



FEDERAL REGISTER

Vol. 78

Friday,

No. 221

November 15, 2013

Pages 68687–68980

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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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, November 19, 2013
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



Contents

Federal Register

Vol. 78, No. 221

Friday, November 15, 2013

Agriculture Department

See Food and Nutrition Service

See Forest Service

See Rural Utilities Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68810

Army Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68828–68829

Blind or Severely Disabled, Committee for Purchase From People Who Are

See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68846–68849

Draft Guidance for Industry and Staff:

NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace; Update, 68849–68850

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products; Withdrawal, 68850–68851

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68851–68852

Coast Guard

PROPOSED RULES

Cargo Securing Manuals, 68784–68809

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68813

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 68823–68824

Commodity Futures Trading Commission

PROPOSED RULES

Aggregation of Positions, 68946–68979

Defense Acquisition Regulations System

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Defense Federal Acquisition Regulation Supplement; Contract Financing, 68829–68830

Defense Federal Acquisition Regulation Supplement; Describing Agency Needs, 68831

Defense Federal Acquisition Regulation Supplement; Service Contracting, 68830

Defense Department

See Army Department

See Defense Acquisition Regulations System

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68824

Meetings:

National Commission on the Structure of the Air Force, 68826–68828

Strategic Environmental Research and Development Program, Scientific Advisory Board; Federal Advisory Committee, 68825–68826

Privacy Act; Systems of Records, 68828

Drug Enforcement Administration

RULES

Schedules of Controlled Substances:

Temporary Placement of Three Synthetic Phenethylamines into Schedule I, 68716–68719

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Evaluation of the Early Warning and Intervention Monitoring System, 68831–68832

Meetings:

National Advisory Committee on Institutional Quality and Integrity, 68832–68833

Employment and Training Administration

NOTICES

Announcement Regarding a Change in Eligibility:

Unemployment Insurance claimants in Alaska, Mississippi, and Wisconsin in the Emergency Unemployment Compensation 2008 Program, 68865

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Pesticide Tolerances:

Tebuconazole, 68741–68748

NOTICES

Initiation of Scoping for an Environmental Assessment, 68835–68836

Meetings:

FIFRA Scientific Advisory Panel, 68836–68837

Pesticide Program Dialogue Committee, 68837

Nominations:

National Drinking Water Advisory Council, 68838

Export-Import Bank

NOTICES

Applications:

Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 million, 68838–68839

Federal Aviation Administration**RULES**

Airworthiness Design Standards:

Advanced Avionics under Special Class (JAR-VLA) Regulations; Aquila Aviation by Excellence GmbH, Model AT01-100, 68687-68688

Airworthiness Directives:

EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Airplanes, 68688-68691

Fokker Services B.V. Airplanes, 68691-68693

The Boeing Company Airplanes, 68693-68697

Turbomeca S.A. Turboshaft Engines, 68697-68699

Establishment of Class E Airspace:

Battle Mountain, NV, 68699

IFR Altitudes:

Miscellaneous Amendments, 68699-68702

Standard Instrument Approach Procedures, and Takeoff

Minimums and Obstacle Departure Procedures;

Miscellaneous Amendments, 68702-68705

PROPOSED RULES

Proposed Establishment of Area Navigation Routes:

Atlanta, GA, 68777-68779

Special Conditions:

Airbus, Model A350-900 Series Airplane; Composite Fuselage In-Flight Fire/Flammability Resistance, 68775-68777

NOTICES

Airport Property Releases:

Marianna Municipal Airport, Marianna, FL, 68901-68902

Federal Communications Commission**NOTICES**

Changes to Auction 902 Schedule Following Resumption of Normal Commission Operations:

Tribal Mobility Fund Phase I Auction Rescheduled for February 25, 2014, 68839-68840

Federal Energy Regulatory Commission**NOTICES**

Filings, 68833-68834

Initiation of Proceeding:

Pacific Gas and Electric Company; Refund Effective Date, 68834

Meetings:

Exelon Generation Co., LLC; Staff Attendance, 68834

Petitions for Limited Waivers:

Maryland Solar, LLC, 68834-68835

Requests under Blanket Authorizations:

Southern Star Central Gas Pipeline, Inc., 68835

Federal Reserve System**NOTICES**

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 68840

Federal Trade Commission**RULES**

Premerger Notifications:

Reporting and Waiting Period Requirements, 68705-68713

NOTICES

Public Workshops:

Follow-On Biologics; Impact of Recent Legislative and Regulatory Naming Proposals on Competition, 68840-68845

Fish and Wildlife Service**NOTICES**

Comprehensive Conservation Plans:

Seal Beach National Wildlife Refuge, Orange County, CA, 68858-68859

Food and Drug Administration**RULES**

Listing of Color Additives Exempt from Certification:

Spirulina Extract; Confirmation of Effective Date, 68713-68714

Medical Devices:

Ophthalmic Devices; Classification of the Scleral Plug, 68714-68715

NOTICES

Draft Guidance for Industry:

Acrylamide in Foods, 68852-68853

Medical Device Single Audit Program International

Coalition Pilot Program, 68853-68854

Meetings:

Over-the-Counter Ophthalmic Drug Products; Emergency Use Eyewash Products, 68854-68855

Food and Nutrition Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

2014 Evaluation of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity, 68810-68811

Foreign-Trade Zones Board**NOTICES**

Applications for Reorganization/Expansion under Alternative Site Framework:

Foreign-Trade Zone 235, Lakewood, NJ, 68813-68814

Authorization of Production Activities:

Brightstar Corp., Foreign-Trade Zone 32, Miami, FL, 68814

Broan-NuTone, LLC, Subzone 41L, Hartford, WI, 68814

Easton-Bell Sports, Inc., Subzone 114F, Rantoul, IL, 68814

Samsung Austin Semiconductor, LLC, Subzone 183B, Austin, TX, 68814

Forest Service**NOTICES**

Meetings:

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule, 68811-68812

Health and Human Services Department

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Food and Drug Administration

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68846

Homeland Security Department

See Coast Guard

Housing and Urban Development Department**RULES**

Floodplain Management and Protection of Wetlands,
68719–68734

NOTICES

Federal Property Suitable as Facilities to Assist the
Homeless, 68858

Indian Affairs Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:
Proposed Fee-to-Trust Transfer of Property and
Subsequent Development of a Resort/Hotel and
Ancillary Facilities in Taunton, MA, etc., 68859–
68860

Interior Department

See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

Internal Revenue Service**RULES**

Reduction or Suspension of Safe Harbor Contributions,
68735–68739

PROPOSED RULES

Controlled Group Regulation Examples:
Hearing Cancellation, 68779–68780
Treatment of Income from Indian Fishing Rights-Related
Activity as Compensation, 68780–68782

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 68903–68905

International Trade Administration**NOTICES**

Applications:
International Buyer Program Calendar Year 2015, 68814–
68816

International Trade Commission**NOTICES**

Investigations; Determinations, Modifications, Rulings, etc.:
Certain Navigation Products, Including GPS Devices,
Navigation and Display Systems, Radar Systems,
Navigational Aids, Mapping Systems and Related
Software, 68861–68862

Investigations; Terminations, Modifications and Rulings:
Handheld Magnifiers and Products Containing Same,
68862–68863

Justice Department

See Drug Enforcement Administration

NOTICES

Stipulations, Consent Decrees and Settlement Agreements:
Resource Conservation and Recovery Act and the
Comprehensive Environmental Response,
Compensation, and Liability Act, 68863–68864

Labor Department

See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration
See Workers Compensation Programs Office

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Veterans Retraining Assistance Participant Outreach
Reporting, 68864–68865

Land Management Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:
Proposed Stateline Solar Farm and Proposed California
Desert Conservation Area Plan Amendment, 68860–
68861

Mine Safety and Health Administration**PROPOSED RULES**

Refuge Alternatives for Underground Coal Mines, 68783–
68784

National Highway Traffic Safety Administration**RULES**

Federal Motor Vehicle Safety Standards:
Designated Seating Positions, 68748–68757

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 68902–68903

National Institutes of Health**NOTICES****Meetings:**

Center for Scientific Review, 68855–68857
Center for Scientific Review; Amended, 68857
Center for Scientific Review; Cancellation, 68857
National Human Genome Research Institute, 68856–
68857
National Institute of Allergy and Infectious Diseases,
68855, 68857
National Institute of Neurological Disorders and Stroke,
68856
Office of The Director, National Institutes of Health,
68855

National Oceanic and Atmospheric Administration**RULES**

Atlantic Highly Migratory Species:
Vessel Monitoring Systems, 68757–68764
Fisheries off West Coast States:
Pacific Coast Groundfish Fishery Management Plan;
Commercial, Limited Entry Pacific Coast Groundfish
Fishery; Program Improvement and Enhancement,
68764–68773

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
NOAA Space-Based Data Collection System Agreements,
68816–68817

Northeast Region Gear Identification, 68817

Meetings:

Caribbean Fishery Management Council, 68818–68819
Fisheries of the South Atlantic and the Gulf of Mexico;
Southeast Data, Assessment and Review, 68817–
68818

Procedures for Government-to-Government Consultations:
Federally Recognized Indian Tribes and Alaska Native
Corporations, 68819–68821

Seats for National Marine Sanctuary Advisory Councils;
Availability and Requests for Applications, 68821–
68823

Nuclear Regulatory Commission**PROPOSED RULES**

Onsite Emergency Response Capabilities, 68774–68775

NOTICES**Meetings:**

Advisory Committee on Reactor Safeguards,
Subcommittee on US–APWR, 68867–68868

Meetings; Sunshine Act, 68868

Occupational Safety and Health Administration

PROPOSED RULES

Meetings:

Improve Tracking of Workplace Injuries and Illnesses, 68782–68783

NOTICES

Meetings:

Federal Advisory Council on Occupational Safety and Health, 68865–68867

Pension Benefit Guaranty Corporation

RULES

Benefits Payable in Terminated Single-Employer Plans: Interest Assumptions for Paying Benefits, 68739–68741

Postal Regulatory Commission

NOTICES

First-Class Mail Postage Payment Option, 68868–68869

Rural Utilities Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68812

Securities and Exchange Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68869–68872

Filing of Proposed Rules:

Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards, 68872–68887

Examination Engagements Regarding Compliance Reports of Brokers and Dealers, and Engagements Regarding Exemption Reports of Brokers and Dealers, and Related Amendments to PCAOB Standards, 68912–68944

Meetings:

Dodd–Frank Investor Advisory Committee, 68887–68888

Self-Regulatory Organizations; Proposed Rule Changes:

EDGA Exchange, Inc., 68889–68893

EDGX Exchange, Inc., 68897–68901

Financial Industry Regulatory Authority, Inc., 68893–68895

NASDAQ OMX PHLX LLC, 68895–68897

Options Clearing Corp., 68888–68889

Substance Abuse and Mental Health Services Administration

NOTICES

Funding Opportunities:

Community Anti-Drug Coalitions of America, Fiscal Year 2014, 68857–68858

Surface Transportation Board

NOTICES

Acquisition of Control Exemptions:

Dynegy Inc., Illinois Power Holdings, LLC and Illinois Power Holdings II, LLC; Coffeen and Western Railroad Company and Joppa & Eastern Railroad Company, 68903

Transportation Department

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

Treasury Department

See Internal Revenue Service

Veterans Affairs Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Ankle Conditions Disability Benefits Questionnaire, 68908

Annual Certification of Veteran Status and Veteran-Relatives, 68905

Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire, 68906

Elbow and Forearm Conditions Disability Benefits Questionnaire, 68907

Foot (Including Flatfeet (pes planus)) Conditions Disability Benefits Questionnaire, 68907–68908

Gravesite Reservation Survey (2 Year), 68909

Hand and Finger Conditions Disability Benefits Questionnaire, 68907

Hip and Thigh Conditions Disability Benefits Questionnaire, 68906

Knee and Lower Leg Conditions Disability Benefits Questionnaire, 68909–68910

Veterans Transportation Service Data Collection, 68908–68909

Wrist Conditions Disability Benefits Questionnaire, 68905–68906

Workers Compensation Programs Office

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 68867

Separate Parts In This Issue

Part II

Securities and Exchange Commission, 68912–68944

Part III

Commodity Futures Trading Commission, 68946–68979

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR**Proposed Rules:**

5068774
5568774

14 CFR

2168687
39 (4 documents)68688,
68691, 68693, 68697
7168699
9568699
97 (2 documents)68702,
68704

Proposed Rules:

2568775
7168777

16 CFR

80168705

17 CFR**Proposed Rules:**

15068946

21 CFR

7368713
88668714
130868716

24 CFR

5068719
5568719
5868719

26 CFR

168735

Proposed Rules:

1 (2 documents)68779,
68780

29 CFR

402268739

Proposed Rules:

190468782
195268782

30 CFR**Proposed Rules:**

7568783

33 CFR**Proposed Rules:**

9768784
16068784

40 CFR

18068741

46 CFR**Proposed Rules:**

9768784

49 CFR

57168748

50 CFR

63568757
66068764

Rules and Regulations

Federal Register

Vol. 78, No. 221

Friday, November 15, 2013

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Final Additional Airworthiness Design Standards: Advanced Avionics Under the Special Class (JAR-VLA) Regulations; Aquila Aviation by Excellence GmbH, Model AT01-100

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of airworthiness design standards.

SUMMARY: This document is an issuance of the final airworthiness design criteria for the inclusion of advance avionics with integrated electronic displays for the Aquila Aviation by Excellence GmbH AT01-100. These additional provisions are expansions of the existing JAR-VLA (Joint Aviation Requirements—Very Light Aircraft) and CS-VLA regulations as the current regulations do not adequately address these types of systems. The current regulations only address traditional federated gauges. The European Aviation Safety Agency (EASA) has not expanded the VLA regulations for these types of installation on these types of airplanes through EASA special conditions or new regulations. These Federal Aviation Administration (FAA) design criteria help initiate standards for this type of airplane without being over burdensome and to encourage EASA to follow suit.

DATES: Effective November 15, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Rudolph, Aerospace Engineer, Standards Office (ACE-112), Small Airplane Directorate, Aircraft Certification Service, FAA; telephone number (816) 329-4059, fax number (816) 329-4090, email at doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Background

The original certification of the aircraft was done under the provisions of 14 CFR 21.29, as a § 21.17(b), special class aircraft, JAR-VLA, using the requirements of JAR-VLA Amendment VLA/92/01 as developed by the Joint Aviation Authority, and under Title 14 of the Code of Federal Regulations and two additional design criteria issued on September 2, 2003 (68 FR 56809).

The regulation applicable to the Amended Type Certificate (TC) approval is § 21.17(b). This section describes the regulatory basis for the approval of JAR-VLA and CS-VLA aircraft as a special class. Policy on this subject includes AC 23-11B and AC 21.17-3.

FAA policy expressed in AC 23-11B and AC 21.17-3 limits JAR-VLA and CS-VLA aircraft approved under § 21.17(b), to Day-VFR operations. Additionally, the FAA also published design criteria to allow expansion of the Aquila AT01-100 airplane to include Night-VFR as shown in NPRM 75 FR 32576. In conjunction with the expansion to Night-VFR operations integrated avionic displays are to be installed on the Aquila AT01-100 airplane.

EASA allowed the applicant to comply with CS-23 regulations for the integrated avionic displays installed on the Aquila AT01-100 airplane and made them part of the EASA certification basis, but did not publish these additional requirements as Special Conditions as they did for the Night-VFR expansion. The FAA's system does not allow this type of additional requirements, such as 14 CFR part 23 regulations, to be added to a special class, § 21.17(b) airplane without being publically noticed either through design criteria or expansion of the existing AC 23-11B. This is the reason for this design criteria notification.

The FAA has concluded that it is acceptable to allow advanced integrated avionic systems for certification on the Aquila Model AT01-100 under the special class amended TC project AT00651CE-A, provided the applicant complies with the below listed design criteria based on existing part 23

regulations at the described amendment levels. Revisions to AC 23-11B and AC 21.17-3 will be made to address future airplanes that wish to allow these installations.

To satisfy the additional required design criteria for the Special Class (JAR-VLA) Regulations of § 21.17(b), Aquila Aviation by Excellence GmbH has agreed with the FAA to use the 14 CFR part 23 regulations for their Model AT01-100, as shown on the FAA G-1 Issue Paper. The applicable criteria for the installation of advanced avionic displays on the Aquila AT01-100 are as follows:

- 14 CFR 23.1307 at amendment 23-49, "Miscellaneous Equipment"
- 14 CFR 23.1311 at amendment 23-62, "Electronic Display Instrument Systems"
- 14 CFR 23.1321 at amendment 23-49, "Arrangement and visibility"
- 14 CFR 23.1359 at amendment 23-49, "Electrical System Fire Protection".

In addition to the above four regulations that will be used for design criteria, the FAA has also develop a method of compliance (MOC) issue paper for VLA-1309 for this type of installation.

Discussion of Comments

Existence of proposed airworthiness standards for acceptance under 14 CFR part 21 § 21.17(b), special class aircraft, JAR-VLA; the AQUILA Model AT01-100 was published in the **Federal Register** on September 6, 2013, (78 FR 54792). One comment was received from Mr. Alfred Schmiderer from Aquila GmbH. Mr. Schmiderer requested that showing of compliance to the added regulation 14 CFR 23.867(c) as shown in the NPRM, would require a total redesign of the aircraft concerning the lightning protection system. For a composite aircraft like AQUILA AT01-100 this would require, dependent on the results of a "zoning analysis", the installation of a protection system (meshing, strapping of components) which is far beyond the requirements of CS-VLA 857 "Electrical Bonding" to which compliance was shown in the basic certification. A redesign of that kind, postulated by a change of instruments from analog to electronic glass displays only without changing the kind of operation, is a burden too big for the benefit gained by the change. As the aircraft is still

operated as before the change under VMC, safety in relation to lightning effects is not diminished by installing a "glass cockpit". An operation in IMC, which would to our mind require a lightning protection system in accordance with FAR 23.867(c), is not considered and not permitted (reference AFM). For these reasons AQUILA proposes to remove the added requirement 14 CFR 23.867 from the Airworthiness Design Standards as listed in the NPRM.

The FAA agrees with the commenter and has removed the added design criteria of 14 CFR part 23.867 at amendment 23-49. The final applicable design criteria for the installation of advanced avionic displays on the Aquila AT01-100 are the addition four 14 CFR part 23 regulations as shown above.

Applicability

As discussed above, these airworthiness design standards under the special class, JAR-VLA rule are applicable to the Aquila AT01-100 model and future JAR-VLA (CS-VLA) models on FAA TCDS A51CE.

Conclusion

This action affects only certain airworthiness design standards on Aquila AT01-100 model and future JAR-VLA model airplanes shown on FAA TCDS A51CE. It is not a standard of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Citation

The authority citation for these airworthiness standards is as follows:

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

Issued in Kansas City, Missouri on October 28, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-26910 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0870; Directorate Identifier 2013-NM-166-AD; Amendment 39-17657; AD 2013-23-02]

RIN 2120-AA64

Airworthiness Directives; EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model CN-235, CN-235-100, CN-235-200, CN-235-300, and C-295 airplanes. This AD requires inspection of the feeder cables of certain fuel booster pumps for damage (including, but not limited to, signs of electrical arcing and fuel leaks), and replacement if necessary. This AD was prompted by a report of an in-flight problem with the fuel transfer system. We are issuing this AD to detect and correct damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective December 2, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 2, 2013.

We must receive comments on this AD by December 30, 2013.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact EADS CASA, Military

Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email MTA.TechnicalService@casa.eads.net; Internet <http://www.eads.net>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone (425) 227-1112; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013-0186, dated August 16, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

An occurrence with a CN-235 aeroplane has been reported, involving an in-flight problem with the fuel transfer system.

The results of the subsequent investigation revealed damage on the fuel booster pump electrical feeding cable and some burn marks on the pump body and plate (fairing) at the external side of the fuel tank; confirmed electrical arcing between the wire and pump body; and revealed as well fuel leakage onto the affected wire.

This condition, if not detected and corrected, could create an ignition source in the fuel tank vapour space, possibly resulting in a fuel tank explosion and loss of the aeroplane.

To address this potential unsafe condition, EADS CASA (Airbus Military) issued All Operators Letter (AOL) 235-025 and AOL

295–025, providing inspection instructions for the affected fuel booster pumps, Part Number (P/N) 1C12–34 and P/N 1C12–46.

For the reasons described above, this [EASA] AD requires a one-time [detail visual] inspection of the affected fuel booster pumps to detect damage [including, but not limited, to signs of electrical arcing and fuel leaks] and, depending on findings, replacement of the fuel booster pump. This [EASA] AD also requires the reporting of all findings to EADS CASA for evaluation.

This [EASA] AD is considered to be an interim action and further AD action may follow.

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA–2013–0870.

Relevant Service Information

Airbus Military (EADS CASA) has issued the following service information.

- For Model CN–235 airplanes: Airbus Military All Operator Letter 235–025, dated July 29, 2013.
- For Model C–295 airplanes: Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA’s Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA’s Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because damage to the fuel booster pump could create an ignition source in the fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2013–0870; Directorate Identifier 2013–NM–166–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of fuel boost pump.	2 work-hours × \$85 per hour = \$170 per fuel boost pump.	\$0	\$170 per fuel boost pump	\$11,900

We estimate the following costs to do any necessary replacements that would

be required based on the results of the inspection. We have no way of

determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of fuel boost pump	3 work-hours × \$85 per hour = \$255 per pump	\$16,080	\$16,335 per pump.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of

Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with

promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–23–02 EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.): Amendment 39–17657. Docket No. FAA–2013–0870; Directorate Identifier 2013–NM–166–AD.

(a) Effective Date

This AD becomes effective December 2, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, CN–235–300, and C–295 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a report of an in-flight problem with the fuel transfer system. We are issuing this AD to detect and correct damage to certain fuel booster pumps, which could create an ignition source in the fuel tank vapor space, and result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Inspection of the Feeder Cables of Certain Fuel Booster Pumps

Within the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Perform a detailed visual inspection for damage (including, but not limited to, signs of electrical arcing and fuel leaks) of the electrical feeder cables of each fuel booster pump having part number (P/N) 1C12–34 or 1C12–46, in accordance with the instructions of Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) For each fuel booster pump that has not been replaced as of the effective date of this AD: Prior to the accumulation of 300 total flight hours or within 5 cycles after the effective date of this AD, whichever occurs later.

(2) For each fuel booster pump that has been replaced as of the effective date of this AD: Within 300 flight hours since the most recent fuel booster pump replacement, or within 5 flight cycles after the effective date of this AD, whichever occurs later.

(h) Replacement of Affected Fuel Boost Pumps

If any damage (including, but not limited to, signs of electrical arcing and fuel leaks) is found during the inspection required by paragraph (g) of this AD: Within the time specified in paragraph (h)(1) or (h)(2) of this AD, replace the affected fuel booster pump with a serviceable pump, in accordance with Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) Before further flight.

(2) Within 10 days following the inspection, provided that the airplane is operated under the conditions specified in Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235

airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(i) Report of Inspection Findings

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, submit an inspection report to EADS CASA (Airbus Military), in accordance with Airbus Military All Operator Letter 235–025, dated July 29, 2013 (for Model CN–235 airplanes); or Airbus Military All Operator Letter 295–025, Revision 01, dated August 1, 2013 (for Model C–295 airplanes).

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1112; fax: (425) 227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder (DAH) with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response,

including the time for reviewing instructions, completing, and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES-200.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013-0186, dated August 16, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2013-0870.

(l) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Military All Operator Letter 235-025, dated July 29, 2013.

(ii) Airbus Military All Operator Letter 295-025, Revision 01, dated August 1, 2013.

(3) For service information identified in this AD, contact EADS-CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; email MTA.TechnicalService@casa.eads.net; Internet <http://www.eads.net>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on October 31, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-27017 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2013-0630; Directorate Identifier 2012-NM-213-AD; Amendment 39-17660; AD 2013-23-05]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by a design review, which revealed that, under certain failure conditions, wiring in the main fuel tank could develop a short circuit that might cause a hot spot on the wiring conduit or puncture the wiring conduit wall. This AD requires installing fuses in the power supply wiring and/or return wiring for various components in the fuel system; and revising the airplane maintenance program by incorporating critical design configuration control limitations. We are issuing this AD to prevent an ignition source in the main fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD becomes effective December 20, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 20, 2013.

ADDRESSES: You may examine the AD on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2013-0630>; or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email technicalservices@fokker.com; Internet <http://www.myfokkerfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM published in the **Federal Register** on July 31, 2013 (78 FR 46303). The NPRM proposed to correct an unsafe condition for the specified products.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012-0241, dated November 12, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88 [66 FR 23086, May 7, 2001], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.

The design review conducted by Fokker Services on the Fokker 70 and Fokker 100 in response to these regulations revealed that under certain failure conditions of the wiring of the Overflow Valve Reed Switch, or the solenoid of the Level Control Pilot Valve (LCPV), or the solenoid of the Re/De-fueling Shut-Off Valve, or the Collector-Tank Low Level Float-Switch, a short circuit may develop that causes a hot spot on the wiring conduit, or puncturing of the wiring conduit wall in the main fuel tank.

This condition, if not corrected, could create an ignition source in the main fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.

For the reasons described above, this [EASA]AD requires the installation of fuses in the power supply wiring and/or return wiring for the main tank overflow valve reed-switches, the LCPV solenoid, the Re/De-fuel shut-off valve solenoid and the collector-tank Low Level float switch and subsequently, the implementation of the associated Critical Design Configuration Control Limitations (CDCCL[s]) [and revising the maintenance program to incorporate the CDCCLs].

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0630-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 46303, July 31, 2013) 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 this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 46303, July 31, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already

proposed in the NPRM (78 FR 46303, July 31, 2013).

Costs of Compliance

We estimate that this AD affects 10 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation and revision of maintenance program.	29 work-hours × \$85 per hour = \$2,465	\$4,600	\$7,065	\$70,650

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. 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 MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2013-0630-0002>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013-23-05 Fokker Services B.V.:
Amendment 39-17660. Docket No. FAA-2013-0630; Directorate Identifier 2012-NM-213-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 20, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a design review, which revealed that, under certain failure conditions, wiring in the main fuel tank could develop a short circuit that might cause a hot spot on the wiring conduit or puncture the wiring conduit wall. We are issuing this AD to prevent an ignition source in the main fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Installation of Fuses

Within 24 months after the effective date of this AD: Install fuses in the power supply wiring and return wiring, as applicable, for the reed-switches in the main fuel tank overflow valve, level control pilot valve solenoid, re/de-fuel shut off valve solenoid, and the collector-tank low level float switch, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100-28-068, dated August 10, 2012, including the drawings specified in paragraphs (g)(1) through (g)(3) of this AD and the manual change notification specified in paragraph (g)(4) of this AD.

(1) Fokker Drawing W41192, Sheet 051, Issue AS (the issue date is not specified on the drawing).

(2) Fokker Drawing W41208, Sheet 002, Issue B (the issue date is not specified on the drawing).

(3) Fokker Drawing W59520, Sheet 002, Issue E, dated March 18, 2011.

(4) Fokker Manual Change Notification MCNM F100-143, dated August 10, 2012.

(h) Revision of Maintenance or Inspection Program

After installing the fuses as required by paragraph (g) of this AD, before further flight, revise the maintenance or inspection program, as applicable, by incorporating the critical design configuration control limitations (CDCCLs) specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF100-28-068, dated August 10, 2012, including the drawings specified in paragraphs (h)(1) through (h)(3) of this AD and the manual change notification specified in paragraph (h)(4) of this AD.

(1) Fokker Drawing W41192, Sheet 051, Issue AS (the issue date is not specified on the drawing).

(2) Fokker Drawing W41208, Sheet 002, Issue B (the issue date is not specified on the drawing).

(3) Fokker Drawing W59520, Sheet 002, Issue E, dated March 18, 2011.

(4) Fokker Manual Change Notification MCNM F100-143, dated August 10, 2012.

(i) No Alternative Intervals or CDCCLs

After the CDCCLs have been incorporated, as required by paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1137; fax 425-227-1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European

Aviation Safety Agency Airworthiness Directive 2012-0241, dated November 12, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#/documentDetail;D=FAA-2013-0630-0002>.

(l) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100-28-068, dated August 10, 2012, including the drawings specified in paragraphs (l)(2)(i)(A) through (l)(2)(i)(C) of this AD and the manual change notification specified in paragraph (l)(2)(i)(D) of this AD.

(A) Fokker Drawing W41192, Sheet 051, Issue AS (the issue date is not specified on the drawing).

(B) Fokker Drawing W41208, Sheet 002, Issue B (the issue date is not specified on the drawing).

(C) Fokker Drawing W59520, Sheet 002, Issue E, dated March 18, 2011.

(D) Fokker Manual Change Notification MCNM F100-143, dated August 10, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88-6280-350; fax +31 (0)88-6280-111; email technicalservices@fokker.com; Internet <http://www.myfokkerfleet.com>.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 6, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-27229 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0426; Directorate Identifier 2011-NM-087-AD; Amendment 39-17659; AD 2013-23-04]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737-600, -700, -800, -900, and -900ER series airplanes. This AD was prompted by reports that certain seat track bolts were found with severed head bolts due to fatigue. This AD requires replacing titanium seat track bolts with corrosion resistant steel (CRES) bolts, repetitive inspections for cracking of the splice strap and forward seat track holes, and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct missing or severed bolt heads, which, if not corrected, could result in the inability of the seat track to carry passenger loads, which could cause the seats to detach from the seat track, resulting in possible injury to passengers during an emergency landing or survivable crash.

DATES: This AD is effective December 20, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 20, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9

a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6483; fax: 425-917-6590; email: sarah.piccola@faa.gov.

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. The NPRM published in the **Federal Register** on May 8, 2012 (77 FR 26993). The NPRM proposed to require replacing titanium seat track bolts with CRES bolts, repetitive inspections for cracking of the splice strap and forward seat track holes, and related investigative and corrective actions if necessary. The NPRM also proposed to provide an optional terminating action for the repetitive inspections.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 26993, May 8, 2012), and the FAA's response to each comment. Boeing and United Airlines supported the NPRM.

Request To Revise Costs of Compliance Section

American Airlines (American) requested that we revise the Costs of Compliance section of the NPRM (77 FR 26993, May 8, 2012). American explained that, since it alone operates 113 airplanes that are affected by the NPRM, several hundred airplanes should be affected.

We agree with the request to revise the Costs of Compliance section of this final rule because there was an error in the number of affected airplanes identified in the Costs of Compliance section of NPRM (77 FR 26993, May 8, 2012). We have updated the number of airplanes from 168 to 973 in the Costs of Compliance section of this final rule accordingly.

Although we have revised the cost calculation, there is no change to the actual number of airplanes affected by this final rule. This final rule refers to Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, for affected airplanes. The effectivity of Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, is correct. The number of affected airplanes identified in the Costs of Compliance section of this final rule now reflects the number of airplanes of U.S. registry listed in the effectivity of Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011.

Request To Revise Compliance Time

American requested that we revise the initial compliance time for replacing titanium seat track bolts with CRES bolts from 7,000 total flight cycles or within 24 months, to 8,000 total flight cycles or within 60 months (whichever occurs later) after the effective date of this AD. American stated that extending this compliance time would enable operators who have extended their maintenance program in accordance with Boeing maintenance planning documents to accomplish the replacement during the first heavy maintenance visit.

American also asked that, if the compliance time cannot be extended for all airplanes, then the compliance time should be extended for certain airplanes. For example, American has found and replaced sheared bolts with new bolts on airplanes having between 13,000 and 15,000 total flight cycles. Therefore, American concluded that the inspection interval could be extended to 7,000 flight cycles from "bolt replacement" for airplanes for which maintenance records show the seat track bolts were replaced previously. In addition, American stated that the fact it is finding and replacing severed seat track bolts proves that this condition will be detected and corrected by operators during routine maintenance.

We disagree with extending the initial compliance time to 8,000 total flight cycles or 60 months. The inspection threshold of 7,000 total flight cycles was established by the manufacturer at approximately 90 percent of fatigue life. In developing an appropriate compliance time for this action, we considered the manufacturer's recommendation, the safety implications, parts availability, and maintenance schedules for the timely accomplishment of the inspection.

Affected operators may request approval of an alternative method of compliance (AMOC) for an extension of

the compliance times under the provisions of paragraph (j) of this final rule by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed the final rule in regard to this issue.

Request To Allow Re-Sequencing of Steps

American requested that we remove or reword the Differences Between Proposed AD and Service Bulletin section of the preamble of the NPRM (77 FR 26993, May 8, 2012) regarding the sentence that refers to the sequence of the steps in Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011. American stated that the sentence specifies operators would be required to perform the repair using the sequence of steps in Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011. American stated that this language is "ambiguous" as no sections or figures in that service bulletin are titled "Repair." Therefore, it is unclear if the NPRM refers to the entire service bulletin or only one portion.

American stated that the sequence of removing and installing bolts, angles, or splice straps from the right side before the left side (or from forward to aft instead of aft to forward) has no impact on safety as long as the final installation of all parts is done in accordance with Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011. American requested that this exception to Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, be removed or, at a minimum, re-worded to specifically state which sections must be accomplished in the sequence specified in Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011.

We agree that clarification is necessary. Note 1. in paragraph 3.A., "General Information," of Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, specifies that "the instructions identified in Paragraph 3.B., Work Instructions, and the Figure(s) give the recommended sequence of steps. The sequence of steps to do this service bulletin can be changed." We agree that accomplishing the left side before the right side or accomplishing forward before aft does not have an impact on safety.

However, Note 1. in paragraph 3.A., "General Information" of Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, suggests this applies to the sequence of steps in

the figure(s), which clearly state “in accordance with,” in the Accomplishment Instructions. When the words “in accordance with” are included in a step in the Accomplishment Instructions, the operator must follow the corresponding sequence of steps that are provided. For example, if a step specifies to do a replacement “in accordance with Figure 1,” then the steps within Figure 1 must be done in sequence. This final rule does not dictate the order in which other steps are performed.

Statement Regarding Installation of Winglets

Aviation Partners Boeing (APB) stated that the installation of winglets per supplemental type certificate (STC) ST00830SE (http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/408E012E008616A7862578880060456C?OpenDocument&Highlight=st00830se) does not affect the actions specified in the NPRM (77 FR 26993, May 8, 2012).

We concur. STC ST00830SE does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST00830SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of section 39.17 of the Federal Aviation Regulations (14 CFR 39.17).

Request To Include Note Regarding Access

American requested the following note be added to the NPRM (77 FR 26993, May 8, 2012): “If it is necessary to remove more parts for access, you can remove those parts. If you can get access without removing identified parts, it is not necessary to remove all of the identified parts. Jacking and shoring limitations must be observed.” American stated that this general information note is needed to remove the ambiguity relating to access required to accomplish the service information, and that it would provide operators additional flexibility.

We agree that clarification is necessary. This general information note was one recently added to Boeing service information to remove the ambiguity. However, Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011, does not contain this note. We acknowledge this

information is helpful to remove the ambiguity related to access required to accomplish the actions specified in Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011. We have added similar information in paragraph (g) of this final rule.

Request To Revise Paragraphs (g) and (h)(2) of the NPRM (77 FR 26993, May 8, 2012)

AirTran/Southwest Airlines (AirTran/Southwest) requested that we revise the wording in paragraphs (g) and (h)(2) of the NPRM (77 FR 26993, May 8, 2012) that reads “. . . repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD” to “. . . repair the seat track using a method approved in accordance with the procedures specified in paragraph (j) of this AD.” Southwest stated that this change would allow the ACO or Boeing Commercial Airplanes Organization Designation Authorization (ODA) to approve the repair.

We agree. Paragraph (j)(3) of this AD already allows Boeing Commercial Airplanes ODA to approve repairs if authorized by the Seattle ACO. We have changed paragraphs (g) and (h)(2) of this final rule to refer to paragraph (j) of this final rule, as requested by the commenter.

Request To Clarify Installation Location in Paragraphs (g) and (h)(2) of the NPRM (77 FR 26993, May 8, 2012)

AirTran/Southwest requested a note be added to paragraph (i) of the NPRM (77 FR 26993, May 8, 2012) to clarify the location of a splice strap installation. The commenter noted an error in Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011, in Step 1, “Move,” of Figure 10, Sheet 5 of 7; and in Step 1, “Move,” of Figure 12, Sheet 5 of 7. AirTran/Southwest stated the splice strap needs to be centered with left buttock line (LBL) 45.50 and right buttock line (RBL) 45.50, respectively—not LBL 24.75.

We agree that clarification is necessary. The errors noted by AirTran/Southwest are present in Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011. We acknowledge that the splice strap needs to be centered with LBL 45.50 and RBL

45.50, respectively—not LBL 24.75. Therefore, we have added Note 1 to paragraph (i) of this AD to clarify the location of a splice strap installation.

Request To Delay Issuance of AD

AirTran/Southwest requested a delay in the issuance of this final rule until Boeing has had time to build up an adequate stock of seat track bolt and splice part kits when frame replacements are required. The commenter stated that Boeing currently has no kits in stock and has a reorder time of 558 days. AirTran/Southwest stated that there would be an economic and operational impact if Boeing has no stock of seat track bolt and splice kits, or if it takes Boeing 558 days to re-stock a kit.

We disagree with the request to delay release of this final rule. Boeing has confirmed that the required kits are available to support of the compliance times specified in this final rule. Should adequate parts not be available approaching the end of the compliance period, paragraph (j) of this final rule provides operators the opportunity to request approval of an alternative compliance time if data are presented that prove the alternative compliance time will provide an acceptable level of safety. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 26993, May 8, 2012), for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 26993, May 8, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 973 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of bolts and installation of new splice strap.	18 work-hours × \$85 per hour = \$1,530	\$1,991	\$3,521	\$3,425,933
Repetitive inspection	3 work-hours × \$85 per hour = \$255	0	255	248,115

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2013–23–04 The Boeing Company:
Amendment 39–17659; Docket No. FAA–2012–0426; Directorate Identifier 2011–NM–087–AD.

(a) Effective Date

This AD is effective December 20, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –800, –900, and –900ER series airplanes, with passenger seats installed; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53: Fuselage.

(e) Unsafe Condition

This AD was prompted by reports that certain seat track bolts were found with severed bolt heads due to fatigue. We are issuing this AD to detect and correct missing or severed bolt heads, which, if not corrected, could result in the inability of the seat track to carry passenger loads, which could cause the seats to detach from the seat track, resulting in possible injury to passengers during an emergency landing or survivable crash.

(f) Compliance

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

(g) Seat Track Bolt Replacement and Splice Strap Installation

Before the accumulation of 7,000 total flight cycles, or within 24 months after the

effective date of this AD, whichever occurs later: Replace titanium seat track bolts with corrosion resistant steel (CRES) bolts at both the left and right sides of buttock lines 24.75 and 45.50, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011. If a titanium seat track bolt is found missing from the structure during the accomplishment of the tasks required by paragraph (g) of this AD: Before further flight, do a high frequency eddy current (HFEC) inspection for cracking in the fastener holes and a general visual inspection of the area, including the splice strap and forward seat track for damage, and replace missing bolts with new or serviceable CRES bolts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011. If cracking or damage is found: Before further flight, repair the seat track using a method approved in accordance with the procedures specified in paragraph (j) of this AD. If it is necessary to remove more parts for access, those parts may be removed. If access can be obtained without removing identified parts, it is not necessary to remove all identified parts. Jacking and shoring limitations should be observed.

(h) Detailed and HFEC Inspections

Before the accumulation of 7,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later: Do a detailed inspection and an HFEC inspection for cracking in the holes common to the splice strap and forward seat track at both the left and right sides of buttock lines 24.75 and 45.50, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011. Repeat the inspections thereafter at intervals not to exceed 7,000 flight cycles, until the actions specified in paragraph (i) of this AD have been done.

(1) If a crack is found in the splice strap during any inspection required by paragraph (h) of this AD: Before further flight, replace the seat track bolts and install a new splice strap part number (P/N) 146A5342–26 and retained angle at the affected location, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011.

(2) If a crack is found in the seat track during any inspection required by paragraph (h) of this AD, and Boeing Special Attention Service Bulletin 737–53–1296, dated January 11, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair the seat track using a method approved

in accordance with the procedures specified in paragraph (j) of this AD.

(i) Optional Terminating Action

Replacing the titanium seat track bolts with CRES bolts on both the left and right sides of buttock lines 24.75 and 45.50 at station 727B, and installing a new splice strap P/N 146A5342-26, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, terminates the repetitive inspections required by paragraph (h) of this AD.

Note 1 to paragraph (i) of this AD: Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011, contains an error in Step 1, "Move," of Figure 10, Sheet 5 of 7; and in Step 1, "Move," of Figure 12, Sheet 5 of 7. The splice strap needs to be centered with left buttock line 45.50 and right buttock line 45.50, respectively— not left buttock line 24.75, as stated in that service bulletin.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: 9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Sarah Piccola, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6483; fax: 425-917-6590; email: sarah.piccola@faa.gov.

(l) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Special Attention Service Bulletin 737-53-1296, dated January 11, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>.

(4) You may view this service information at 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 4, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-27091 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2012-0940; Directorate Identifier 2012-NE-26-AD; Amendment 39-17654; AD 2013-22-22]

RIN 2120-AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2013-01-07 for all Turbomeca S.A. Arriel 2D turboshaft engines. AD 2013-01-07 required replacing the hydromechanical metering unit (HMU) at a reduced life. This AD maintains that requirement and also requires conducting inspections of the HMU. This AD was prompted by further cases of deterioration of HMU rotating components. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine and possible loss of the helicopter.

DATES: This AD is effective December 20, 2013.

ADDRESSES: For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France;

phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7779; fax: 781-238-7199; email: frederick.zink@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013-01-07, Amendment 39-17321 (78 FR 6725, January 31, 2013), ("AD 2013-01-07"). AD 2013-01-07 applied to the specified products. The NPRM published in the **Federal Register** on June 7, 2013 (78 FR 34284). The NPRM proposed to continue to require replacing the HMU at a reduced life. The NPRM also proposed to require inspections of the HMU.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 34284, June 7, 2013).

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for the following editorial changes. We changed paragraphs (e)(1)(iv) and (e)(2)(iv).

Paragraph (e)(1)(iv) now reads, "Guidance on replacing the complete sleeve and inspecting the complete sleeve female splines, and HP and LP male splines, can be found in Turbomeca Technical Instruction No. 292 73 2847."

Paragraph (e)(2)(iv) now reads, "Guidance for completing the requirements of paragraph (e)(2) can be found in Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A292 73 2847."

We changed paragraph (f) to provide credit for initial replacements specified in paragraph (e) of this AD.

We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 32484, June 7, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 32484, June 7, 2013).

Costs of Compliance

We estimate that this AD affects 56 Arriel 2D turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about two hours per engine to comply with this AD. The average labor rate is \$85 per hour. Required parts cost about \$14,400 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators is \$815,920.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2013-01-07, Amendment 39-17321 (78 FR 6725, January 31, 2013), and adding the following new AD:

2013-22-22 Turbomeca S.A.: Amendment 39-17654; Docket No. FAA-2012-0940; Directorate Identifier 2012-NE-26-AD.

(a) Effective Date

This AD is effective December 20, 2013.

(b) Affected ADs

This AD supersedes AD 2013-01-07, Amendment 39-17321 (78 FR 6725, January 31, 2013).

(c) Applicability

This AD applies to all Turbomeca S.A. Arriel 2D turboshaft engines.

(d) Unsafe Condition

This AD was prompted by further cases of deterioration of hydromechanical metering unit (HMU) rotating components. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine and possible loss of the helicopter.

(e) Compliance

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

- (1) Replace inter-pump complete sleeve, and visually inspect the complete sleeve female splines and HMU high-pressure (HP) pump and low-pressure (LP) pump male splines for corrosion, scaling, cracks, and wear, at the following:

(i) Before exceeding 400 HMU operating hours since new if the HMU has 375 or fewer operating hours on the effective date of this AD; or

(ii) Within 25 HMU operating hours if the HMU has more than 375 operating hours on the effective date of this AD.

(iii) Thereafter, at intervals not to exceed 400 HMU operating hours.

(iv) Guidance on replacing the complete sleeve and inspecting the complete sleeve female splines, and HP and LP male splines, can be found in Turbomeca Technical Instruction No. 292 73 2847.

(v) If the HMU does not pass the initial or repetitive visual inspections required by paragraph (e)(1) of this AD, then before the next flight, replace the affected HMU with an HMU eligible for installation.

(2) Replace the rotating components of the HP and LP pumps, including the complete sleeve, or replace the HMU with an HMU eligible for installation at the following:

(i) Before exceeding 800 HMU operating hours since new; or

(ii) Within 800 HMU operating hours since last replacement of LP and HP fuel pumps rotating components; whichever occurs later.

(iii) Thereafter, replace the LP and HP fuel pump rotating components or the HMU within every 800 HMU operating hours.

(iv) Guidance for completing the requirements of paragraph (e)(2) can be found in Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A292 73 2847.

(f) Credit for Previous Actions

If before the effective date of this AD, you complied with Turbomeca S.A. Alert MSB No. A292 73 2847, Version A, dated May 29, 2012, you met the initial replacement requirements specified in paragraph (e) of this AD. However, you must still comply with the repetitive inspection requirements of this AD.

(g) Installation Prohibition

After the effective date of this AD, do not install any HMU onto any engine, or install any engine onto any helicopter, unless the HMU is in compliance with this AD.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781-238-7779; fax: 781-238-7199; email: frederick.zink@faa.gov.

(2) Refer to MCAI European Aviation Safety Agency AD 2013-0079, dated March 22, 2013, for more information. You may examine the AD on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2012-0940-0006>.

(3) Turbomeca S.A. Alert MSB No. A292 73 2847, Turbomeca Technical Instruction No. 292 73 2847, and Turbomeca Maintenance Manual Task 73-23-00-802-A01, which are

not incorporated by reference in this AD, pertain to the subject of this AD and can be obtained from Turbomeca, using the contact information in paragraph (i)(4) of this AD.

(4) For Turbomeca service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on October 24, 2013.

Colleen M. D'Alessandro,

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

[FR Doc. 2013-27185 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA No. FAA-2013-0530; Airspace Docket No. 13-AWP-9]

Establishment of Class E Airspace; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** of September 23, 2013, that establishes Class E airspace at the Battle Mountain VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC) navigation aid, Battle Mountain, NV. A favorable comment from the National Business Aviation Association (NBAA) was received in the public Docket but was not referenced in the Final Rule.

DATES: *Effective Date:* 0901 UTC, December 12, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** establishing Class E airspace at the Battle Mountain VORTAC navigation aid, Battle Mountain, NV (78 FR 58159, September

23, 2013). The FAA received a comment in support of the rule from the NBAA for inclusion in FAA Docket No. FAA-2013-0530 prior to the closing of the comment period. However, the preamble incorrectly references that there were no comments to the proposal. This action corrects that statement.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the description under the History heading, as published in the **Federal Register** on September 23, 2013 (78 FR 58159), Airspace Docket No. 13-AWP-9, FR Doc. 2013-58159, is corrected as follows: On page 58160, column 1, line 2, remove "No comments were received.", and add in their place "One comment was received from the National Business Aviation Association (NBAA) supporting the establishment of Class E en route airspace."

Issued in Seattle, Washington, on: November 6, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013-27217 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30931; Amdt. No. 510]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, December 12, 2013.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS-420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on November 8, 2013.

John Duncan,
Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is

amended as follows effective at 0901 UTC, June 30, 2011.

■ 1. The authority citation for part 95 continues to read as follows:

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

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 510 Effective date, December 12, 2013]

From	To	MEA
§ 95.6001 Victor Routes-U.S		
§ 95.6009 VOR Federal Airway V9 is Amended to Read in Part		
MC COMB, MS VORTAC *4000—MRA **1900—MOCA	*ROMAR, MS FIX	**3000
*ROMAR, MS FIX *4000—MRA **1900—MOCA	MAGNOLIA, MS VORTAC	**3000
§ 95.6018 VOR Federal Airway V18 is Amended to Read in Part		
MONROE, LA VORTAC	MAGNOLIA, MS VORTAC	2500
§ 95.6048 VOR Federal Airway V48 is Amended to Read in Part		
PEORIA, IL VORTAC *2400—MOCA	MAROC, IL FIX	*3000
MAROC, IL FIX	PONTIAC, IL VOR/DME	2500
§ 95.6066 VOR Federal Airway V66 is Amended to Read in Part		
BROOKWOOD, AL VORTAC	LAGRANGE, GA VORTAC	3400
§ 95.6070 VOR Federal Airway V70 is Amended to Read in Part		
U.S./MEXICO BORDER *1600—MOCA	BROWNSVILLE, TX VORTAC	*5000
§ 95.6083 VOR Federal Airway V83 is Amended to Read in Part		
ALAMOSA, CO VORTAC	BLOKE, CO FIX. E BND	14000
BLOKE, CO FIX *14000—MCA GOSIP, CO FIX, SW BND	W BND *GOSIP, CO FIX	10400 14000
§ 95.6091 VOR Federal Airway V91 is Amended to Read in Part		
GLENS FALLS, NY VORTAC *10000—MCA ENSON, VT FIX, SW BND **5000—GNSS MEA	*ENSON, VT FIX	**10000
ENSON, VT FIX *2800—MOCA	WEIGH, VT FIX	*4000
WEIGH, VT FIX	BURLINGTON, VT VOR/DME. N S	BND 3000 BND 4000
§ 95.6119 VOR Federal Airway V119 is Amended to Read in Part		
NEWCOMBE, KY VORTAC *5500—MCA CROUP, OH FIX, NE BND	*CROUP, OH FIX	2800
CROUP, OH FIX	HENDERSON, WV VORTAC	5500
§ 95.6140 VOR Federal Airway V140 is Amended to Read in Part		
NASHVILLE, TN VORTAC *6500—MRA **2400—MOCA	*LENON, TN FIX	**3000
*LENON, TN FIX	HARME, TN FIX	**3000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 510 Effective date, December 12, 2013]

From	To	MEA
*6500—MRA **2400—MOCA HARME, TN FIX	LIVINGSTON, TN VORTAC	3200
§ 95.6141 VOR Federal Airway V141 is Amended to Read in Part		
RUCKY, VT FIX	*BURLINGTON, VT VOR/DME	6300
*4000—MCA BURLINGTON, VT VOR/DME, SE BND		
§ 95.6161 VOR Federal Airway V161 is Amended to Read in Part		
LLANO, TX VORTAC	*BUILT, TX FIX	**6000
*6000—MRA **3200—MOCA		
*BUILT, TX FIX	DUFFA, TX FIX	**6000
*6000—MRA **2900—MOCA		
§ 95.6198 VOR Federal Airway V198 is Amended to Read in Part		
PEARL, LA FIX	MINNI, MS FIX	*2300
*1300—MOCA		
MINNI, MS FIX	ELSIE, MS FIX	*3500
*1300—MOCA		
ELSIE, MS FIX	*ROMMY, MS FIX	**2800
*4000—MRA **1300—MOCA		
SEMINOLE, FL VORTAC	LLOYD, FL FIX	2000
§ 95.6210 VOR Federal Airway V210 is Amended to Read in Part		
ALAMOSA, CO VORTAC	BLOKE, CO FIX. E BND	14000
	W BND	10400
BLOKE, CO FIX	*GOSIP, CO FIX	14000
*14000—MCA GOSIP, CO FIX, SW BND		
§ 95.6229 VOR Federal Airway V229 is Amended to Read in Part		
MUDDI, VT FIX	*BURLINGTON, VT VOR/DME	6000
*3100—MCA BURLINGTON, VT VOR/DME, SE BND		
§ 95.6240 VOR Federal Airway V240 is Amended to Read in Part		
PEARL, LA FIX	MINNI, MS FIX	*2300
*1300—MOCA		
MINNI, MS FIX	ELSIE, MS FIX	*3500
*1300—MOCA		
ELSIE, MS FIX	*ROMMY, MS FIX	**2800
*4000—MRA **1300—MOCA		
§ 95.6487 VOR Federal Airway V487 is Amended to Read in Part		
WEIGH, VT FIX	BURLINGTON, VT VOR/DME. N BND	3000
	S BND	4000
§ 95.6568 VOR Federal Airway V568 is Amended to Read in Part		
LLANO, TX VORTAC	*BUILT, TX FIX	**6000
*6000—MRA **3200—MOCA		
§ 95.6573 VOR Federal Airway V573 is Amended to Read in Part		
TEXARKANA, AR VORTAC	ELMMO, AR FIX. SW BND	*3500
	NE BND	*5500
*2600—MOCA		
ELMMO, AR FIX	*MARKI, AR FIX	**5500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued

[Amendment 510 Effective date, December 12, 2013]

From	To	MEA
*5500—MCA MARKI, AR FIX, SW BND **2600—MOCA MARKI, AR FIX *2700—MOCA	HOT SPRINGS, AR VOR/DME	*3500

§ 95.6586 VOR Federal Airway V586 is Amended to Read in Part

MACON, MO VOR/DME	QUINCY, IL VORTAC	2700
QUINCY, IL VORTAC	PEORIA, IL VORTAC	2500
PEORIA, IL VORTAC	MAROC, IL FIX	*3000
*2400—MOCA		
MAROC, IL FIX	PONTIAC, IL VOR/DME	2500

From	To	MEA	MAA
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§ 95.7001 JET ROUTES

§ 95.7190 Jet Route J190 MAA is Amended to Read in Part

#SLATE RUN, PA VORTAC	BINGHAMTON, NY VORTAC	18000	45000
#USE SLATE RUN R-072 TO BINGHAMTON			

Airway Segment		Changeover points	
From	To	Distance	From

§ 95.8003 VOR Federal Airway Changeover Point V210 is Amended To Delete Changeover Point

ALAMOSA, CO VORTAC	LAMAR, CO VOR/DME	60	ALAMOSA.
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[FR Doc. 2013-27404 Filed 11-14-13; 8:45 am]
BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30927; Amdt. No. 3562]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 15, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 15, 2013.

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

For Examination—

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

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

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

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

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

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Richard A. Dunham III, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated

by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260-3, 8260-4, 8260-5, 8260-15A, and 8260-15B when required by an entry on 8260-15A.

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

The Rule

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

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

for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

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

Issued in Washington, DC on October 25, 2013.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 12 DECEMBER 2013

Akutan, AK, Akutan, RNAV (GPS)–A, Orig
Akutan, AK, Akutan, Takeoff Minimums and Obstacle DP, Orig
Alexander City, AL, Thomas C Russell Fld, RNAV (GPS) RWY 18, Amdt 1
Alexander City, AL, Thomas C Russell Fld, RNAV (GPS) RWY 36, Amdt 2
Clarksville, AR, Clarksville Muni, NDB–A, Amdt 5, CANCELED
Conway, AR, Dennis F Cantrell Field, GPS RWY 26, Orig–A, CANCELED
Conway, AR, Dennis F Cantrell Field, NDB–A, Amdt 2

Conway, AR, Dennis F Cantrell Field, RNAV (GPS)–B, Orig
Conway, AR, Dennis F Cantrell Field, Takeoff Minimums and Obstacle DP, Amdt 2
Bakersfield, CA, Bakersfield Muni, GPS RWY 34, Orig, CANCELED
Bakersfield, CA, Bakersfield Muni, RNAV (GPS) RWY 34, Orig
Bakersfield, CA, Bakersfield Muni, VOR/DME RWY 34, Amdt 1
San Francisco, CA, San Francisco Intl, Takeoff Minimums and Obstacle DP, Amdt 8A
Longmont, CO, Vance Brand, RNAV (GPS) RWY 29, Amdt 2
Palm Coast, FL, Flagler County, RNAV (GPS) RWY 6, Amdt 1A
Punta Gorda, FL, Punta Gorda, VOR RWY 4, Amdt 1B, CANCELED
Montezuma, GA, DR. C P Savage Sr., RNAV (GPS) RWY 18, Orig–A
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 15, Orig–A
Stockton, KS, Rooks County, RNAV (GPS) RWY 18, Orig
Stockton, KS, Rooks County, RNAV (GPS) RWY 36, Orig
Stockton, KS, Rooks County, Takeoff Minimums and Obstacle DP, Orig
Falmouth, KY, Gene Snyder, RNAV (GPS) RWY 21, Orig
Falmouth, KY, Gene Snyder, VOR–A, Amdt 3
Lexington, KY, Blue Grass, ILS OR LOC RWY 22, Amdt 20B
Rayville, LA, John H Hooks Jr Memorial, VOR/DME–A, Amdt 3
Churchville, MD, Harford County, VOR/DME–A, Amdt 1A, CANCELED
Crisfield, MD, Crisfield Muni, VOR/DME–A, Orig–A, CANCELED
Greenville, ME, Greenville Muni, NDB RWY 14, Amdt 5, CANCELED
Bay City, MI, James Clements Muni, Takeoff Minimums and Obstacle DP, Amdt 6
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 30
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 22L (SIMULTANEOUS CLOSE PARALLEL), Orig–C
Linden, MI, Prices, Takeoff Minimums and Obstacle DP, Amdt 5
Charleston, MO, Mississippi County, RNAV (GPS) RWY 18, Orig
Charleston, MO, Mississippi County, RNAV (GPS) RWY 36, Orig
Charleston, MO, Mississippi County, Takeoff Minimums and Obstacle DP, Orig
Clarksdale, MS, Fletcher Field, VOR/DME RWY 18, Orig–B, CANCELED
Greenville, MS, Greenville Mid-Delta, ILS OR LOC RWY 18L, Amdt 9G
Greenville, MS, Greenville Mid-Delta, RNAV (GPS) RWY 18L, Orig–B
Greenville, MS, Greenville Mid-Delta, RNAV (GPS) RWY 18R, Orig–A
Greenville, MS, Greenville Mid-Delta, RNAV (GPS) RWY 36L, Orig–B
Greenville, MS, Greenville Mid-Delta, RNAV (GPS) RWY 36R, Orig–A
Greenville, MS, Greenville Mid-Delta, Takeoff Minimums and Obstacle DP, Orig–A

Greenville, MS, Greenville Mid-Delta, VOR/DME RWY 18L, Amdt 13A
 Greenville, MS, Greenville Mid-Delta, VOR/DME RWY 18R, Orig-A
 Beaufort, NC, Michael J. Smith Field, RNAV (GPS) RWY 8, Amdt 2
 Scottsbluff, NE., Western Neb. Rgnl/William B. Heilig Field, RNAV (GPS) RWY 5, Amdt 1
 New Philadelphia, OH, Harry Clever Field, RNAV (GPS) RWY 14, Orig-A
 The Dalles, OR, Columbia Gorge Rgnl/The Dalles Muni, DALLE ONE, Graphic DP
 The Dalles, OR, Columbia Gorge Rgnl/The Dalles Muni, Takeoff Minimums and Obstacle DP, Amdt 3
 Collegeville, PA, Perkiomen Valley, VOR-A, Orig-A, CANCELED
 Philadelphia, PA, Northeast Philadelphia, RNAV (GPS) RWY 6, Orig-B
 Cleburne, TX, Cleburne Rgnl, LOC/DME RWY 15, Orig-C
 Dalhart, TX, Dalhart Muni, GPS RWY 17, Orig-B, CANCELED
 Dalhart, TX, Dalhart Muni, RNAV (GPS) RWY 17, Orig
 Dalhart, TX, Dalhart Muni, RNAV (GPS) RWY 35, Orig
 Dalhart, TX, Dalhart Muni, VOR/DME RWY 35, Amdt 3
 Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Z RWY 7R, Amdt 1A
 Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Z RWY 25L, Amdt 1A
 Cowley/Lovell/Byron, WY, North Big Horn County, NDB RWY 9, Amdt 2
 Cowley/Lovell/Byron, WY, North Big Horn County, RNAV (GPS) RWY 9, Orig
 Cowley/Lovell/Byron, WY, North Big Horn County, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. 2013-26721 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30928; Amdt. No. 3563]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new

obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 15, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 15, 2013.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html.

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

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Richard A. Dunham III, Flight Procedure Standards Branch (AFS-420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA

Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P-NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on October 25, 2013.

John Duncan,
Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
12/12/13	AK	Venetie	Venetie	3/5254	10/15/13	Takeoff Minimums and (Obstacle) DP, Orig.
12/12/13	AK	Minchumina	Minchumina	3/5335	10/15/13	NDB RWY 3, Amdt 3A.
12/12/13	AK	Minchumina	Minchumina	3/5336	10/15/13	RNAV (GPS) RWY 3, Orig.
12/12/13	AK	Minchumina	Minchumina	3/5340	10/15/13	RNAV (GPS) RWY 21, Orig.
12/12/13	WA	Everett	Snohomish County (Paine Fld).	3/5409	10/15/13	Takeoff Minimums and (Obstacle) DP, Amdt 2.
12/12/13	AK	Northway	Northway	3/6133	10/15/13	RNAV (GPS) RWY 23, Amdt 1.
12/12/13	AK	Gustavus	Gustavus	3/6328	10/15/13	RNAV (GPS) RWY 29, Amdt 2.
12/12/13	IL	Effingham	Effingham County Memorial.	3/7065	10/15/13	RNAV (GPS) RWY 29, Orig.
12/12/13	MT	Scobey	Scobey	3/7755	10/15/13	RNAV (GPS) RWY 12, Orig.
12/12/13	FL	Tampa	Tampa Intl	3/9215	10/15/13	RNAV (GPS) RWY 10, Amdt 1A.
12/12/13	AZ	Fort Huachuca Sierra Vista.	Sierra Vista Muni-Libby AAF.	3/9530	10/15/13	RNAV (GPS) RWY 8, Amdt 1.
12/12/13	CA	Chico	Chico Muni	3/9848	10/15/13	Takeoff Minimums and (Obstacle) DP, Amdt 6.

[FR Doc. 2013–26719 Filed 11–14–13; 8:45 am]
BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 801
RIN 3084-AA91

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.
ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“Commission” or “FTC”), with the concurrence of the Assistant Attorney General, Antitrust Division, Department of Justice (the “Assistant Attorney General” or the “Antitrust Division”) (together the “Agencies”), is amending the Hart-Scott-Rodino Premerger Notification Rules (the “Rules”) in order to provide a framework for determining when a transaction involving the transfer of rights to a patent or part of a patent in

the pharmaceutical, including biologics, and medicine manufacturing industry (North American Industry Classification System Industry Group 3254) (“pharmaceutical industry”) is reportable under the Hart Scott Rodino Act (“the Act,” “HSR Act” or “HSR”). This final rule defines and applies the concepts of “all commercially significant rights,” “limited manufacturing rights,” and “co-rights” in determining whether the rights transferred with regard to a patent or a part of a patent in the pharmaceutical industry constitute a potentially reportable asset acquisition under the Act.

DATES: *Effective Date:* These final rule amendments are effective on December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room H–303, Federal Trade Commission, Washington, DC 20580, (202) 326–3100, rjones@ftc.gov.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

Section 7A of the Clayton Act requires the parties to certain mergers or acquisitions to file with the Agencies and to wait a specified period of time before consummating such transactions. The reporting requirement and the waiting period that it triggers are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation, pursuant to Section 7 of the Act.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain

such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

On August 13, 2012, the Commission posted a Notice of Proposed Rulemaking and Request for Public Comment (“NPRM”) on its Web site, and it was published in the **Federal Register** on August 20, 2012.¹ The comment period closed on October 25, 2012. The proposed rule recommended amendments to 16 CFR 801.1 and § 801.2 to reflect the longstanding staff position that a transaction involving the transfer of exclusive rights to a patent or a part of a patent in the pharmaceutical industry, which typically takes the form of an exclusive license, is potentially reportable under the Act and to clarify the treatment of retained manufacturing rights. The proposed rule defined and applied the concepts of “all commercially significant rights,” “limited manufacturing rights,” and “co-rights” in determining whether the rights transferred with regard to a patent or a part of a patent in the pharmaceutical industry constitute a potentially reportable asset acquisition under the Act. Under the proposed rule, the retention of limited manufacturing rights and co-rights does not affect whether the transfer of all commercially significant rights has occurred.

The Commission received three public comments addressing the proposed rule. The comments are published on the FTC Web site at <http://ftc.gov/os/comments/premergeriprights/index.shtm>.

The following submitted public comments on the proposed rule:

1. Clyde Dinkins. (8/13/2012)
2. Pharmaceutical Research and Manufacturers of America. (Baker Botts LLP, Stephen Weissman) (10/25/2012)²
3. Antonio Burrell. (10/26/2012) Comments 1 and 3 supported the proposed rule. Comment 2 did not support the proposed rule, objecting to the adoption of rules limited to the pharmaceutical industry.

¹ 77 FR 50057 (August 20, 2012).

² PhRMA also provided additional information to the Commission in a letter dated June 7, 2013 (“Comment 2’s Supplemental Letter”).

After carefully considering the comments, the Commission has determined that the proposed rule is appropriately limited to the pharmaceutical industry. Thus, the Commission is adopting the rule as proposed.

Although the rule is limited to the pharmaceutical industry, to the extent that other industries engage in similar exclusive licensing transactions, such transactions remain potentially reportable events under the Act and existing rules implementing the Act. Parties dealing with the transfer of exclusive rights to a patent or part of a patent in other industries should consult with Premerger Notification Office (“PNO”) staff to determine whether the arrangement at issue is reportable under the Act and Rules. The Commission will continue to assess the appropriateness of a rule for other industries.

Background

The Act applies to reportable acquisitions of voting securities, controlling non-corporate interests,³ and assets. A patent is an asset under the Act.⁴ The acquisition of a patent gives the buyer the right to commercially use that patent to the exclusion of all others. The same is true of an exclusive license to a patent. In an exclusive patent licensing arrangement, the licensor gives the licensee the right to commercially use the patent, or a part of the patent,⁵ to the exclusion of all others, including the licensor.⁶ An exclusive license is substantively the same as buying the patent or part of the patent outright, and carries the same potential anticompetitive effects. Thus, the granting of an exclusive right to commercially use a patent or part of a patent is a potentially reportable asset acquisition under the Act.

In determining reportability, the parties must analyze what the licensor is transferring to the licensee and

determine whether the license conveys the exclusive rights to commercially use the patent or part of a patent. For years, this analysis was straightforward as evidenced by the questions and filings received by the PNO about exclusive patent licenses in the pharmaceutical industry that expressly included the rights to “make, use, and sell” under the patent or part of the patent.⁷ For such licenses, the PNO had only to verify that the transfer involved the exclusive right to use a patent or part of a patent to develop a product, manufacture the product, and sell that product without restriction. Although never codified, the “make, use and sell” approach became well-known throughout the HSR bar and is reflected in the numerous letters and emails from practitioners in the PNO’s informal interpretation database on its Web site.⁸

In recent years, however, it has become more common for pharmaceutical companies to transfer most but not all of the rights to “make, use, and sell” under an exclusive license, such that the “make, use and sell” approach is no longer adequate in evaluating the reportability of exclusive licenses in the pharmaceutical industry for HSR purposes. A licensor will often, for example, retain the right to manufacture under the patent, but under the agreement the licensor can only manufacture for the licensee. In such a case, under the PNO’s “make, use, and sell” approach, the retention of the right to manufacture would render the transaction non-reportable even though the licensor would not be manufacturing for its own commercial use, but exclusively for the licensee. In addition, the PNO has seen with increasing frequency licensors retaining the right to co-develop, co-promote, co-market and co-commercialize the product along with the licensee, and the retention of these “co-rights” also raises questions about the adequacy of using the “make, use, and sell” approach to determine reportability. Practitioners who represent clients in the pharmaceutical industry have often sought guidance from the PNO about transactions where the licensor grants the licensee the exclusive right to commercially use a pharmaceutical patent or part of a patent but retains the right to manufacture for the licensee and/or to co-develop, co-promote, co-market and co-commercialize the product along with the licensee. This

³ Acquisitions of non-corporate interests must confer control in order to be reportable.

⁴ As the Second Circuit explained in *SCM Corp. v. Xerox Corp.*, “[s]ince a patent is a form of property . . . and thus an asset, there seems little reason to exempt patent acquisitions from scrutiny under [Section 7 of the Clayton Act.]” 645 F.2d 1195, 1210 (2d Cir. 1981).

⁵ In this rule, the phrase “part of the patent” refers to a subset of potential uses under the patent. For example, in the pharmaceutical industry, the phrase refers to a therapeutic area or a specific indication within a therapeutic area. See discussion in the all commercially significant rights section.

⁶ A patent holder may choose to enter into a licensing arrangement instead of an outright sale because a license provides for a royalty revenue stream over many years and may better allow parties to agree on a method of valuing an unproven patent. See discussion of limitation to the pharmaceutical industry.

⁷ The pharmaceutical industry has been making HSR filings for exclusive licenses that trigger the reporting requirements of the Act since the early 1980s.

⁸ <http://ftc.gov/bc/hsr/informal/index.shtm>.

rule addresses when an exclusive patent license to a pharmaceutical patent or part of a patent constitutes an asset transfer under the HSR Act.

The “all commercially significant rights” test in the rule captures more completely what the “make, use, and sell” approach was a proxy for, namely whether the license has transferred the exclusive right to commercially use a patent or a part of a patent. § 801.2(g)(3) of the rule provides that the transfer of exclusive rights to a patent or a part of a patent in the pharmaceutical industry is a reportable asset transfer if it allows only the recipient to commercially use the patent as a whole, or a part of the patent in a particular therapeutic area or specific indication within a therapeutic area.⁹ The rule codifies the PNO’s long-standing position that the retention of co-rights does not render a license to the patent or part of the patent as non-exclusive. The rule also provides that such a reportable asset transfer may occur even if the licensor retains the limited right to manufacture under the patent or part of a patent for the licensee.¹⁰

All Commercially Significant Rights

As noted above, due to the evolution of pharmaceutical patent licenses, the “make, use, and sell” approach is no longer adequate to evaluate the HSR reportability of exclusive patent licenses in the pharmaceutical industry.

In this rule, the “all commercially significant rights” test modifies the analysis to address the evolving structure of exclusive patent licenses in the pharmaceutical industry, providing the Agencies with a more effective means of reviewing exclusive patent licenses meeting the statutory requirements under the Act.¹¹ In effect, however, with the exception of the treatment of the right to manufacture exclusively for the licensee, the rule treats the reportability of exclusive licensing arrangements, including those where the licensor retains co-rights, in the same way that the PNO has for decades.

The “all commercially significant rights” test focuses on whether the

licensee receives the exclusive right to commercially use the patent.¹² In such a case, only the recipient of the exclusive rights to the patent may generate revenue from those exclusive rights, even when some of those profits will likely be shared with the licensor through royalties or other revenue sharing arrangements.

An exclusive patent license may be reportable even if it transfers exclusive rights to only a part of the patent—that is, a subset of potential uses under the patent—because only the recipient of the exclusive rights to a part of a patent may generate revenue from those exclusive rights. The rule clarifies that, in the pharmaceutical industry, a patent licensing arrangement constitutes an asset acquisition if it transfers all commercially significant rights to the patent in a particular therapeutic area or specific indication within a therapeutic area. The terms “therapeutic area” and “indication” should provide clear guidance to the pharmaceutical industry, as these terms are well-known in the industry and frequently appear in exclusive patent licenses. A therapeutic area covers the intended use for a part of the patent, such as for cardiovascular use or neurological use, and includes all indications. An indication encompasses a narrower segment of a therapeutic area, such as Alzheimer’s disease within the neurological therapeutic area.

Retention of Co-Rights

In transferring exclusive rights to a patent or a part of a patent in the pharmaceutical industry, the licensor often retains “co-rights.” This term, as defined by § 801.1(q), refers to shared rights to assist the licensee in developing and commercializing the patented product and includes rights to co-develop, co-promote, co-market, and co-commercialize. In the PNO’s experience with exclusive patent licensing transactions in the pharmaceutical industry, the licensor grants the licensee an exclusive license to “make, use, and sell” under a patent or part of a patent, but retains co-rights to assist the licensee in maximizing its sales of the licensed product. In such cases, all sales are typically booked by the licensee, but the licensor often benefits from sharing in a more robust

royalty revenue stream or other revenue sharing arrangement.

“Co-rights” do not include the right of the licensor to commercially use the patent or part of the patent. Therefore a transfer of “all commercially significant rights” has occurred even when the grantor retains co-rights. Accordingly, this rule reflects the PNO staff’s established position that exclusive licenses in which the licensor retains co-rights are asset acquisitions and potentially reportable under the Act. While Comment 2 asserts that the PNO’s treatment of co-rights has been unclear and/or inconsistent,¹³ the PNO has consistently taken this approach for many years, as illustrated by numerous informal interpretations available on the PNO’s Web site in its informal interpretations database. We note that in the case of a co-exclusive license, no exclusivity exists and the agreement would not be reportable.¹⁴

Comment 2 also asserts that the rule does not differentiate between the kinds, magnitude, or scope of co-rights being retained and that blanket treatment of co-rights is inconsistent with the Act’s coverage.¹⁵ When a licensee obtains the exclusive right to commercially use a patent or part of a patent, a potentially reportable asset transfer occurs regardless of the kind or magnitude of co-right retained by the licensee. In the PNO’s experience, the existence of a co-right is indicative of an effort on the part of the licensor to support the sales and marketing of the licensee in order to create a more lucrative royalty stream. Whether an asset transfer has occurred does not hinge on the kind, magnitude, or scope of co-right retained, but on whether the exclusive patent license allows only the licensee to commercially use the patent or part of the patent. Even though both the licensee and licensor will share any eventual profits, the profits result from a potentially reportable transfer to the licensee of the exclusive right to commercially use the patent or part of the patent.

Retention of Limited Manufacturing Rights

The “all commercially significant rights” test in the rule also clarifies the analysis of manufacturing rights under

⁹ This rulemaking defines when the transfer of exclusive rights to a pharmaceutical patent or part of a patent constitutes the acquisition of an asset. It in no way delimits the much broader definition of an asset for purposes of Sections 7 and 7A of the Clayton Act in any other context.

¹⁰ The focus of the rule is exclusive patent licenses that transfer the rights to use the patent or part of a patent to the exclusion of all others, even the licensor. Exclusive licenses that do not involve the transfer of exclusive rights to use the patent or part of the patent, such as an exclusive distribution agreement, are not covered by the rule.

¹¹ 15 U.S.C. 18a. See also <http://ftc.gov/bc/hsr/stepstofile.shtm>

¹² Although the transfer of exclusive rights to a patent or part of a patent in the pharmaceutical industry typically occurs through a license, the rule does not use this term and instead focuses on the broader concept of exclusive rights to a patent or part of a patent in defining “all commercially significant rights.” This is intended to keep the focus on the exclusivity of the rights being transferred and not on the form of the transfer.

¹³ Cmt. 2 at 11.

¹⁴ Comment 2 cited an informal interpretation from 2008, number 0806009, as inconsistent with the PNO’s position in the rule. *Id.* In fact, this interpretation is not inconsistent because it concerns a case where the IP at issue was co-exclusively licensed. As a result, no filing was required because no transfer of exclusive patent rights occurred. The co-rights do not factor into the analysis.

¹⁵ Cmt. 2 at 12.

an exclusive patent license in the pharmaceutical industry. Exclusive patent licensing arrangements have evolved such that, in many instances, an exclusive patent license in the pharmaceutical industry no longer includes the exclusive right to manufacture; typically the licensor grants the licensee exclusive rights to the patent but retains the right to manufacture solely for the licensee. Under the prior “make, use, and sell” approach, the retention of such manufacturing rights renders the arrangement non-reportable because not all of the rights to “make, use, and sell” under the patent or part of a patent transfer to the licensee. This has been the PNO’s approach even though the arrangement has the same effect as a transfer to the licensee of all patent rights. The final rule ensures that transactions in which the licensor retains only the right to manufacture exclusively for the licensee, and thus retains “limited manufacturing rights,” as defined by § 801.1(p), will be reported if the relevant HSR statutory thresholds are met.

Comment 2 asserts that there are agreements in other industries that involve the retention of manufacturing rights.¹⁶ The Commission does not disagree. There are many kinds of exclusive licensing agreements in other industries that involve the retention of manufacturing rights. But, the rule is not focused on all exclusive licensing agreements where the licensor retains manufacturing rights; it is focused on exclusive patent licenses that transfer all rights to a patent or part of a patent but where the licensor retains rights to manufacture solely for the licensee. The agreements cited by Comment 2 are not the kind of agreements that are the subject of the rule. They are exclusive distribution agreements, which convey to the licensee only the exclusive right to distribute the patented product. In exclusive distribution agreements, the licensor retains not just the right to manufacture but all commercially significant rights to the patent, such that no reportable asset acquisition takes place. Based on HSR filings and requests for advice on the reportability of transactions, the PNO has found that exclusive patent licensing agreements that transfer all of the rights to commercially use a patent or part of a patent almost solely occur in the pharmaceutical industry.

Comment 2 also takes issue with the NPRM’s statement that, in licensing arrangements in the pharmaceutical industry, the right to manufacture is less

important than the right to commercialize. Comment 2 asserts that the right to manufacture is integral to the pharmaceutical industry and that the NPRM discounts the importance of manufacturing in this industry.¹⁷ The statement in the NPRM, however, was not a general assessment of the value of manufacturing in the pharmaceutical industry but was intended only to provide a possible explanation as to why the PNO sees exclusive patent licenses in the pharmaceutical industry structured the way they are structured, namely more and more frequently without the transfer of manufacturing rights.

Limitation to the Pharmaceutical Industry

The Commission is limiting the rule to the pharmaceutical industry because, as stated in the NPRM, this is where the need for clarification arises and where the Commission has experience with the relevant transactions. For the five-year period ending December 31, 2012, the PNO received filings for 66 transactions involving exclusive patent licenses, and all were for pharmaceutical patents. The PNO has not found other industries that rely on these types of arrangements. Although it is possible for other industries to engage in the kind of exclusive licensing that typifies the pharmaceutical industry, the PNO has not processed filings related to these kinds of exclusive licenses in any other industry in the past five years. In addition, requests for guidance on the treatment of exclusive patent licensing transactions have generally been limited to the pharmaceutical industry. Accordingly, the Commission has not found a need for a rule applicable to other industries. Moreover, the Commission’s experience with such transactions in the pharmaceutical industry allows it to develop a rule that is tailored to exclusive patent licenses in the pharmaceutical industry, defining the relevant scope of the transfer of part of a patent by reference to the therapeutic area or specific indication within a therapeutic area.

As noted above, the PNO typically does not see exclusive transfers of rights to a patent or part of a patent outside the pharmaceutical context, and this is likely a result of the incentives that characterize the industry. The PNO quite frequently sees situations in which an innovator discovers and patents a pharmaceutical or biomedical compound, but that innovator does not have the financial resources to shepherd the compound through the FDA

approval process, nor to effectively market or promote it in drug form after FDA approval. Thus, the innovator will enter into an exclusive licensing agreement transferring all the rights to the patent or part of the patent with a (typically, although not always, much larger) pharmaceutical company to provide the financial resources for the FDA approval process and the eventual marketing and promotion of the drug. There is a great deal of uncertainty involved because the transfer takes place very early in the development of the product covered by the patent and neither party to the exclusive licensing agreement knows whether the compound will actually become an approved drug and achieve commercial success. If the drug is successful, however, the licensee will book enormous profits, some of which will be shared with the licensor through royalties or other revenue sharing arrangements. As a result, there is a tremendous incentive for the pharmaceutical innovator to enter into an exclusive licensing arrangement rather than a patent sale.

By contrast, in many other industries, the products are generated pursuant to the exercise of a patent or part of a patent at a much later stage in development, and the patent owner can simply sell the patent for its proven value.¹⁸ Where companies in other industries do enter into patent licensing agreements, the incentives for licensors typically lie in engaging as many licensees as possible and not in the exclusivity that characterizes patent licenses in the pharmaceutical industry.

Comment 2 argues that the pharmaceutical industry incentives and market structure are not unique.¹⁹ The comment points to several other industries as encountering regulatory hurdles similar to those presented by the FDA in the pharmaceutical industry. It also asserts that the royalty rates in the pharmaceutical industry are similar to those in other industries and appears to claim that, therefore, the incentives to maximize future profits are no different in the pharmaceutical industry.²⁰ The rule is limited to the pharmaceutical industry not because of the uniqueness of the incentives in that industry but because it is the only industry to the

¹⁸ For example, the electronics, semiconductor, and chemicals industries.

¹⁹ Cmt. 2 Varner Decl. at 9–11.

²⁰ Comment 2 also cites to the prevalence of “know how” to argue that co-rights are ubiquitous, appearing in numerous industries. Cmt. 2 Varner Decl. at 10. The NPRM did not state that the retention of co-rights is unique to the pharmaceutical industry. It stated only that the retention of such co-rights is common in that industry.

¹⁶ Cmt. 2 Varner Decl. at 11–14.

¹⁷ Cmt. 2 Varner Decl. at 15.

PNO's knowledge in which exclusive patent licenses are prevalent. The incentives are discussed because they may help explain why the mechanism for transferring patent rights in the pharmaceutical industry takes the form of an exclusive license instead of an outright sale. However, even if there are other industries that may encounter similar regulatory hurdles or share certain other structural similarities with the pharmaceutical industry, this does not change the fact that the exclusive patent licenses frequently seen in the pharmaceutical industry have not been seen by the PNO in other industries. As discussed above, Comment 2 has not identified any other industry in which exclusive patent licenses, as opposed to exclusive distribution agreements, are common.²¹

In sum, in the PNO's experience, the pharmaceutical industry is the only industry in which parties regularly enter into exclusive patent licenses that transfer all commercially significant rights. If the PNO finds that such arrangements occur in other industries, the Agencies can then assess the appropriateness of a similar rule for those other industries. Even in the absence of a specific rule concerning other industries, however, such exclusive patent licenses remain potentially reportable.

Rulemaking Authority Under the HSR Act

As mentioned above, the HSR Act requires the Agencies to review asset acquisitions meeting certain size of transaction and size of party thresholds. The Act provides the Commission, with concurrence of the Assistant Attorney General, rulemaking authority to implement this requirement. Section 18(a)(d)(2)(A) gives the Commission authority to define terms, which allows it to determine which types of patent rights constitute reportable assets under the Act. In addition, Section 18a(d)(2)(C) gives the Commission authority to prescribe rules "as may be necessary and appropriate to carry out the purposes of this section."

Comment 2 has argued that the Commission does not have authority to issue a rule under the HSR Act that expands the Act's requirements with respect to only a single industry.²² First, the Commission is not expanding the

HSR requirements to parties or transactions not covered by the Act. The Commission is simply clarifying the types of transactions that constitute asset transfers for which the Act requires prior notification.²³ Second, the Commission has broad authority to issue rules to facilitate the review of large transactions.²⁴ Nothing in the HSR Act prevents the Commission from issuing such rules on an industry-specific basis. Section 18(a)(d)(2)(B), which grants the Commission authority to exempt from the filing requirement classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws, does not limit the broad and discretionary rulemaking authority granted in Sections 18a(d)(2)(A) and (C).²⁵ The authority to exempt specific industries or transactions from the Act's filing requirements is not inconsistent with the authority to implement these requirements on an industry-specific basis prior to consummation of these agreements.²⁶

The licensing arrangements covered by this rule are functionally equivalent to patent transfers and are thus properly viewed as asset acquisitions under the

²³ Indeed, with the exception of agreements in which the licensor retains limited manufacturing rights, the pharmaceutical industry has been filing the exclusive patent licenses at issue for decades.

²⁴ Citing H.R. Rep. No. 94-1372 (July 28, 1976), Comment 2 has argued that, in order to issue a rule under the FTC's authority to issue regulations necessary and appropriate to carry out the purposes of the Act, the FTC must show that the transactions at issue are "the most likely to substantially lessen competition and the most difficult to unscramble." Cmt 2 at n. 23. The cited House Report excerpt merely explains Congress's rationale for including only large mergers and asset acquisitions in the HSR Act. It does not purport to alter the Commission's authority to implement rules carrying out the purpose of the Act, which is to ensure that large transactions are reported. Moreover, the language of the HSR Act is controlling, and that statutory language requires premerger reporting of asset acquisitions based on size thresholds, without limitation to transactions that might prove particularly difficult to untangle.

²⁵ See, e.g., *Texas Oil & Gas Ass'n v. EPA*, 161 F.3d 923, 938-39 (5th Cir. 1998) (holding that particularized exemption authority did not speak to the scope of agency's plenary rulemaking authority to differentiate among groups of covered parties).

²⁶ Nor does the legislative history of the HSR Act suggest that the Commission may not use its broad rulemaking authority to issue industry-specific rules. Comment 2 has asserted that Congress's exclusion of a provision that would have permitted the Commission to require pre-merger notification from persons or categories of persons not otherwise required to file (namely, parties below the minimum size thresholds) indicates Congress's intent not to allow the Commission to impose requirements on an industry-specific basis. See Cmt. 2 at 3. However, the omission of a provision allowing the Commission to expand the Act's coverage beyond the minimum thresholds says nothing about the Commission's authority to issue industry-specific rules for parties or transactions that meet the thresholds.

Act. Allowing such transactions to go unreported would deprive the Commission of an opportunity, consistent with the purpose of the Act, to review these significant asset acquisitions that, like other reportable asset acquisitions, are potentially anticompetitive.²⁷

Consistency With the APA

Comment 2 has also argued that the rule is arbitrary and capricious because there is no basis to limit the rule to the pharmaceutical industry.²⁸ The rule is limited to the pharmaceutical industry because the PNO has not received filings over the past five years for exclusive patent licensing arrangements in other industries and requests for guidance on the treatment of exclusive patent licensing arrangements have nearly always come from practitioners in the pharmaceutical industry. Moreover, the PNO's experience with such arrangements in the pharmaceutical context allows the Commission to tailor the rule to the pharmaceutical industry by covering exclusive patent rights to use the patent in a therapeutic area or for a specific indication within a therapeutic area. While the PNO's experience with exclusive patent licensing arrangements has indicated a need for a rule for the pharmaceutical industry, at this time the Commission has not yet determined that a specific rule is necessary with respect to other industries. Nevertheless, to the extent they occur, transfers of exclusive rights to patents in other industries remain potentially reportable under the Act and existing HSR rules. Parties to such a transaction should contact the PNO, which will advise whether the arrangements are reportable under the Act.

Agencies may limit rules to those areas where they have observed a problem to be addressed.²⁹ As noted

²⁷ See 122 Cong. Rec. 29342 (statement of Sen. Hart) ("The whole purpose of [the Pre-Merger Notification section] is to provide antitrust authorities with a meaningful opportunity to study the potential antitrust consequences of significant mergers and acquisitions prior to consummation."); The Antitrust Improvements Act of 1975, S. 1284, 94th Cong. (1975) ("It is the purpose of the Congress in this Act to support and invigorate effective and expeditious enforcement of the antitrust laws, to improve and modernize antitrust investigation and enforcement mechanisms, to facilitate the restoration and maintenance of competition in the marketplace, and to prevent and eliminate monopoly and oligopoly power in the economy.");

²⁸ Cmt. 2 at 2, 7-13.

²⁹ See, e.g., *Illinois Commercial Fishing Ass'n v. Salazar*, 867 F.Supp.2d 108 (D.D.C. 2012) (upholding rule banning take of certain fish by commercial fishermen but not recreational fisherman, where evidence indicated that greatest risk to endangered fish was posed by commercial

²¹ In addition, Comment 2 references technology licenses, but these are not the kinds of exclusive patent licenses covered by the final rule. Cmt. 2 Varner Decl. at 9. Technology licenses grant the use of technology covered by a patent and do not involve the potentially reportable transfer of patent rights.

²² Cmt. 2 at 1, 3-6.

above, the Agencies will continue to assess the appropriateness of a similar rule for other industries, but they need not take an all-or-nothing approach. In promulgating regulations, agencies may proceed incrementally. Like legislatures, they are not required to resolve a problem that may occur more broadly “in one fell regulatory swoop.”³⁰

Effect on Pharmaceutical Industry

Comment 3, although expressing support for the rule, indicated a concern that the administrative costs associated with HSR filings, as well as the cost of obtaining a patent valuation to determine whether a filing is required, could chill pharmaceutical transactions. Comment 2’s Supplemental Letter raised a similar concern that the rule could chill pharmaceutical transactions or cause parties to alter the terms of such transactions. In the PNO’s experience, the administrative costs of filing are very small compared to the profits at stake in the multi-million dollar transactions reportable under the Act and are unlikely to deter or materially distort these acquisitions. In an exclusive licensing transaction the parties would be very likely to conduct a patent valuation as part of their due diligence notwithstanding HSR.³¹

Conclusion

In sum, the “all commercially significant rights” test should provide

fishing rather than recreational fishing); *Manufactured Housing Instit. v. EPA*, 467 F.3d 391 (4th Cir. 2006) (upholding EPA regulation treating apartment buildings differently from manufactured home communities for purposes of determining whether submetering constituted a sale of water, effectively exempting apartment buildings from certain water safety requirements; although EPA had deemed the water distribution system to be safe in apartment houses, it could not categorically say the same for manufactured home communities, which would be exempted on a case-by-case basis); *Investment Co. Inst. v. United States Commodity Futures Trading Comm’n*, 891 F.Supp.2d 162, 187 (D.D.C. 2012) (upholding CFTC regulation requiring registration and reporting by some entities engaging in derivatives trading, but exempting others, where CFTC justified exempting these other entities on the basis that it was not aware of any such other entities engaging in derivatives trading).

³⁰ *Investment Co. Inst.*, 891 F.Supp.2d at 201. See also *City of Las Vegas v. Lujan*, 891 F.2d 927, 935 (D.C. Cir. 1989) (“agencies have great discretion to treat a problem partially”); *National Ass’n of Broadcasters v. FCC*, 740 F.2d 1190, 1207–08 (D.C. Cir. 1984) (“agencies . . . need not deal in one fell swoop with the entire breadth of a novel development; instead, reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the regulatory mind.”) (quotation, quotation marks, and brackets omitted).

³¹ Comment 3 also argued that the rule would have a chilling effect stemming from companies’ fears that the transaction will be challenged by the Agencies. The Agencies can challenge any transaction that is anticompetitive under the antitrust laws, regardless of whether it triggers the need for an HSR filing.

clarity and consistency to the assessment of whether an asset acquisition is occurring as the result of the transfer of rights to a patent or part of a patent in the pharmaceutical industry. In addition, the test explains that even if there is a retention of “limited manufacturing rights” and “co-rights” the transfer of all commercially significant rights has occurred. The rule thus clarifies the analysis of the reportability of transfers of pharmaceutical patent rights while providing the Agencies with an opportunity to assess under the HSR Act the competitive impact of exclusive pharmaceutical patent licenses that may not have been reportable under PNO staff’s prior approach. The Commission believes these benefits outweigh any potential additional burden on filing parties.

Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule, and a Final Regulatory Flexibility Analysis (“FRFA”) with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission does not anticipate that the rule will have a significant economic impact on a substantial number of small entities. The Act is designed to have minimal impact on small entities. First, for a transaction to trigger a reporting requirement under the Act, the transaction must be valued at more than \$50 million (as adjusted).³² Such a high transaction threshold will typically not catch most transactions involving small entities.

In addition, the Act requires that in cases where the transaction is valued at greater than \$50 million (as adjusted) but \$200 million or less (as adjusted), one party to the transaction must have at least \$10 million (as adjusted) in sales or assets in order to trigger reporting requirements. This size of person test also ensures that the Act does not regularly reach small entities. Of the 6,487 transactions filed over the last five years, only 66 of this total number were related to exclusive licenses involving

the pharmaceutical industry. Of these 66 transactions, only one involved an entity that did not have reportable sales or assets of \$10 million or more (as adjusted).

The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant Small Business Administration (“SBA”) thresholds, which for the pharmaceutical industry are based on number of employees and not on annual receipts. However, the Commission does not expect that the requirements specified in the rule will have a significant impact on these businesses. A business falling within the SBA thresholds that is subject to a reporting obligation as a result of the rule would in most instances be filing under the Act as the acquired person in the context of an asset transaction and would therefore be submitting less information. For example, an acquired person in an asset acquisition is not required to complete Item 6 of the Form. In addition, the acquired person in the types of licensing transactions covered by the rule would typically not report any revenues in Item 5 of the Form because the product has not yet generated any revenues, and this would mean no requirement to report overlaps in Item 7 of the Form. The acquired person would thus be required to submit only annual financial statements in Item 4(b) of the Form (assuming it is not publicly traded) and relevant transaction documents in Items 4(c) and 4(d) of the Form. Although there is some burden associated with gathering documents responsive to Items 4(c) and 4(d) of the Form, most of that burden will fall on the buyer with whom these kinds of documents typically reside. The buyer also typically pays the filing fee associated with the notification requirement.

Although the Commission continues to certify under the RFA, as it did in the NPRM, that the amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Need for and Objectives of the Final Rule Amendments

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary

³² The 2000 amendments to the Clayton Act require the Commission to revise certain reportability thresholds annually, based on the change in the level of gross national product. The minimum size of transaction threshold as of February 11, 2013, is \$70.9 million with one person having sales or assets of at least \$141.8 million and the other person having sales or assets of at least \$14.2 million.

material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A. The objective of the rule is to clarify when transactions involving the transfer of exclusive rights to a pharmaceutical patent are reportable under the Act.

B. Significant Issues Raised by Public Comments, Summary of the Agency's Assessment of These Issues, and Changes, if Any, Made in Response to Such Comments

The Commission received three comments on the proposed rule, two of which addressed possible small business impacts. Comments 2 and 3 asserted that small businesses would be impacted by the rule because of the costs associated with a HSR filing. However, as discussed above, any business falling within the SBA threshold would likely be the acquired person in the transaction, while most of the costs associated with a filing required by the Rules would be borne by the acquiring person.

C. Description and Estimate of the Number of Small Entities Subject to the Final Rule or Explanation Why No Estimate Is Available

Under the Small Business Size Standards issued by the Small Business Administration, the standards for the pharmaceutical industry are 750 or 500 employees, depending on the specific NAICS code. Based on an assessment of prior filings, the Commission estimates that of the 60 additional filings expected annually as a result of the rule, roughly 20 of the filers will qualify as small businesses, although these businesses will typically have revenues or assets large enough to meet the minimum HSR filing thresholds.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule Amendments, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Rule and the Type of Professional Skills That Will Be Necessary To Comply

The Commission recognizes that the rule will involve some burdens on affected entities and related fees. However, the amendments should not

have a significant impact on entities falling within the SBA thresholds that are acquired persons. As discussed above, such acquired entities required to submit HSR filings as a result of the rule would submit an HSR form along with yearly financials and related deal documents, but less information than acquiring entities.

E. Steps the Agency Has Taken To Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statute

As discussed above, the Agencies have minimized the filing burden for acquired persons because the current Rules allow acquired persons to submit less information than the acquirer. Any entities newly covered by the final rule amendments that fall within the SBA thresholds would likely be acquired persons and have reduced filing burdens.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3521 (“PRA”), requires agencies to submit “collections of information” to the Office of Management and Budget (“OMB”) and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The existing information collection requirements in the Rules and Form have been reviewed and approved by OMB under Control No. 3084–0005. In accordance with the PRA, the FTC submitted the proposed rule³³ and supporting statement to OMB. The currently cleared burden hours total is 53,759. Comment 2 and its Supplemental Letter addressed the PRA estimates.

A. Necessity for the Rule Amendments

The PRA requires that an agency’s collection of information be necessary for the proper performance of the agency’s function, and that the information collected have “practical utility.”³⁴ According to the PRA,

³³ 76 FR 42471 (July 19, 2011).

³⁴ 44 U.S.C. 3508: Determination of necessity for information; hearing

Before approving a proposed collection of information, the Director [of the Office of Management and Budget] shall determine whether the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility. Before making a determination the Director may give the agency and other interested persons an opportunity to be heard or to submit statements in writing. To the extent, if any, that the Director determines that

“practical utility” is the ability of an agency to use information, particularly the ability to process such information in a timely and useful fashion.³⁵

Comment 2 questions the need for the rulemaking to further the purposes of the HSR Act.³⁶ The HSR Act is intended to allow the Agencies to review significant transactions to determine, prior to consummation of a transaction, if it is anticompetitive. Like patent sales, exclusive patent licenses prevalent in the pharmaceutical industry are asset acquisitions that may produce anticompetitive effects. This rule ensures that exclusive patent licensing transactions in the pharmaceutical industry are reported when they meet the requisite minimum thresholds, enabling the agencies to assess under the HSR Act the competitive impact of these transactions. Thus, the amended reporting requirements are necessary to effectuate the purposes of the HSR Act and have practical utility.

B. Filing Requirements, Including Form Preparation and Document Collection

Commenter 2 submitted two cost estimates. In its original submission, the commenter stated that the cost associated with preparation and completion of HSR forms for a “straightforward” transaction is at least \$15,000 per party. Subsequently, however, the commenter submitted a Supplemental Letter stating that, on average, the cost associated with preparation of HSR forms, including collection and review of documents, is between \$40,000 and \$60,000 for each party to a transaction, with more straightforward transactions costing in the \$15,000–\$20,000 range. This assessment is higher than the Agencies’ assessment, which is based on an hourly cost estimate derived after consultation with practitioners from the private bar. The FTC’s estimate for a standard non-index filing³⁷ is \$16,650 (based on an

the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.

³⁵ 44 U.S.C. 3502(11). In determining whether information will have “practical utility,” OMB will consider “whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction.” 5 CFR 1320.3(l).

³⁶ Cmt. 2 at 13.

³⁷ Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant

assumed 37 hours per filing multiplied by \$460/hour), and for filings requiring more precise valuation for fee determination purposes, it is \$18,400 (based on an assumed 40 hours per filing, multiplied by \$460/hour).

In the PNO's experience, Comment 2's Supplemental Letter substantially overestimates the costs of preparing an HSR filing. First, Comment 2's estimate suggests that the cost of preparing the HSR filing would depend in substantial part on the number of people involved in investigating, assessing, negotiating, and approving licensing transactions. In the PNO's experience, however, the competitive impact documents required by the HSR Rules usually reside with a core team of individuals, as not every person with some involvement in the transaction will have the specific documents that must be produced. Indeed, in the PNO's experience, HSR filings for exclusive licensing transactions typically contain fewer documents than company-wide acquisitions or mergers. Moreover, by not differentiating between the acquiring and acquired person, Comment 2's estimate suggests that both parties to a transaction would incur comparable costs. However, the acquired person's costs would be significantly lower, as that person does not have to supply as much information for the HSR form.³⁸

In addition, Comment 2's original estimate appears to include the costs of valuing the transactions.³⁹ Parties to an exclusive patent licensing agreement, however, are very likely to conduct a patent valuation as part of their due diligence for the transaction; accordingly, this is not an additional cost of rule compliance. While in some circumstances a more precise valuation would assist in determining whether a filing is required or the appropriate filing fee, such a more precise estimate would be needed only where the existing estimate is a range that straddles the minimum filing threshold or two filing fee categories.

While the FTC's per transaction estimate is lower than the estimates in Comment 2's Supplemental Letter, the FTC's estimate of the industry-wide incremental costs of filing due to the

Attorney General. Thus, parties must submit copies of these "index" filings, but completing the task requires significantly less time than non-exempt transactions which require "non-index" filings.

³⁸ For example, see Regulatory Flexibility section above.

³⁹ Comment 3 also expressed concern that the Rule would add administrative costs to pharmaceutical deals, including the costs of analyzing whether the transaction is reportable and the costs of conducting a valuation of the acquisition.

rule is roughly comparable to Comment 2's original estimate. Comment 2's original estimate stated that the proposed rule amendments would increase the costs of form preparation and document collection, cumulatively, by more than \$1,000,000.⁴⁰ By comparison, in the NPRM, the FTC stated that, rounding upward the number of expected new filings, this rule would increase the cost burden of the existing Rules by a total of \$1,225,000. Without such upward rounding, the estimated burden increase is smaller. Calculating the burden under the assumption that the rule will result in the filing of 30 additional transactions per year, or 60 additional filings, with 10 filings requiring a more precise valuation, the estimated increase in the industry-wide burden is 2,250 hours per year,⁴¹ or \$1,035,000 using a rate of \$460 per hour.⁴² Nevertheless, out of an abundance of caution and in light of the comments, the Commission retains the larger burden increase estimate of 2,664 hours, or \$1,225,000.

C. Filing Fees

Comment 2 asserts further that filing fees associated with reporting a transaction covered by the HSR Act should be included in the PRA cost estimates.⁴³ Filing fees, however, are not part of a respondent's burden of a PRA "collection of information" as they are not resources expended "to generate, maintain, or provide information" regarding the transactions to the Agencies, *see* 44 U.S.C. 3502(2), but rather are paid pursuant to an accompanying, additional statutory requirement in order to offset the Agencies' expenses. *See* Public Law 106-553, 114 Stat. 2762.

D. Second Requests

Comment 2 also asserts that the costs of responding to additional information

⁴⁰ Cmt. 2 at 14.

⁴¹ Based on a review of valuations for prior licensing transactions, the FTC estimates that about one third of the 30 added transactions will require a more precise valuation, with one party per transaction conducting such valuation. [(50 filings × 37 burden hours) + (10 filings requiring a more precise valuation × 40 burden hours) = 2,250 burden hours]. Even assuming, however, that two thirds of the transactions would require a more precise valuation, the total estimated burden hours are not significantly higher. [(40 filings × 37 burden hours) + (20 filings requiring a more precise valuation × 40 burden hours) = 2280].

⁴² As noted above, because the acquired person (or licensor) would be submitting less information for the HSR form than the acquiring person (or licensee), it would have a smaller burden than the acquiring person. Nevertheless, for purposes of this rulemaking, the FTC will assume that, like the acquiring person, the acquired person will incur a burden of 37 hours per filing.

⁴³ Cmt. 2 at 14.

requests ("second requests") should also be included in the PRA estimates.⁴⁴ "Second requests," however, are not a "collection of information" subject to the PRA because they are issued "during the conduct of an . . . investigation . . . involving an agency against specific individuals or entities." *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4(a)(2).

Accordingly, the FTC retains its previously published estimates that the amendments will yield an additional 2,664 burden hours and approximately \$1,225,000 in associated labor costs (based on an assumed hourly rate of \$460 per hour).

List of Subjects in 16 CFR Part 801

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 801 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by adding paragraphs (o), (p) and (q) to read as follows:

§ 801.1 Definitions.

* * * * *

(o) *All commercially significant rights.* For purposes of paragraph (g) of § 801.2, the term all commercially significant rights means the exclusive rights to a patent that allow only the recipient of the exclusive patent rights to use the patent in a particular therapeutic area (or specific indication within a therapeutic area).

(p) *Limited manufacturing rights.* For purposes of paragraph (o) of this section and paragraph (g) of § 801.2, the term limited manufacturing rights means the rights retained by a patent holder to manufacture the product(s) covered by a patent when all other exclusive rights to the patent within a therapeutic area (or specific indication within a therapeutic area) have been transferred to the recipient of the patent rights. The retained right to manufacture is limited in that it is retained by the patent holder solely to provide the recipient of the patent rights with product(s) covered by the patent (which either the patent holder alone or both the patent holder and the recipient may manufacture).

(q) *Co-rights.* For purposes of paragraph (o) of this section and paragraph (g) of § 801.2, the term co-rights means shared rights retained by

⁴⁴ *Id* at 14–15.

the patent holder to assist the recipient of the exclusive patent rights in developing and commercializing the product covered by the patent. These co-rights include, but are not limited to, co-development, co-promotion, co-marketing and co-commercialization.

■ 3. Amend § 801.2 by adding paragraph (g) to read as follows:

§ 801.2 Acquiring and acquired persons.

* * * * *

(g) Transfers of patent rights within NAICS Industry Group 3254.

(1) This paragraph applies only to patents covering products whose manufacture and sale would generate revenues in NAICS Industry Group 3254, including:

- 325411 Medical and Botanical Manufacturing
- 325412 Pharmaceutical Preparation Manufacturing
- 325413 In-Vitro Diagnostic Substance Manufacturing
- 325414 Biological Product (except Diagnostic) Manufacturing

(2) The transfer of patent rights covered by this paragraph constitutes an asset acquisition; and

(3) Patent rights are transferred if and only if all commercially significant rights to a patent, as defined in § 801.1(o), for any therapeutic area (or specific indication within a therapeutic area) are transferred to another entity. All commercially significant rights are transferred even if the patent holder retains limited manufacturing rights, as defined in § 801.1(p), or co-rights, as defined in § 801.1(q).

Examples: Although these examples refer to licenses, which are typically used to effect the transfer of pharmaceutical patent rights to a recipient of those rights, other methods of transferring patent rights, by assignment or grant, among others, are similarly covered by these rules and examples.

1. B holds a patent relating to an active pharmaceutical ingredient for cardiovascular use. A will obtain a license from B that grants A the exclusive right to all of B's patent rights except that both A and B can manufacture the active pharmaceutical ingredient to be sold by A under the exclusive license agreement. B retains limited manufacturing rights as defined in § 801.1(p) because it retains the right to manufacture the product covered by the patent for cardiovascular use solely to provide the product to A. A is still receiving all commercially significant rights to the patent, and the transfer of these rights via the license constitutes an asset acquisition. Further, even if B

retained all rights to manufacture (so that A could not manufacture), B would still retain limited manufacturing rights, and A would still receive all commercially significant rights to the patent. Thus, the transfer of these rights via the license would also constitute an asset acquisition.

2. B holds a patent for an in-vitro diagnostic substance relating to arthritis. B will grant A an exclusive license to all of B's patent rights for all veterinary indications. B retains all patent rights for all human indications. The exclusive license to all commercially significant rights for all veterinary indications is an asset acquisition because A is receiving all rights to the patent for a therapeutic area.

3. B holds a patent relating to a biological product. B will grant A an exclusive license to all of B's patent rights in all therapeutic areas. A and B are also entering into a co-development and co-commercialization agreement under which B will assist A in developing, marketing and promoting the product to physicians. B cannot separately use the patent in the same therapeutic area as A under the co-development and co-commercialization agreement. A will book all sales of the product and will pay B a portion of the profits resulting from those sales. Despite B's retention of these co-rights, A is still receiving all commercially significant rights. The licensing agreement is an asset acquisition. This would be an asset acquisition even if B also retained limited manufacturing rights.

4. B holds a patent relating to an active pharmaceutical ingredient and a bulk compound that contains that active pharmaceutical ingredient. B will grant A an exclusive license to use the bulk compound to manufacture and sell a finished product in the neurological therapeutic area. B cannot manufacture the active pharmaceutical ingredient or bulk compound for any other finished products in the neurological area, but it can manufacture either for use by another party in a different therapeutic area. Despite B's retention of manufacturing rights of the active pharmaceutical ingredient and bulk compound for therapeutic areas other than neurology, A is still receiving all commercially significant rights in a therapeutic area and the licensing agreement is the acquisition of an asset.

5. B holds a patent related to a pharmaceutical product that has been approved by the FDA. B will enter into an exclusive distribution agreement with A that will give A the right to distribute the product in the U.S. B will manufacture the product for A and will

receive a portion of all revenues from the sale of the product. A receives no exclusive patent rights under the distribution agreement. A has not obtained all commercially significant rights to the patent because it is only handling the logistics of selling and distributing the product on B's behalf. Therefore, the exclusive distribution agreement is not an asset acquisition.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2013-27027 Filed 11-14-13; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA-2011-C-0878]

Listing of Color Additives Exempt From Certification; Spirulina Extract; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of September 13, 2013, for the final rule that appeared in the **Federal Register** of August 13, 2013. The final rule amended the color additive regulations to provide for the safe use of spirulina extract made from the dried biomass of the cyanobacteria *Arthrospira platensis* (*A. platensis*), as a color additive in candy and chewing gum.

DATES: The effective date for the final rule published August 13, 2013 (78 FR 49117), is confirmed as September 13, 2013.

FOR FURTHER INFORMATION CONTACT: Felicia M. Ellison, Center for Food Safety and Applied Nutrition (HFS-265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 240-402-1264.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 2013 (78 FR 49117), we amended the color additive regulations to add § 73.530 *Spirulina extract* (21 CFR 73.530) to provide for the safe use of spirulina extract made from the dried biomass of the cyanobacteria *A. platensis*, as a color additive in candy and chewing gum.

We gave interested persons until September 12, 2013, to file objections or

requests for a hearing. We received no objections or requests for a hearing on the final rule. Therefore, we find that the effective date of the final rule that published in the **Federal Register** of August 13, 2013, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379 e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Office of Food Additive Safety, we are giving notice that no objections or requests for a hearing were filed in response to the August 13, 2013, final rule. Accordingly, the amendments issued thereby became effective September 13, 2013.

Dated: November 8, 2013.

Susan M. Bernard,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2013-27381 Filed 11-14-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA-2012-N-1238]

Medical Devices; Ophthalmic Devices; Classification of the Scleral Plug

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is classifying the scleral plug into class II (special controls), and exempting the scleral plugs composed of surgical grade stainless steel (with or without coating in gold, silver, or titanium) from premarket notification (510(k)) and continuing to require premarket notification (510(k)) for all other scleral plugs in order to provide a reasonable assurance of safety and effectiveness of the device. The scleral plug is a prescription device used to provide temporary closure of a scleral incision during an ophthalmic surgical procedure.

DATES: This final rule is effective on December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Tina Kiang, Center for Devices and

Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2414, Silver Spring, MD 20993-0002, 301-796-6860, Tina.Kiang@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94-295), the Safe Medical Devices Act of 1990 (Pub. L. 101-629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105-115), Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107-250), Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110-85), and Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112-144), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C 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 FD&C Act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as “preamendments devices.” FDA classifies these devices after the Agency takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel’s recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as “postamendments devices.” These devices are classified automatically by statute (section 513(f) of the FD&C Act) into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until: (1) FDA reclassifies the device 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 FD&C Act, as amended by FDAMA; or (3) FDA issues an order finding the

device to be substantially equivalent, under section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A person may market a preamendments device that has been classified into class III through premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval.

Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of scleral plugs if the material is a surgical grade stainless steel with or without a gold, silver, or titanium coating.

II. Regulatory History of the Device

In the **Federal Register** of January 25, 2013 (78 FR 5327), FDA proposed to classify scleral plug devices used to provide temporary closure of a scleral incision during an ophthalmic surgical procedure into class II (special controls) and proposed special controls for these devices. FDA also proposed to exempt the devices from premarket notification requirements if the device is made from surgical grade stainless steel (with or without a gold, silver, or titanium coating). FDA invited interested persons to comment on the proposed regulation by April 25, 2013. FDA received no comments on the proposed rule.

III. Summary of Final Rule

In accordance with 21 CFR 860.84(g)(2), FDA is classifying scleral plugs into class II (special controls). FDA is codifying the classification of scleral plugs by adding § 886.4155. The Agency is also exempting these devices from premarket notification requirements when they are made from surgical grade stainless steel (with or without a gold, silver, or titanium coating). The Agency has also identified special controls for scleral plug devices. Following the effective date of this final classification rule, manufacturers will

need to address the issues covered by these special controls.

IV. Analysis of Comments and FDA's Response

FDA received no comments on the proposed rule. Therefore, under section 513 of the FD&C Act, FDA is adopting the proposed classification and FDA's finding. FDA is also adopting the assessment of the risks to public health stated in the proposed rule published on January 25, 2013. FDA is issuing this final rule which classifies the generic type of device, scleral plugs, into class II (special controls). In addition, FDA, on its own initiative, is exempting scleral plugs made from surgical grade stainless steel (with or without a gold, silver, or titanium coating) from premarket notification requirements.

V. 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.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct 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 Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final regulation classifies a previously unclassified preamendment device type, there are only five registered establishments listed in the Establishment Registration and Device Listing database, and the regulation designating the classification of scleral plugs as class II is consistent with the historical regulatory oversight given to this device type, the Agency certifies that the final rule will not have

a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$141 million, using the most current (2012) 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.

VII. Paperwork Reduction Act of 1995

This final rule establishes special controls that refer to previously approved collections of information found in other 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 part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in part 807, subparts B and C, have been approved under OMB control number 0910–0387.

List of Subjects in 21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for 21 CFR part 886 continues to read as follows:

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

■ 2. In subpart E, add § 886.4155 to read as follows:

§ 886.4155 Scleral plug.

(a) *Identification.* A scleral plug is a prescription device intended to provide temporary closure of a scleral incision during an ophthalmic surgical procedure. These plugs prevent intraocular fluid and pressure loss when instruments are withdrawn from the

eye. Scleral plugs include a head portion remaining above the sclera, which can be gripped for insertion and removal, and a shaft that fits inside the scleral incision. Scleral plugs are removed before completing the surgery.

(b) *Classification.* Class II (special controls). The special controls for the scleral plug are as follows:

(1) The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 886.9 if the material is a surgical grade stainless steel with or without a gold, silver, or titanium coating. The special controls for the surgical grade stainless steel scleral plug (with or without a gold, silver, or titanium coating) are:

(i) The device must be demonstrated to be sterile during the labeled shelf life;

(ii) The device must be demonstrated to be biocompatible; and

(iii) Labeling must include all information required for the safe and effective use of the device, including specific instructions regarding the proper sizing, placement, and removal of the device.

(2) The device is not exempt from premarket notification procedures if it is composed of a material other than surgical grade stainless steel (with or without a gold, silver, or titanium coating). The special controls for scleral plugs made of other materials are:

(i) The device must be demonstrated to be sterile during the labeled shelf life;

(ii) The device must be demonstrated to be biocompatible;

(iii) Characterization of the device materials must be performed;

(iv) Performance data must demonstrate acceptable mechanical properties under simulated clinical use conditions including insertion and removal of the device;

(v) Performance data must demonstrate adequately low levels of the extractables or residues from manufacturing (or processing) of the device; and

(vi) Labeling must include all information required for the safe and effective use of the device, including specific instructions regarding the proper sizing, placement, and removal of the device.

Dated: November 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27365 Filed 11–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****21 CFR Part 1308**

[Docket No. DEA-382]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Phenethylamines Into Schedule I**AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Final order.

SUMMARY: The Deputy Administrator of the Drug Enforcement Administration (DEA) is issuing this final order to temporarily schedule three synthetic phenethylamines into the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The substances are 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36) [hereinafter 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe]. This action is based on a finding by the Deputy Administrator that the placement of these synthetic phenethylamines and their optical, positional, and geometric isomers, salts and salts of isomers in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, dispense, import, export, engage in research, conduct instructional activities, and possess), or propose to handle these synthetic phenethylamines.

DATES: This final order is effective November 15, 2013.**FOR FURTHER INFORMATION CONTACT:** Ruth A. Carter, Chief, Policy Evaluation and Analysis Section, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone (202) 598-6812.**SUPPLEMENTARY INFORMATION:****Legal Authority**

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are

referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, but they are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purpose of this action. 21 U.S.C. 801-971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, controlled substances are classified into one of five schedules based upon their potential for abuse, their currently accepted medical use, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years, without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), 21 U.S.C. 355, for the substance. 21 U.S.C. 811(h)(1). Pursuant to 21 U.S.C. 871(a), the Attorney General has delegated his scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA, who in turn has delegated her authority to the Deputy Administrator of the DEA. 28 CFR 0.100, 0.104.

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Deputy Administrator to notify the Secretary of the Department of Health and Human

Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.¹ The Deputy Administrator transmitted notice of his intent to place 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe in schedule I on a temporary basis to the Assistant Secretary by letter dated September 3, 2013. The Assistant Secretary responded to this notice by letter dated October 1, 2013 (received by the DEA on October 8, 2013), and advised that based on review by the FDA, there are currently no investigational new drug applications or approved new drug applications for 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe. The Assistant Secretary also stated that the HHS has no objection to the temporary placement of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe in schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). As 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are not currently listed in any schedule under the CSA, and as no exemptions or approvals are in effect for 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe under section 505 of the FD&C Act, 21 U.S.C. 355, the conditions of 21 U.S.C. 811(h)(1) have been satisfied. As required by 21 U.S.C. 811(h)(1)(a), a notice of intent to temporarily schedule these three synthetic phenethylamines was published in the **Federal Register** on October 10, 2013. 78 FR 61991.

To make a finding that placing a substance temporarily in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Deputy Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA, 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration, and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(c)(4)-(6). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21

¹ Because the Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations, for purposes of this Final Order, all subsequent references to "Secretary" have been replaced with "Assistant Secretary." As set forth in a memorandum of understanding entered into by the HHS, the Food and Drug Administration (FDA), and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Assistant Secretary's scheduling responsibilities under the CSA, with the concurrence of the NIDA. 50 FR 9518, Mar. 8, 1985.

U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1). Available data and information for 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe indicate that these three synthetic phenethylamines have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

Synthetic Phenethylamines

The 2-methoxybenzyl series of 2C phenethylamine substances, such as 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe, has been developed over the last 10 years for use in mapping and investigating the serotonin receptors in the mammalian brain. 25I-NBOMe and 25B-NBOMe were first described by legitimate research laboratories in 2003. Subsequent studies involving these two substances appeared in the scientific literature starting in 2006. 25C-NBOMe first appeared in the scientific literature in 2011. No approved medical use has been identified for these synthetic phenethylamines, nor have they been approved by the FDA for human consumption. Synthetic 2C phenethylamine substances, of which 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are representative, are so termed for the two-carbon ethylene group between the phenyl ring and the amino group of the phenethylamine and are substituted with methoxy groups at the 2 and 5 positions of the phenyl ring. Numerous blotter papers and food items have been analyzed, and combinations of one or more of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe have been identified as adulterants. Bulk quantities of these substances have been encountered as powders and liquid solutions.

From November 2011 through June 2013, according to the System to Retrieve Information from Drug Evidence² (STRIDE) data, there are 54 exhibits involving 27 cases for 25I-NBOMe; 27 exhibits involving 12 cases for 25C-NBOMe; and 4 exhibits involving 4 cases for 25B-NBOMe. From June 2011 through June 2013, the National Forensic Laboratory Information System³ (NFLIS) registered 959 reports containing these synthetic phenethylamines (25I-NBOMe—795

reports; 25C-NBOMe—144 reports; 25B-NBOMe—20 reports) across 35 States. No instances involving 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe were reported in NFLIS prior to June 2011.

Factor 4. History and Current Pattern of Abuse

One or more 2-methoxybenzyl analogues of the 2C compounds described here have been available over the Internet since 2010. The first identified domestic law enforcement encounter with 25I-NBOMe occurred in June 2011 in Milwaukee, Wisconsin.

Information from published studies and law enforcement reports, supplemented with discussions on Internet Web sites and personal communications, document abuse of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe by nasal insufflation of powders, intravenous injection or nasal absorption of liquid solutions, sublingual or buccal administration of blotter papers, and consumption of food items laced with these substances. These sources also report that 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are often purported to be schedule I hallucinogens like lysergic acid diethylamide (LSD). Reports document that the abuse of these substances can cause severe toxic reactions, including death.

According to United States Customs and Border Protection data, bulk quantities of powdered 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe have been seized from shipments originating overseas, particularly from Asia. Given the relatively small quantity of these substances predicted to produce a hallucinogenic effect in humans, single seizures of these substances are capable of producing hundreds of thousands to millions of dosage units. Large seizures of these substances prepared on blotter papers have also been reported. Abuse of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe has been characterized with acute public health and safety issues domestically and abroad. In response, a number of States and foreign governments have controlled these substances.

Factor 5. Scope, Duration, and Significance of Abuse

According to forensic laboratory reports, the first law enforcement encounter with 25I-NBOMe in the United States occurred in June 2011. According to NFLIS, 959 exhibits involving 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe were submitted to forensic laboratories between June 2011 and June 2013 from a number of States

including Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming. The number of reports submitted to NFLIS involving 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe has increased in each of the last five quarters where complete data is available. According to STRIDE, there are 85 records that identify 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe in evidence submitted to DEA laboratories between November 2011 and June 2013.

Factor 6. What, If Any, Risk There Is to the Public Health

In 2012 and 2013, emergency department physicians and toxicologists published and presented numerous case reports of patients treated for exposure to 25I-NBOMe. The adverse health effects reported include tachycardia, hypertension, agitation, aggression, visual and auditory hallucinations, seizures, hyperpyrexia, clonus, elevated white cell count, elevated creatine kinase, metabolic acidosis, rhabdomyolysis, and acute kidney injury.

Medical examiner and postmortem toxicology reports from 11 States implicate some combination of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe in the death of at least 17 individuals. These reports suggest that 14 individuals died of acute toxicity, and 3 individuals died of unpredictable or violent behavior due to 25I-NBOMe toxicity. 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe have each been detected in postmortem blood toxicology for cases of acute toxicity.

Since abusers obtain these drugs through unknown sources, the identity, purity, and quantity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users. There are no recognized therapeutic uses for these substances in the United States and possible deadly drug interactions between 25I-NBOMe and FDA-approved medications have been noted.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

Based on the above data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe pose an

² STRIDE includes data on analyzed samples from DEA laboratories.

³ NFLIS is a database that collects scientifically verified data on analyzed samples in State and local forensic laboratories.

imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for these synthetic phenethylamines in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe indicate that these three synthetic phenethylamines have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Deputy Administrator through a letter dated September 3, 2013, notified the Assistant Secretary of the intention to temporarily place these three synthetic phenethylamines in schedule I.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Deputy Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule three synthetic phenethylamines, 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82) and 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36), in schedule I of the CSA, and finds that placement of these synthetic phenethylamines in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

Because the Deputy Administrator hereby finds it necessary to temporarily place these synthetic phenethylamines in schedule I to avoid an imminent hazard to the public safety, the final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the permanent or regular scheduling process. 21 U.S.C. 811(h)(1)-(2).

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in

accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Requirements

Upon the effective date of this Final Order, 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe will become subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importation, exportation, research, conduct of instructional activities, and possession including the following:

1. Registration. Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, conducts instructional activities, or possesses), or desires to handle, 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Any person who currently handles 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe, and is not registered with the DEA must submit an application for registration and may not continue his/her activities until the DEA has approved that application. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA.

2. Security. 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe are subject to schedule I security requirements and must be handled and stored in accordance with 21 CFR 1301.71-1301.93, pursuant to 21 U.S.C. 821, 823, 871(b), as of November 15, 2013.

3. Labeling and packaging. All labeling and packaging requirements for controlled substances set forth in part 1302 of title 21 of the CFR shall apply to commercial containers of 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe. Current DEA registrants shall have 30 calendar days from November 15, 2013 to comply with all labeling and packaging requirements.

4. Quotas. Quotas for 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe will be established based on registrations

granted and quota applications received pursuant to part 1303 of title 21 of the CFR.

5. Inventory. Every DEA registrant who possesses any quantity of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe on the effective date of this order will be required to take an inventory of all stocks of these substances on hand as of the effective date of this order, pursuant to 21 U.S.C. 827, 958(e), and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements.

6. Records. All registrants who are authorized to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe are required to keep records pursuant to 1304.03, 1304.04, 1304.21, 1304.22, and 1304.23 of title 21 of the CFR. Current DEA registrants authorized to handle 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. Reports. All registrants are required to submit reports in accordance with 1304.33 of title 21 of the CFR. DEA registrants who manufacture or distribute 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe are required to comply with these reporting requirements and shall do so as of November 15, 2013.

8. Order Forms. All registrants involved in the distribution of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must comply with order form requirements of part 1305 of title 21 of the CFR as of November 15, 2013.

9. Importation and Exportation. All importation and exportation of 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe must be conducted by appropriately registered DEA registrants in compliance with part 1312 of title 21 of the CFR, pursuant to 21 U.S.C. 952, 953, 957, and 958, on or after November 15, 2013.

10. Criminal Liability. Any activity involving 25I-NBOMe, 25C-NBOMe, or 25B-NBOMe not authorized by, or in violation of the CSA, occurring as of November 15, 2013 is unlawful, and may subject the person to administrative, civil, and criminal proceedings.

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order,

schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of a proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action final order is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 808(2) of the Congressional Review Act (CRA), "any rule for which an agency for good cause finds...that notice and public procedure thereon are impracticable, unnecessary,

or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines." It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to section 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety from new or designer drugs or abuse of those drugs. Section 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie section 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose a threat to public health, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order shall take effect immediately upon its publication.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA, 21 U.S.C. 811(h), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations, 28 CFR 0.100, Appendix to Subpart R, the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

- 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

- 2. Section 1308.11 is amended by adding paragraphs (h)(12), (13), and (14) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(12) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7538 (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)

(13) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7537 (Other

names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)

(14) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7536

(Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)

Dated: November 7, 2013.

Thomas M. Harrigan,
Deputy Administrator.

[FR Doc. 2013-27315 Filed 11-14-13; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, and 58

[Docket No. FR-5423-F-02]

RIN 2501-AD51

Floodplain Management and Protection of Wetlands

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations governing the protection of wetlands and floodplains. With respect to wetlands, the rule codifies existing procedures for Executive Order 11990 (E.O. 11990), Protection of Wetlands. HUD's policy has been to require the use of the 8-Step Process for floodplains for wetlands actions performed by HUD or actions performed with HUD financial assistance. This rule codifies this wetlands policy and improves consistency and increases transparency by placing the E.O. 11990 requirements in regulation. In certain instances, the new wetlands procedures will allow recipients of HUD assistance to use individual permits issued under section 404 of the Clean Water Act (Section 404 permits) in lieu of 5 steps of the E.O. 11990's 8-Step Process, streamlining the wetlands decisionmaking processes. With respect to floodplains, with some exceptions, the rule prohibits HUD funding (e.g., Community Development Block Grants, HOME Investment Partnerships Program, Choice Neighborhoods, and others) or Federal Housing Administration (FHA) mortgage insurance for construction in Coastal High Hazard Areas. In order to ensure maximum protection for communities and wise investment of Federal resources in the face of current and future risk, this final rule also requires the use of preliminary flood maps and advisory base flood elevations where the Federal Emergency

Management Agency (FEMA) has determined that existing Flood Insurance Rate Maps (FIRMs) may not be the “best available information” for floodplain management purposes. This change in map usage requirements brings HUD’s regulations into alignment with the requirement in Executive Order 11988 that agencies are to use the “best available information” and will provide greater consistency with floodplain management activities across HUD and FEMA programs. The rule also streamlines floodplain and wetland environmental procedures to avoid unnecessary processing delays. The procedures set forth in this rule would apply to HUD and to state, tribal, and local governments when they are responsible for environmental reviews under HUD programs.

DATES: Effective December 16, 2013.

FOR FURTHER INFORMATION CONTACT:

Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410–8000. For inquiry by phone or email, contact Jeremiah Sanders, Environmental Review Division, Office of Environment and Energy, Office of Community Planning and Development, at 202–402–4571 (this is not a toll-free number) or at Jerimiah.J.Sanders@hud.gov. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. The December 12, 2011, Proposed Rule

Federal departments and agencies (agencies) are charged by E.O. 11990, entitled Protection of Wetlands, dated May 24, 1977 (42 FR 26961) and Executive Order 11988 (E.O. 11988), entitled “Floodplain Management,” dated May 24, 1977 (42 FR 26951), with incorporating floodplain management goals and wetland protection considerations in their respective planning, regulatory, and decisionmaking processes. A floodplain refers to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands that, at a minimum, are subject to a one percent or greater chance of flooding in any given year (often referred to as the “100-year” flood). Wetlands refers to those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal

circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

On December 12, 2011, HUD proposed revising its regulations governing floodplain management (76 FR 77162, as corrected by 76 FR 79145) to codify the procedures applicable to wetlands authorized by E.O. 11990. The procedures authorized by E.O. 11990, which focus on protection of wetlands, require the completion of an 8-step process referred to as the “8-Step Process” of evaluation, public notice, environmental review, and evaluation of alternatives. This review and evaluation process is similar to the process required for protection of floodplains under E.O. 11988, Floodplain Management, which is already codified in HUD regulations, (See 24 CFR 55.20).

The 8-Step Process is administered by HUD, state governments, units of general local government, or tribal governments. Step 1 requires a determination regarding whether or not the proposed project to be developed with HUD financial assistance will be in a wetland. If the project is in a wetland, Step 2 requires that public notice be issued to inform interested parties that a proposal to consider an action in a wetland has been made. Following this notice, Step 3 requires the identification and evaluation of practicable alternatives to avoid locating the project in a wetland. Step 4 requires the identification and evaluation of the potential direct and indirect impacts associated with the occupancy or modification of wetlands. Step 4 also requires the identification of the potential direct support of wetlands development, such as housing or public-service structures that require additional investment such as food service or parking, and indirect support of wetlands development that can be caused by infrastructure, such as water and waste water systems for the development that could induce further development due to proximity to the wetland. Step 5 requires an analysis of practicable modifications and changes to the proposal to minimize adverse impacts to the wetlands and to the project as a result of its proposed location in wetlands. Under Step 6, the practicable alternatives developed under Step 3 are evaluated. If there is no practicable alternative to the proposed wetland development, Step 7 requires a second notice to be issued to the public

stating that the decision has been made and providing details associated with the decision. After this second notice, Step 8 implements the action, including any mitigating measures established during the decisionmaking process. The December 12, 2011, rule also proposed requiring appropriate compensatory mitigation for adverse impacts to more than one acre of wetlands.

The December 12, 2011, rule also proposed streamlining the wetlands decisionmaking process by allowing HUD and HUD’s recipients of assistance to use permits issued under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities). In order to obtain a permit, an applicant must show that it has: (1) Taken steps to avoid wetland impacts, (2) minimized potential impacts on wetlands, and (3) provided compensation for any remaining unavoidable impacts.

The use of Section 404 permits was proposed to reduce costs and the processing time for complying with parts of the 8-Step Process. The proposed rule provided that if the applicant had obtained an individual Section 404 permit and submitted the permit with its application for a HUD program, then HUD or a responsible entity assuming HUD’s authority need complete only the last 3 steps of the 8-Step Process. The rule also proposed to streamline project approvals by expanding the use of the current “5-Step Process” for repairs, rehabilitations, and improvements to facilitate rehabilitation of certain residential and nonresidential properties.

Several other changes were proposed by the December 12, 2011, rule including a proposal to require the use of FEMA’s preliminary flood maps and advisory base flood elevations in post-disaster situations where the FEMA has determined that the official FIRMs may not be the most up-to-date information. In addition, the proposed rule suggested exempting certain activities, such as

leasing some already insured structures, allowing entities to adopt previous reviews performed by a responsible entity or HUD, and modifying a categorical exclusion from review under the National Environmental Policy Act of 1969 (NEPA). Further, the rule proposed prohibiting HUD funding or FHA mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule also proposed to encourage nonstructural floodplain management, when possible, to encourage resiliency. When HUD or a recipient analyzes alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. For a full discussion of the proposed rule, please see the December 12, 2011 **Federal Register** (76 FR 77162).

B. Solicitation of Specific Comment on Requiring That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation

HUD's proposed rule also solicited specific comment regarding a potential change to § 55.20(e), Step 5 of the "Decisionmaking process" to require that all new construction of "critical actions" in the 100- or 500-year floodplain be elevated to the 500-year base flood elevation. While HUD received comments on this issue, which will be discussed later in this preamble, HUD has decided not to make any changes to address this issue at this time. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation.

C. This Final Rule

This final rule follows publication of the December 12, 2011, proposed rule. HUD received four public comments, which are detailed in the section of this preamble labeled "Discussion of Public Comments received on the December 12, 2011 Proposed Rule," and is making several changes in response to public comment. In addition, HUD is making selected changes in the final rule to provide greater consistency between the regulatory text, the intent expressed in the proposed rule preamble language, paragraph 2(b) of E.O. 11990, and other codified HUD regulations. HUD is also revising § 55.20(a) to make it more consistent with the preamble of the proposed rule and the requirements of E.O. 11990. Section 55.28 is also revised to make it more consistent with the preamble of the proposed rule and section 404 of the Clean Water Act.

A summary of key changes in the final rule from the proposed rule follow.

Changes made in response to public comments.

- Clarification of § 55.1(c)(3), which describes the exceptions to the prohibition on HUD financial assistance for noncritical actions in high hazard areas, to allow "infrastructure" improvements and reconstruction following destruction caused by a disaster in Coastal High Hazard Areas. This change is intended to reduce confusion. It also narrows the proposed prohibition and makes HUD's policies for grantees more consistent with FEMA policies. Section 55.11(c) is also revised to make the table in this section consistent with § 55.1(c)(3).

- Revision of the definition of Coastal High Hazard Areas in § 55.2(b)(1) to allow FEMA flood insurance studies to be used in addition to flood insurance maps in making the determinations of the boundaries of the Coastal High Hazard Areas, 100- and 500-year floodplains, and floodways. HUD is also clarifying that when available, the latest interim FEMA information, such as advisory base flood elevations or preliminary maps or studies, shall be used as the source of these designations.

- Modification of the definition of wetlands in § 55.2(b)(11) to cover manmade wetlands in order to ensure that wetlands built for mitigation would be preserved as natural wetlands would be preserved.

- Revision of the scope of assistance eligible for the 5-Step Process in § 55.12(a)(3) by providing that certain types of projects not be categorized as substantial improvements as defined by § 55.2(b)(10). Projects that are "substantial improvements" remain subject to the 8-Step Process, while projects that fall below that rehabilitation threshold are eligible for the 5-Step Process for the residential and nonresidential rehabilitations at § 55.12(a)(3) and (4). This will allow less costly housing units and those housing units damaged by events to receive expedited processing, while more costly and more severely damaged units will continue to be subject to the full 8-Step Process.

Changes made to more closely align the regulatory text with the statutory language and the Executive Order.

- Revision of § 55.12(c) to remove the exclusion from part 55 for HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720) (ILSDA). Section 1061(b)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5581(b)(7), transferred all of HUD's consumer protection functions under ILSDA to the Bureau of Consumer Financial Protection.

- Clarification of § 55.20(a), which describes Step 1 in the decisionmaking process. The change removes redundant language and clarifies that actions that result in new construction in a wetland are covered actions. The revised regulatory text is more consistent with E.O. 11990 and current policy to protect wetlands impacted by off-site actions. For example, it would now cover such situations as damming a stream, which could result in diking or impounding of wetlands offsite. This change will allow wetlands to be considered consistent with the hydrology of the land as opposed to the property boundaries that often do not reflect hydrological conditions. An estimated 275 8-Step Processes for wetlands and floodplains will be performed on HUD-assisted projects each year.

- Clarification of § 55.28(a)(2) to permit recipients of HUD assistance to use permits issued by state and tribal governments under section 404(h) of the Clean Water Act in lieu of 5 steps of the Executive Order's 8-Step Process. State agencies and tribes were specifically mentioned in the proposed rule preamble, and the terms are now included in the regulatory text to provide effective notice to affected parties that these entities are covered. Michigan and New Jersey currently exercise the authority under section 404(h) of the Clean Water Act to issue Section 404 permits.

II. Discussion of Public Comments Received on the December 12, 2011, Proposed Rule

By the close of the public comment period on February 10, 2012, HUD received four public comments on the proposed rule. Comments were submitted by two individuals; a national, nonprofit organization representing state floodplain managers; and the Floodplain Management Branch of FEMA. The comments generally expressed support for the proposed rule, but several raised questions about the rule or offered suggestions for additional amendments. After careful consideration of the issues raised by the commenters, HUD has decided to adopt the regulatory amendments as proposed, with some minor changes as already discussed.

The following section of this preamble summarizes the significant issues raised by the commenters on the December 12, 2011, proposed rule and HUD's responses to these comments. To ease review of the comments, the comments and responses are presented in the sequence of the sections presented for proposed amendment in the proposed rule.

Comment: Prohibit HUD funding or FHA multifamily mortgage insurance for construction of new structures in Coastal High Hazard Areas. One commenter supported the prohibition on construction in Coastal High Hazard Areas (V Zones, one of the FEMA-defined Special Flood Hazard Areas in the 100-year Floodplain) that was contained in the proposed rule. The commenter stated that HUD may, under existing regulations, fund construction activities in the Coastal High Hazard Area as long as the structures meet FEMA regulations establishing acceptable construction standards. The commenter referenced HUD's current policy in relationship to current FEMA regulations in 44 CFR 60.3(e), "Floodplain management criteria for flood-prone areas" and stated that these minimal construction standards would still result in significant residual risk and an increased flood risk, particularly given the current sea level rise projections. Accordingly, the commenter supported HUD's proposal to completely eliminate HUD funding for construction in these areas.

Another commenter addressing this issue stated that the regulatory text of proposed § 55.1(c)(3), which lists some regulatory exceptions to the general prohibition on HUD assistance, was not clear as to the meaning of "an improvement of an existing structure" and "reconstruction." The commenter also stated that it was unclear as to whether some definitions would be retained. In addition, the commenter suggested minimization for V Zones and floodways, which are defined in § 55.2(b)(4).

HUD Response. HUD appreciates these comments. In response, HUD has decided to clarify § 55.1(c)(3), which would prohibit the use of HUD financial assistance with respect to most noncritical actions in Coastal High Hazard Areas, by removing reference to improvements to existing "structures" and "structures" destroyed by disasters. HUD is making this clarification since HUD's proposed rule prohibited new construction of structures, a term that is defined by FEMA regulations at 44 CFR 9.4 to mean walled or roofed buildings, including mobile homes and gas or liquid storage tanks. HUD believes that referencing the term "structures" could be misinterpreted as limiting improvements of projects that are not structures under the FEMA regulations, such as roads and utility lines. Such an interpretation does not accurately describe current HUD regulations and policies or accurately portray the intent of the proposed rule changes. Namely, HUD has been interpreting currently

codified § 55.1(c)(3) to allow infrastructure reconstruction in V Zones. HUD has changed the language to "existing construction (including improvements)" to better describe the eligible activities and in order to make the provision more consistent with § 55.1(c)(3)(ii), which uses the term "existing construction." Under the same rationale, HUD has changed the § 55.1(c)(3) language from "reconstruction of a structure destroyed by a disaster" to "reconstruction following destruction caused by a disaster." HUD made the change to follow the intent of the proposed rule, which was not to limit reconstruction to structures alone. Additionally, these changes are consistent with the intent of the preamble to the December 12, 2011, proposed rule, which expresses HUD's goal of aligning HUD's development standards with those of FEMA grant programs.

Section 55.11(c) is also revised to make a corresponding change to a table in this section describing the type of proposed actions allowed in various locations.

Comment: The "Coastal High Hazard Area" definition is confusing and seems to address multiple topics. A commenter stated that too many references were made within the "Coastal High Hazard Area" definition at § 55.2(b)(1). The commenter also stated that the "Coastal High Hazard Area" definition is not consistent with that of the National Flood Insurance Program (NFIP). In addition, the commenter expressed concern as to whether other terms from the codified regulations not mentioned in the proposed rule would be retained.

HUD Response. HUD has decided to retain the current definition of "Coastal High Hazard Area" in order to maintain consistency with HUD's preexisting codified environmental regulations. This definition is also consistent with FEMA's "Coastal High Hazard Area" definition at 44 CFR 9.4, which is used for FEMA grant programs. Terms are retained as indicated in the proposed rule.

Comment: Require the use of preliminary flood maps, Flood Insurance Studies, and Advisory Base Flood Elevations where they may be deemed best available data. A commenter stated that HUD's requirement to use updated and preliminary data where existing official published data, such as FIRMs, is not the "best available information" is a useful course of action. The commenter also stated that past experience has shown that flood events frequently highlight the inadequacy of older flood

maps and studies. A commenter also recommended the use of Flood Insurance Studies (FIS).

HUD Response. HUD agrees with this comment and will, in the interest of public safety, require the use of the latest interim FEMA information. HUD has also added a reference to FIS at § 55.2(b)(1). In addition, HUD clarifies that, when available, the latest interim FEMA information, such as an Advisory Base Flood Elevation or preliminary map or study, is the best available information for the designation of flood hazard areas or equivalents. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with E.O. 11988.

Comment: Mitigation banking should not be used in an urban area and this term should be restricted to areas of open space and significant environmental areas. Mitigation banking means the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. A commenter stated that mitigation banking could be a "check the box" analysis.

HUD Response. HUD declines to adopt the commenter's recommendation, although HUD agrees that mitigation banking, or compensatory mitigation as defined in the rule, is not appropriate for all sites. Due to the various different state and local mitigation programs around the United States, HUD supports the flexibility to allow state and local governments to determine what is best for projects. For this reason, the definition of compensatory mitigation at § 55.2(b)(2) will remain broad as presented in the proposed rule.

Comment: The proposed definition of wetlands does not include manmade wetlands. The commenter stated that the Environmental Protection Agency (EPA) and United States Army Corps of Engineers (USACE) programs often create wetlands, and these wetlands are not covered by the definition.

HUD Response. HUD has clarified the definition based on the commenter's recommendation. The definition in the proposed rule is the definition that is stated in E.O. 11990. HUD has added a sentence to the regulatory text of § 55.2(b)(11) to ensure that the definition covers manmade wetlands under compensatory programs. The definition of wetlands at § 55.2(b)(11)

now includes “constructed wetlands” in the final regulatory text.

Comment: The Department of Fish and Wildlife should be involved in wetlands protection. One commenter stated that consultation with, or permit approvals from, the “Department of Fish and Wildlife” should be involved with wetlands protection.

HUD Response. HUD has decided not to revise the proposed rule language. HUD encourages its employees and recipients of financial assistance from HUD to consult with the United States Fish and Wildlife Service (USFWS). If the HUD employee or responsible entity wants to challenge the USFWS National Wetlands Inventory (NWI) maps, they must consult with the USFWS, under § 55.2(b)(11)(ii-iv). In addition, all federal requirements (including Section 404 permits) and state and local laws apply to HUD assistance.

Comment: HUD should include all available sources in wetlands evaluations. One commenter stated that all sources should be used in the wetlands evaluation and not just federal sources.

HUD Response. HUD declines to adopt the commenter’s recommendation. The final rule encourages the use of other sources in the wetlands evaluation after using the NWI maps as primary screening. HUD does not require, but recommends, other sources as well as the NWI maps. At § 55.2(b)(11)(iii), the regulatory text states: “As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.”

Comment: Opposition to HUD’s broadening the use of the 5-Step Process for repairs, rehabilitations, and improvements. One commenter opposed HUD’s proposal to broaden use of the 5-Step Process which eliminates the consideration of alternatives at Step 3, and the two notices at Step 2 and Step 7. The commenter stated that applications of the 5-Step Process as provided in the proposed rule would increase the possible risk to federal investments in these floodplain areas. The commenter also stated opposition to placing some critical actions under the 5-Step Process; for example, making hospitals and nursing homes, which are critical facilities that must be operable and accessible during flood events, eligible for the 5-Step Process. A commenter also questioned what was

meant by the terminology not “significantly increasing the footprint or paved areas.”

HUD Response. HUD declines to accept all of these recommendations, but has made some changes. HUD has found that the 5-Step Process has worked well for repairs, rehabilitations, and improvements under HUD mortgage insurance programs, and that using the full 8-Step Process for these activities has not resulted in significant differences in comments or project outcomes.

HUD has revised the proposed expansion of types of assistance subject to the 5-Step Process by requiring in paragraph (a)(3) and (a)(4) of § 55.12 that a project be below a threshold of a “substantial improvement” to be eligible for the 5-Step Process for residential and nonresidential rehabilitations.

“Substantial improvement” is generally defined as any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement is started; or (2) if the structure has been damaged and is being restored, before the damage occurred. Setting the substantial improvement criteria as a threshold will allow less costly repairs and less damaged housing units to be subject to expedited processing, while more costly repairs and more severely damaged units will continue to be subject to the full 8-Step Process.

In general, HUD has not received public comments during its administration of the 8-Step notice and comment process for the vast majority of HUD or HUD-assisted projects that have not risen to the level of substantial improvements. However, the public remains welcome to inspect the full environmental review record developed on floodplain impacts, or any other aspect of environmental reviews.

HUD considers an increase in the footprint up to 10 percent not to be significant. This is consistent with the policy regarding reconstruction in V Zones under § 55.1(c)(3).

Comment: Exemption of certain activities from the 8-Step Process for floodplain management compliance. One commenter opposed the proposed exemptions for leasing structures (except those that are in floodways or Coastal High Hazard Areas, and critical actions in either the 100-year or 500-year floodplains), special projects to increase access for those with special needs, and activities involving ships or waterborne vessels. However, the commenter supported the exemption for

activities that preserve or enhance natural and beneficial functions of floodplains.

HUD Response. HUD declines to adopt the commenter’s recommendation to delete the exemptions proposed in the proposed rule, but appreciates the commenter’s statement supporting the proposed exemption of activities that preserve or restore beneficial functions.

HUD has found that the 8-Step Process has not been beneficial for projects that only allow access for those with special needs or involving ships and waterborne vessels due to the activities’ lack of impacts or alternatives. HUD supports greater participation in the National Flood Insurance Program. The exception for leasing requires the purchase of flood insurance for the structure. HUD also believes that the economic costs of the premiums and the financial protection of the property through insurance are adequate mitigation where the building is not owned by HUD or the recipient of financial assistance.

Comment: Environmental justice is an unresolved issue. One commenter questioned how environmental justice was addressed by HUD.

HUD Response. HUD is charged with addressing environmental justice under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (dated February 11, 1994 (59 FR 7629)). Executive Order 12898 requires Federal agencies to ensure that consideration is given to disproportionately high and adverse health and environmental effects on minority and low-income populations. This analysis is done on a site-by-site basis by determining the concentration of minority and low-income populations and then analyzing environmental and health risks in the area. Environmental justice is an integral part of HUD’s mission. HUD works with multiple stakeholders and other Federal agencies in its efforts to assure environmental justice concerns are addressed and are part of the environmental review for HUD-assisted projects. HUD recently published a final strategy on environmental justice. (See Department of Housing and Urban Development Summary of Public Comments, Response to Public Comments, and Final 2012–2015 Environmental Justice Strategy, dated April 16, 2012 (77 FR 22599)). For a copy of that notice see the following Web site: http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities. HUD requires consideration of environmental justice as part of the floodplain management

process at § 55.20(c)(2)(ii). Additional background information on environmental justice and links can be found at the following Web site: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/justice.

Comment: HUD should include birds, fish, and wildlife in the floodplain evaluation. A commenter suggested that HUD include language specifying that effects on birds, fish, and wildlife be included in the final rule.

HUD Response. HUD believes that the proposed rule already included this language. The rule includes an evaluation of “Living resources such as flora and fauna” at § 55.20(d)(1)(ii). Fauna is typically interpreted to include all birds, fish, and wildlife of an area.

Comment: Infiltration and stormwater capture and reuse should have standards as they can be subject to contamination or disease. The commenter stated that oil and gas contamination as well as avian disease should be addressed and suggested that HUD impose standards.

HUD Response. HUD declines to adopt the commenter’s recommendation. HUD relies on other Federal, state, and local agencies to regulate water quality issues. Typically, stormwater capture and reuse involves a cistern to store the water pending reuse. This storage isolates the water from groundwater. In addition, this water is normally not used for human consumption. Instead, the water is most often used for toilets or landscaping. For these reasons, stormwater standards are beyond the scope of this rule and are unnecessary.

Infiltration, as used in this rule, relates only to flooding and is not meant to address industrial or other contamination issues. Any contamination issues should be addressed during the environmental review regulated under the processes established by § 50.3(i) or § 58.5(i)(2). If contamination issues cannot be sufficiently remediated, the project and HUD financial assistance should be cancelled, and these techniques should not be used under § 55.20(c)(1).

Comment: The evacuation plans and routes established by HUD are not feasible or enforceable. The commenter stated that the plans and routes were not feasible or enforceable, and that the responsible party for the evacuation plans and routes for critical actions was not clearly identified.

HUD Response. HUD declines to adopt any changes to the regulations as these issues are already addressed. Depending on the program, either HUD employees or state or local authorities

are responsible for approving these routes and plans. All routes and plans are included in the environmental record and subject to public review and monitoring by HUD staff. Further, the current language has been in the regulation for at least 18 years and has produced a number of evacuation plans for subject properties. HUD will continue to monitor its own employees and state and local authorities and to provide guidance regarding evacuation plans and routes. HUD also encourages its employees’ involvement with local emergency response staff to attain higher levels of preparedness and safety.

Comment: Allow HUD or a responsible entity to adopt previous review processes that were performed by another responsible entity or HUD. One commenter supported the provision in the proposed rule that allows reviews performed by HUD or a responsible entity under E.O. 11988 and E.O. 11990 to be adopted by HUD or a different responsible entity for the same project.

HUD Response. HUD agrees with the commenter and believes this provision will eliminate duplication and speed processing for projects receiving assistance from multiple programs.

Comment: Use permits issued under section 404 of the Clean Water Act for E.O. 11990, Protection of Wetlands, purposes. A commenter supported explicitly allowing HUD and HUD’s recipients of assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process.

HUD Response. HUD agrees with this comment and this provision remains in the final rule. HUD has changed the text of the rule to explicitly allow Section 404 permits issued by state and tribal governments under programs approved by EPA. HUD also discussed this policy in the preamble of the proposed rule, and accordingly, inclusion of specific language on state and tribal governments in the final rule language is consistent with the preamble of the proposed rule.

Comment: HUD should allow USACE nationwide permits issued under the authority provided by Section 404 to be used in lieu of 5 steps. One commenter requested that nationwide permits under Section 404 be allowed to be used in place of 5 of the steps of the 8-Step Process.¹ The commenter also requested

that these permits be allowed to substitute for 5 steps in the 8-Step Process for floodplains.

HUD Response. HUD cannot adopt the commenter’s recommendation as it is inconsistent with the requirements of E.O. 11988 to provide two notices to the public, it focuses on wetlands as opposed to floodplains, and it would not result in adequate permitting. Further, while HUD agrees that many wetlands are in 100-year floodplains, HUD is also aware of many wetlands that are not in floodplains. HUD does not believe that wetlands outside of the 100-year floodplain are rare on a nationwide basis and believes that the Department must provide for these situations in the rule.

HUD, therefore, cannot allow the abbreviated 3-Step Process to substitute for the 8-Step Process in floodplains, because E.O. 11988 requires two notices at sec. 2(a)(2) and (4) instead of just one notice as required by E.O. 11990. As a result, the single notice under the 3-Step Process would be insufficient for E.O. 11988 purposes. In addition, the USACE Section 404 permitting process does not provide notice or analysis regarding floodplain impacts, so the permitting process would not adequately address the 5 steps, for which HUD is allowing the permit, to substitute for the purposes of floodplains and E.O. 11988.

HUD has also chosen not to allow nationwide permits at this time because the permits are not as site-specific in nature as individual permits. While HUD supports the use of nationwide permits, it has chosen not to allow these permits to substitute for 5 steps of the process. HUD believes that the more intense review under individual permits is a better starting point to begin this process. If HUD and grantees encounter the anticipated high degree of success with the streamlined process provided by this rule using individual permits, HUD will consider expanding this streamlined process to nationwide permits. Additionally, any mitigation under the nationwide permit could be used as part of HUD’s 8-Step Process for E.O. 11990 compliance.

Comment: HUD should allow applicants to forego 5 steps of the 8-Step Process for wetlands before a Section 404 permit is secured. One commenter stated that it is an unreasonable hardship on the applicant to require the acquisition of a wetlands permit prior to

adverse effects on the aquatic environment. The NWP’s authorize a variety of activities, such as aids to navigation, utility lines, bank stabilization activities, road crossings, stream and wetland restoration activities, residential developments, mining activities, commercial shellfish aquaculture activities, and agricultural activities.

¹ USACE issues nationwide permits (NWP’s) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The NWP’s authorize activities that have minimal individual and cumulative

entering the abbreviated 3-Step wetlands process.

HUD Response. The 3-Step Process is only applicable when a permit has been granted. If the permit has not yet been granted, the public would not have access to supporting documentation that was necessary for the permit. This information is necessary for HUD to adequately perform the 8-Step Process and for HUD to provide adequate notice to the public as required by E.O. 11990 at sec. 2(b) and NEPA. For these reasons, HUD will require the full 8-Step Process unless a Section 404 permit has been issued prior to the environmental review.

Comment: HUD should not modify the Categorical Exclusion (CatEx) from environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties by removing the qualification that the footprint of the structure may not be increased in a floodplain or wetland. Two commenters objected to the proposed removal of the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties. One commenter recognized that this may seem like a trivial matter, but the expansion can increase risk to the property or adjacent properties and may increase the base flood elevation level.

HUD Response. HUD declines to adopt the commenters' recommendations, and will retain the proposed language to remove the footprint qualification in the final rule. HUD assistance for minor rehabilitations in a floodplain or wetland will remain subject to E.O. 11988 and E.O. 11990 8-Step-process review, unless 24 CFR 55.12(b)(2) or another exception applies. However, a full environmental assessment will no longer be required unless extraordinary circumstances indicate the potential of significant environmental impact. HUD has found that a full environmental assessment has not been productive in the past. Further, this change will subject rehabilitations of one- to four-unit properties to the same review level as new construction of one- to four-unit buildings, which are currently categorically excluded at 24 CFR 58.35(a)(4), instead of requiring a greater level of review.

III. Comment on Solicitation of Views on Requirement That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation

Comment: HUD should require that critical actions be elevated to the 500-year floodplain level. The commenter supported HUD's potential change submitted for public comment requiring

that all new construction of "critical actions" in the 100- or 500-year floodplain level be elevated to the 500-year base flood elevation. The commenter supported making this change because those actions, such as funding a community wastewater facility, can be among the most significant investments a community will make. Further, such type of facility must be operable during and after a flood event. The commenter also supported, as HUD requested comment on, consistency with the Water Resources Council guidance on critical actions.

HUD Response. HUD appreciates the commenter's support. HUD has decided, however, not to make any changes to address moving "critical actions" at this time. HUD intends to gather more data to analyze factors such as, perhaps, costs and benefits, safety, and project viability. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation, and, if adequate data is available, propose changes to HUD regulations at § 55.20(e).

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (E.O. 12866) (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

Executive Order 13563 (E.O. 13563) (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." E.O. 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of E.O. 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, this rule revises HUD's regulations for the protection of wetlands and floodplains to incorporate existing procedures for E.O. 11990 Protection of Wetlands and,

in certain instances, to allow recipients of HUD assistance to use permits issued under section 404 of the Clean Water Act in lieu of 5 steps of E.O. 11990's 8-Step Process. With respect to floodplains, with some exceptions, the rule prohibits HUD funds or mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule thus streamlines processes and codifies procedures that are currently addressed in guidance.

Regulatory Impact Analysis

The Office of Management and Budget (OMB) reviewed this regulation under E.O. 12866 (entitled "Regulatory Planning and Review"). The regulation has been determined to be a "significant regulatory action," as defined in section 3(f) of E.O. 12866, but not economically significant, as provided in section 3(f)(1) of the Executive Order.

The majority of the regulatory changes made by this rule will have minor economic effects. The primary purpose of this rule is to streamline the existing procedures pertaining to floodplain management and protection of wetlands. However, two changes proposed by HUD are anticipated to have some economic effect. These two changes are: (1) HUD's streamlining the approval process for rehabilitations, repairs, and improvements of HUD-funded properties in floodplains and wetlands; and (2) HUD's prohibiting new construction that would either be funded by HUD or have mortgages insured by FHA in Coastal High Hazard Areas. The streamlined process for rehabilitations will lower costs for projects, which could induce more improvement activities. The prohibition of new construction in Coastal High Hazard Areas could affect the siting of properties, but these projects are rarely proposed or approved even in the absence of a prohibition.

Streamlined Procedures for Minor Repairs and Improvements of Properties in Floodplains

HUD or responsible entities reviewing proposals for rehabilitations, repairs, and improvements to multifamily properties located in floodplains are required to follow the 8-Step Process to minimize the impact to floodplains. This rule abbreviates the process for these proposals because the process no longer requires public notices or the consideration of alternatives for floodplain Executive order compliance. The benefits of this change arise from the reduced compliance costs associated with the eliminated steps. Total labor compliance costs for the entire 8-Step Process have been estimated at \$320 per

project. A more detailed step-by-step cost estimate is not available.

Without precise estimate concerning the costs of the specific steps eliminated, HUD ran Monte Carlo simulations to estimate the percentage reduction in costs. Any one step is assumed to have a cost of either 0 and 1 units of effort. Fixed costs are assumed to equal the number of steps less variable costs so that all of the randomized cost functions result in the same total cost. Expected variable costs are equal to 4 units $\frac{1}{2} \times 8$). Eliminating 3 steps could result in a reduction of between 0 and 3 units of effort. Of the eight possible combinations, a reduction of 1.5 is the average. Thus, the average reduction in total costs would be 18.75 percent, which we observe in simulations. The median and mode of our distribution is often lower, however, and equal to 12.5 percent. For this reason we use a range of between 10 and 15 percent as a measure of central tendency.

If eliminating the 3 steps saves 10 to 15 percent of the total labor cost of compliance, then each rehabilitation project would save between \$32 and \$48. Costs to publish the notices would be added to this amount for the overall cost of compliance. The precise number of proposed rehabilitation, repair, and improvement projects is not available, although the overall number is estimated through a survey of HUD field staff to be less than 100 annually. Although the reduced compliance costs could, on the margin, induce an increase in the requests for funding, that increase is unlikely considering that the cost of these projects generally range from thousands to millions of dollars. For this analysis, HUD estimates an annual total of 100 projects, including the induced projects. One hundred such projects would produce benefits ranging from \$3,200 and \$4,800 plus minimal costs of publication. Since these assessments rarely lead to a different outcome for rehabilitation, repair, and improvement projects, the lost benefits (additional public notice) of not conducting a full floodplain assessment—the cost of this provision—are negligible. These publication steps are typically not costly beyond the publication costs due to HUD providing notice templates to HUD staff and recipients.

Prohibition on New Construction in Coastal High Hazard Areas

Prohibiting new construction in Coastal High Hazard Areas would force developers to locate HUD-funded or FHA-insured properties out of hazard areas subject to high velocity waters.

This prohibition would not affect developments that are destroyed by floods and that need to be rebuilt. Existing property owners interested in developing in Coastal High Hazard Areas would either incur transaction costs from selling the existing property and purchasing an alternative site, or obtain a more expensive source of funding/assistance. HUD would prefer to mitigate existing units from storm damage rather than increase the number of units in these areas. In addition, increasing the footprint of structures in Coastal High Hazard Areas can prevent open spaces from absorbing the storm surge and increase debris that will be carried inland causing additional damage to preexisting structures.

Based on HUD's records, it is extremely rare for HUD to fund, or provide mortgage insurance for, a new construction proposal in these coastal areas. HUD found only one project that had been completed in a Coastal High Hazard Area, and one additional project was recently under review but never built. These projects were approximately 6 years apart.

The benefits are not expected to be significant because only very few properties appear to be affected (2 over 6 years). Calculating the benefits (as measured by the reduction in expected damage) would require an extensive analysis of weather data. Additionally, the use of sea walls and dunes has effectively removed areas from V Zones² in many areas by protecting structures from storm surge. This type of approach would eliminate some risk and lower flood insurance costs while allowing the land to be developed with HUD funds. However, it would be difficult to estimate the number of seawalls and dunes, if any, that would be built due to this rule change. HUD believes that this provision will not have a significant impact. For developers preferring to build in V Zones, this rule would require them to acquire an alternate source of funding or mortgage insurance or relocate to a potentially less preferable location.

Preference for Nonstructural Alternatives

When HUD or recipients analyze alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. This complies with E.O. 11988's purpose of avoiding floodplain development. This provision is intended to focus on resiliency in the 8-Step Process.

² Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves.

The provision is advisory and is not a binding requirement. If a decisionmaker were to avoid floodplain development, the cost savings associated with not purchasing flood insurance, floodproofing or elevating, or creating and maintaining a levee would result in cost savings. In addition, threats to safety and investment would also decrease as the hazard area is avoided. This provision helps HUD accomplish its mission of supplying safe, decent, and affordable housing.

Use of Individual Permits Under Section 404 of the Clean Water Act for HUD Executive Order 11990 Processing Where All Wetlands Are Covered by the Permit

This final rule permits recipients of HUD assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act in lieu of 5 steps of the E.O. 11990 8-Step Process. Specifically, the rule permits applicants that have obtained an individual Section 404 permit to submit it with his or her application for a HUD program. By doing so, HUD or the responsible entity assuming HUD's authority would only need to complete the last 3 steps of the 8-Step Process. HUD expects that this provision would apply to fewer than five projects a year since recipients generally complete an environmental review prior to obtaining a Section 404 permit or general or nationwide permit. As a result, HUD has determined that the costs and benefits of eliminating these steps, specifically the reduced delay of one notice and cost of documenting other steps, would be minimal.

Accordingly, this regulation is expected to create an annual economic impact ranging from \$3,200 to \$4,800, which are avoided costs resulting from a streamlined approval process for rehabilitations of properties located in floodplains. Thus, the implementation of this rule will not create an impact exceeding the \$100 million threshold established by E.O. 12866.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant economic impact on a substantial number of small entities.

As discussed more fully in the Background section of the preamble, this final rule is largely a procedural rule that codifies HUD's existing policies and procedures implementing E.O. 11990, Protection of Wetlands. The goal of E.O. 11990 is to prevent adverse impacts associated with the destruction or modification of wetlands. E.O. 11990 establishes a uniform set of requirements designed to meet this goal, which are applicable to both large and small entities that propose to use HUD financial assistance in wetlands. HUD is codifying these procedures in 24 CFR part 55 to increase consistency and transparency in these processes and to reduce confusion when working with other Federal agencies. The rule also broadens the use of the abbreviated 8-Step Process, also known as the 5-Step Process, used by HUD and responsible entities when considering the impact on floodplains in connection with the repair of existing structures. Specifically, the rule authorizes the use of the abbreviated process for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated process to repairs financed under HUD's mortgage insurance programs. Finally, the rule requires the use of preliminary flood maps and advisory base flood elevations where FEMA has determined that existing FIRMs may not be the best available information.

Section 601 of the Regulatory Flexibility Act defines the term "small entity" to include small businesses, small organizations, and small governmental jurisdictions. HUD asserts that this rule would neither increase the incidence of floodplain and wetlands assessments nor increase the burdens associated with carrying out such an assessment. As discussed above, the focus of this rule is to codify procedures for protection of wetlands that are already in place. The rule would not prohibit HUD support of activities in floodplains or wetlands (except for certain activities in Coastal High Hazard Areas), but would create a consistent departmental policy governing such

support. HUD's codification of these procedures will neither increase the incidence of floodplain and wetlands assessment nor increase the burdens of carrying out an assessment. The rule also streamlines floodplain and wetland environmental review procedures to avoid unnecessary processing delays. As described in HUD's Regulatory Impact Analysis, the benefits of HUD's streamlined floodplain and wetland review will provide a beneficial cost impact on entities of all sizes and decrease burdens on both large and small entities.

This final rule contains several other provisions that will reduce administrative burden for entities of all sizes. It removes the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties and, to avoid unnecessary delays, exempts leasing from the 8-Step Process for floodplain management where the building is insured with the National Flood Insurance Program and not located in a floodway or Coastal High Hazard Area. Exemptions are also added for special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities, and activities that involve ships or waterborne vessels. The rule also exempts from review activities that restore and preserve natural and beneficial functions of floodplains and wetlands. Together, these changes will reduce administrative burdens and unnecessary delays and assist communities that choose to engage in actions beneficial to floodplains and wetlands.

In HUD's December 12, 2011, proposed rule, HUD certified that this rule would not have a significant economic impact on a substantial number of small entities and invited public comment on HUD's certification. HUD received no comment in response to its certification. Therefore, the undersigned has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection at www.regulations.gov under docket number FR-5423-F-02. The FONSI is

also available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

E.O. 13132 Federalism

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520 *et seq.*). The information collection requirement for Floodplain Management and Wetland Protection is assigned OMB control number 2506-0151. The information collection requirements in this final rule include largely preexisting information collection requirements. However, the preexisting information collection requirements are being revised to reduce the paperwork burden. Specifically, the information collection requirements reflect a slight decrease to the paperwork burden as a result of revising the scope of assistance eligible for the streamlined 5-Step

Process. Under the rule, recipients' actions under any HUD program for the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects are eligible for the 5-Step Process for residential and nonresidential rehabilitations as long as the action does not meet the threshold of substantial improvement under § 55.2(b)(10). Similarly, financial

assistance for weatherizations and floodplain and wetland restoration activities would also be granted the use of the shortened 5-Step Process. These changes will allow for expedited processing and a decreased amount of analysis for projects that have no or little adverse impact or have beneficial effects.

The sections in this rule that contain the current information collection requirements and the upcoming revisions that are awaiting OMB approval, as well as the estimated adjusted burden of the pending revisions, are set forth in the following table.

CFR Section	Number of respondents	Total annual responses	Average hours per response	Total annual burden hours	Total annual cost (\$40/hr)
§ 55.20 Decisionmaking process	275	1	8	2200	\$88,000
§ 55.21 Notification of floodplain hazard	300	1	1	300	12,000
Totals	575	2	9	2500	100,000

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. The docket file is available for public inspection. For information on, or a copy of, the paperwork package submitted to OMB, contact Colette Pollard at 202-708-0306 (this is not a toll-free number) or via email at *Colette.Pollard@hud.gov*. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR parts 50, 55, and 58 as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

■ 2. In § 50.4, revise paragraphs (b)(2) and (3) to read as follows:

§ 50.4 Related federal laws and authorities.

* * * * *

(b) * * *
 (2) HUD procedure for the implementation of Executive Order 11988 (Floodplain Management), (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

(3) HUD procedure for the implementation of Executive Order 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

* * * * *

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

■ 3. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001-4128 and 5154a; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

■ 4. Revise the part heading for part 55 to read as set forth above.

■ 5. Amend § 55.1 as follows:

- a. Revise paragraph (a);
- b. Redesignate paragraph (b) as paragraph (b)(1);
- c. Add paragraph (b)(2); and
- d. Revise paragraphs (c)(1), (c)(3) introductory text, and (c)(3)(i).

The revisions and addition read as follows:

§ 55.1 Purpose and basic responsibility.

(a)(1) The purpose of Executive Order 11988, Floodplain Management, is “to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”

(2) The purpose of Executive Order 11990, Protection of Wetlands, is “to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands for which approval is required either from HUD, under any applicable HUD program, or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in Coastal High Hazard Areas), but provides a consistent means for implementing the Department’s interpretation of the Executive Orders in the project approval decisionmaking processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

(5) Nonstructural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to restore the natural resources and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decisionmaking process where practicable.

(b) * * *

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) * * *

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

* * * * *

(3) Any noncritical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, existing construction (including improvements), or reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction following destruction caused by a disaster or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

* * * * *

■ 6. Amend § 55.2 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (b) introductory text and (b)(1);

■ c. Redesignate paragraphs (b)(2) through (6) and (7) and (8) as paragraphs (b)(3) through (7) and (9) and (10), respectively;

■ d. Add new paragraphs (b)(2) and (b)(8);

■ e. Revise newly designated paragraph (b)(9); and

■ f. Add paragraph (b)(11).

The revisions read as follows:

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988, section 7 of Executive Order 11990, and the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), issued by the Water Resources Council; the terms “special flood hazard area,” “criteria,” and “Regular Program” shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms “Letter of Map Revision” and “Letter of Map Amendment” shall refer to letters issued by FEMA, as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) For purposes of this part, the following definitions apply:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations. FIRMs and FISs are also relied upon for the designation of “100-year floodplains” (§ 55.2(b)(9)), “500-year floodplains” (§ 55.2(b)(4)), and “floodways” (§ 55.2(b)(5)). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as “best available information” in accordance with Executive Order 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

(2) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

Examples include, but are not limited to:

(i) *Permittee-responsible mitigation*: On-site or off-site mitigation undertaken by the holder of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation banking*: A permittee’s purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-lieu fee mitigation*: A permittee’s provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

* * * * *

(8) *New construction* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun after the effective date of Executive Order 11990. (See section 7(b) of Executive Order 11990.)

(9) *100-year floodplain* means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.2(b)(1) for appropriate data sources.)

* * * * *

(11) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act as well as constructed wetlands. The following process shall be followed in making the wetlands determination:

(i) HUD or, for programs subject to 24 CFR part 58, the responsible entity, shall make a determination whether the action is new construction that is located in a wetland. These actions are subject to processing under the § 55.20 decisionmaking process for the protection of wetlands.

(ii) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity

to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without § 55.20 processing.

(iii) As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.

(iv) Any challenges from the public or other interested parties to the wetlands determinations made under this part must be made in writing to HUD (or the responsible entity authorized under 24 CFR part 58) during the commenting period and must be substantiated with verifiable scientific information. Commenters may request a reasonable extension of the time for the commenting period for the purpose of substantiating any objections with verifiable scientific information. HUD or the responsible entity shall consult FWS staff, if available, on the validity of the challenger's scientific information prior to making a final wetlands determination.

■ 7. In § 55.3, revise paragraphs (a)(1), (b)(1) and (2), and (c) and add paragraph (d) to read as follows:

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development (CPD)* shall oversee:

(i) The Department's implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR

part 58, of grant recipients and responsible entities.

* * * * *

(b) * * *

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

* * * * *

(c) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs. Certifying Officers of responsible entities subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(d) *Recipient.* Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented. Recipients shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.

■ 8. The heading for subpart B is revised to read as follows:

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

■ 9. Revise § 55.10 to read as follows:

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI), or an

environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.37. For types of proposed actions that are categorically excluded from NEPA requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial approval (or approval by a responsible entity authorized by 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35(a)) does not exclude those actions from compliance with this part.

■ 10. Revise § 55.11 to read as follows:

§ 55.11 Applicability of Subpart C decisionmaking process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the responsible entity (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988, Executive Order 11990, and this part apply to the proposed action.

(b) If Executive Order 11988 or Executive Order 11990 and this part apply, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is "to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." The primary purpose of Executive Order 11990 is "to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

(c) The following table indicates the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment) ¹	Type of proposed action			
	Floodways	Coastal high hazard areas	Wetlands or 100-year floodplain outside coastal high hazard area and floodways	Nonwetlands area outside of the 100-year and within the 500-year floodplain
Critical Actions as defined in § 55.12(b)(2).	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under § 55.20. ²	Allowed if the proposed critical action is processed under § 55.20. ²
Noncritical actions not excluded under § 55.12(b) or (c).	Allowed only if the proposed non-critical action is a functionally dependent use and processed under § 55.20. ²	Allowed only if the proposed noncritical action is processed under § 55.20 ² and is (1) a functionally dependent use, (2) existing construction (including improvements), or (3) reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area under § 55.1(c)(3).	Allowed if proposed non-critical action is processed under § 55.20. ²	Any noncritical action is allowed without processing under this part.

¹ Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.

² Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

■ 11. Revise 55.12 to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or "bulk sales" of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities,

intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10), and the footprint of the structure and paved areas is not significantly increased.

(4) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10) and that the footprint of the structure and paved areas is not significantly increased.

(b) The decisionmaking process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on

probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or Coastal High Hazard Area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under § 55.2(b)(10);

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties;

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; and

(5) The approval of financial assistance to lease an existing structure located within the floodplain, but only if;

(i) The structure is located outside the floodway or Coastal High Hazard Area, and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(3) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;

(ii) Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(8) HUD's or the responsible entity's approval of financial assistance for a

project on any nonwetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR-F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR-F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies);

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities;

(11) The approval of financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other waterborne vessels that will be used for transportation or cruises and will not be permanently moored.

(12) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

■ 12. The heading for subpart C is revised to read as follows:

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

■ 13. Amend § 55.20 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(3), (c), (d), (e), (f), (g)(1), and (h) to read as follows:

§ 55.20 Decisionmaking process.

Except for actions covered by § 55.12(a), the decisionmaking process

for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. The steps to be followed in the decisionmaking process are as follows:

(a) *Step 1.* Determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions) or results in new construction in a wetland. If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetland determinations.

(1) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(2) Refer to § 55.2(b)(11) for making wetland determinations under this part.

(3) For proposed actions occurring in both a wetland and a floodplain, completion of the decisionmaking process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland and involve the affected and interested public and agencies in the decisionmaking process.

* * * * *

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and the phone number to call for information. The notice shall indicate the hours of HUD or the responsible entity's office, and any Web site at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain

(or a 500-year floodplain for a Critical Action) or wetland.

(1) Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(i) Locations outside and not affecting the 100-year floodplain (or the 500-year floodplain for a Critical Action) or wetland;

(ii) Alternative methods to serve the identical project objective, including feasible technological alternatives; and

(iii) A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.

(2) Practicability of alternative sites should be addressed in light of the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and

(iii) Economic values such as the cost of space, construction, services, and relocation.

(3) For multifamily projects involving HUD mortgage insurance that are initiated by third parties, HUD's consideration of practicable alternatives should include a determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

(1) *Floodplain evaluation:* The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:

(i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(ii) Living resources such as flora and fauna;

(iii) Cultural resources such as archaeological, historic, and recreational aspects; and

(iv) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation:* In accordance with Section 5 of Executive Order 11990, the decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:

(i) Public health, safety, and welfare, including water supply, quality,

recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and to restore and preserve its natural and beneficial functions and values.

(1) Minimization techniques for floodplain and wetland purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.

(2) Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. Compensatory mitigation includes, but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(3) Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(i) Preparation of and participation in an early warning system;

(ii) An emergency evacuation and relocation plan;

(iii) Identification of evacuation route(s) out of the 500-year floodplain; and

(iv) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate on the applicable source under § 55.2(b)(1). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland, publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain or wetland;

(ii) A list of the alternatives considered in accordance with paragraphs(c)(1) and (c)(2) of this section; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

* * * * *

(h) *Step 8.* Upon completion of the decisionmaking process in Steps 1 through 7, implement the proposed action. There is a continuing

responsibility on HUD (or on the responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 [Amended]

- 14. Amend § 55.21 by removing the term "grant recipient" and adding in its place the term "responsible entity."
■ 15. Revise § 55.24 to read as follows:

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain or wetland, and are currently under review by HUD (or by a responsible entity authorized by 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decisionmaking process in § 55.20.

§ 55.25 [Amended]

- 16. Amend § 55.25 as follows:
■ a. Remove, in paragraph (c), the term "grant recipient" and add in its place the term "responsible entity;" and
■ b. Remove in paragraph (d)(2) the term "grant recipients" and add in its place the term "responsible entities."
■ 17. In § 55.26, revise the introductory text and paragraph (a) to read as follows:

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under either or both of the Executive Orders by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management or wetland protection;

* * * * *

- 18. Amend § 55.27 as follows:
■ a. Revise paragraph (a);
■ b. Remove, in paragraph (b), the term "grant recipient" and add, in its place, the words "responsible entity" and;
■ c. Remove, in paragraph (c), the term "grant recipients" and add, in its place, the words "responsible entities".

The revision reads as follows:

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

(1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

* * * * *

- 19. Add § 55.28 to read as follows:

§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD Executive Order 11990 processing where all wetlands are covered by the permit.

(a) Processing requirements. HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a) through (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

(1) The project involves new construction on a property located outside of the 100-year floodplain (or the 500-year floodplain for critical actions);

(2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers (USACE) (or by a State or Tribal government under Section 404(h) of the Clean Water Act) for the proposed project; and

(3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to section 404 of the Clean Water Act and for new construction for which the USACE (or a

State or Tribal government under section 404(h) of the Clean Water Act) issues a general permit under Section 404.

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

- 20. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

- 21. In § 58.5, revise paragraph (b)(2) to read as follows:

§ 58.5 Related federal laws and authorities.

* * * * *

(b) * * *

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

* * * * *

- 22. In § 58.6, add paragraph (a)(4) to read as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

* * * * *

- 23. In § 58.35, revise paragraph (a)(3)(i) to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(a) * * *

(3) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

* * * * *

Dated: November 6, 2013.

Mark Johnston, Deputy Assistant Secretary for Special Needs. [FR Doc. 2013–27427 Filed 11–14–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9641]

RIN 1545-BI64

Reduction or Suspension of Safe Harbor Contributions**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final Regulations.

SUMMARY: This document contains amendments to regulations relating to certain cash or deferred arrangements under section 401(k) and matching contributions and employee contributions under section 401(m). These regulations provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009. These regulations also revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015. The regulations affect administrators of, employers maintaining, participants in, and beneficiaries of certain defined contribution plans that satisfy the nondiscrimination tests of section 401(k) and section 401(m) using one of the design-based safe harbors.

DATES: *Effective Date:* These regulations are effective on November 15, 2013.

Applicability Date: These regulations generally apply to amendments adopted after May 18, 2009. The amendments to the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions apply for plan years beginning on or after January 1, 2015.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs at (202) 622-6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2191. The collection of information in these final regulations is in § 1.401(k)-3(g)(2) and § 1.401(m)-3(h)(2). The collection of information relates to the new supplemental notice requirements in the case of a reduction or suspension of safe harbor nonelective

or matching contributions and the requirement to include additional information in the notice required by §§ 1.401(k)-3(d), 1.401(k)-3(g), and 1.401(m)-3(h) for certain plans that would be permitted to reduce or suspend safe harbor nonelective or matching contributions for a plan year even if the employer had not experienced a business hardship. The likely recordkeepers are businesses and other for-profit institutions, nonprofit institutions, and State and local governments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to regulations under sections 401(k) and 401(m) of the Internal Revenue Code. Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a qualified cash or deferred arrangement. Section 1.401(k)-1(a)(2) defines a cash or deferred arrangement (CODA) as an arrangement under which an eligible employee may make a cash or deferred election with respect to contributions to, or accruals or other benefits under, a plan that is intended to satisfy the requirements of section 401(a). Contributions that are made pursuant to a cash or deferred election under a qualified CODA are commonly referred to as elective contributions.

In order for a CODA to be a qualified CODA, it must satisfy a number of requirements. For example, contributions under the CODA must satisfy either the nondiscrimination test set forth in section 401(k)(3), called the actual deferral percentage (ADP) test, or one of the design-based alternatives in section 401(k)(11), 401(k)(12), or 401(k)(13). Under the ADP test, the average percentage of compensation deferred for eligible highly compensated employees (HCEs) is compared to the average percentage of compensation deferred for eligible nonhighly compensated employees (NHCEs), and, if certain deferral percentage limits are

exceeded with respect to HCEs, corrective action must be taken.

Section 401(k)(12) provides a design-based safe harbor method under which a CODA is treated as satisfying the ADP test if the arrangement meets certain contribution and notice requirements. A plan satisfies this designed-based safe harbor method if the employer makes specified qualified matching contributions (QMACs) for all eligible NHCEs. The employer can make QMACs under a basic matching formula that provides for QMACs on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 3% of compensation, and 50% of the employee's elective contributions that exceed 3% but do not exceed 5% of compensation.

Alternatively, the employer can make QMACs under an enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of QMACs that is at least as generous as under the basic matching formula, but only if the rate of QMACs under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In lieu of QMACs, the plan is permitted to provide qualified nonelective contributions (QNECs) equal to 3% of compensation for all eligible NHCEs. In addition, under the design-based safe harbor methods, notice must be provided to each eligible employee, within a reasonable period before the beginning of the plan year, of the employee's rights and obligations under the plan.

Section 401(k)(13), as added by section 902 of the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), provides an alternative design-based safe harbor for a CODA that provides for automatic contributions at a specified level and meets certain requirements, including employer contribution and notice requirements. Similar to the design-based safe harbor under section 401(k)(12), section 401(k)(13) provides an employer the choice between satisfying a matching contribution requirement or a nonelective contribution requirement. Under the matching contribution requirement, the employer can make matching contributions under a basic matching formula that provides for matching contributions on behalf of each eligible NHCE equal to 100% of the employee's elective contributions that do not exceed 1% of compensation and 50% of the employee's elective contributions that exceed 1% but do not exceed 6% of compensation. Alternatively, the employer can make matching contributions under an

enhanced matching formula that provides, at each rate of elective contributions, for an aggregate amount of matching contributions that is at least as generous as under the basic matching formula, but only if the rate of matching contributions under the enhanced matching formula does not increase as the employee's rate of elective contributions increases. In addition, the plan must satisfy a notice requirement under section 401(k)(13) that is similar to the notice requirement under section 401(k)(12).

Section 401(m) sets forth a nondiscrimination requirement that applies to a plan providing for matching contributions or employee contributions. Such a plan must satisfy either the nondiscrimination test set forth in section 401(m)(2), called the actual contribution percentage (ACP) test, or one of the design-based alternatives in section 401(m)(10), 401(m)(11), or 401(m)(12). The ACP test in section 401(m)(2) is comparable to the ADP test in section 401(k)(3).

Under section 401(m)(11), a defined contribution plan is treated as satisfying the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(12) and certain other requirements are satisfied. Similarly, under section 401(m)(12), as added by section 902 of PPA '06, a defined contribution plan that provides for automatic contributions at a specified level is treated as meeting the ACP test with respect to matching contributions if the plan satisfies the ADP safe harbor of section 401(k)(13) and certain other requirements are satisfied.

Final regulations under sections 401(k) and 401(m) were published on December 29, 2004. Sections 1.401(k)-3 and 1.401(m)-3 set forth the requirements for a safe harbor plan under sections 401(k)(12) and 401(m)(11), respectively. On February 24, 2009, final regulations reflecting sections 401(k)(13) and 401(m)(12) were published in the *Federal Register* (74 FR 8200).

Sections 1.401(k)-3(e)(1) and 1.401(m)-3(f)(1) provide that, subject to certain exceptions, a safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year. Accordingly, if, at the beginning of the plan year, a plan contains an allocation formula that includes safe harbor matching or safe harbor nonelective contributions, then the plan may not be amended to revert to ADP or ACP testing for the same plan year (except to the extent permitted under §§ 1.401(k)-3 and 1.401(m)-3). Sections 1.401(k)-

3(g) and 1.401(m)-3(h) set forth the requirements (including a notice and timing requirement) that must be satisfied in order for a plan that satisfies the ADP and ACP tests using safe harbor matching contributions to be amended during the plan year to reduce or suspend such contributions and to satisfy ADP and ACP tests using the current year testing method. Sections 1.401(k)-3(f) and 1.401(m)-3(g) set forth the requirements that must be satisfied (including a notice requirement) in order for a plan to be amended after the first day of the plan year to provide that it will satisfy the ADP and ACP tests for that year using safe harbor nonelective contributions, effective as of the first day of that plan year.

Sections 1.401(k)-3(e)(4) and 1.401(m)-3(f)(4) provide that, if a plan terminates during a plan year, the plan will not fail to satisfy the requirements of §§ 1.401(k)-3(e)(1) and 1.401(m)-3(f)(1) merely because the final plan year is less than 12 months, provided that the plan satisfies the requirements of §§ 1.401(k)-3 and 1.401(m)-3 through the date of termination and certain other conditions are satisfied (for example, the termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship (comparable to a substantial business hardship described in section 412(d)).¹

On May 18, 2009, proposed regulations under sections 401(k) and 401(m) were published in the *Federal Register* (74 FR 23134), which would permit the mid-year reduction or suspension of safe harbor nonelective contributions in certain circumstances. Written comments were received on the proposed regulations, and a public hearing was held September 23, 2009. After consideration of the comments, these final regulations adopt the provisions of the proposed regulations with certain modifications, the most significant of which are highlighted in the *Summary of Comments and Explanation of Revisions*.

Summary of Comments and Explanation of Revisions

The proposed regulations would have required, as a condition of the permitted reduction or suspension of safe harbor nonelective contributions, that the employer incur a substantial business hardship (comparable to a substantial business hardship described in section 412(c)). Several commentators requested that the substantial business hardship

requirement be eliminated as a condition of the reduction or suspension. The commentators argued that there were insufficient policy reasons for the rules permitting the reduction or suspension of safe harbor nonelective contributions to be stricter than the rules permitting the reduction or suspension of safe harbor matching contributions, that the determination of whether the employer satisfies each of the elements of the section 412(c) definition of substantial business hardship is unnecessarily burdensome, and that employers will not have certainty that they satisfy the substantial business hardship requirements.

The final regulations make two changes in response to these concerns about demonstrating compliance with the requirement that the employer incur a substantial business hardship (comparable to a substantial business hardship described in section 412(c)). First, the requirement has been modified by replacing the standard in the proposed regulations that the employer have a substantial business hardship (as described in section 412(c)) with a standard that the employer be operating at an economic loss as described in section 412(c)(2)(A). This new standard eliminates the requirement to determine the health of the industry (as described in section 412(c)(2)(B) and (C)) or whether the reduction or suspension of safe harbor nonelective contributions is needed so that the plan will continue (as described in section 412(c)(2)(D)). Second, the final regulations permit an employer to reduce or suspend safe harbor nonelective contributions without regard to the financial condition of the employer if notice is provided to participants before the beginning of the plan year which discloses the possibility that the contributions might be reduced or suspended mid-year. The notice must also provide that a supplemental notice will be provided to plan participants if a reduction or suspension does occur and that the reduction or suspension will not apply until at least 30 days after the supplemental notice is provided. These regulations do not alter the existing ability of a safe harbor plan to use a contingent notice (as described in § 1.401(k)-3(f)(2)) before the beginning of the plan year where the contingent notice indicates that the plan may be amended during the plan year to include safe harbor nonelective contributions and that, if the plan is amended, a follow-up notice will be provided.

In order to achieve uniformity between the rules that apply to a mid-

¹ The definition of substantial business hardship in section 412(d) was relocated to become part of section 412(c) by section 111 of PPA '06.

year reduction or suspension of safe harbor matching contributions and the rules that apply to a mid-year reduction or suspension of safe harbor nonelective contributions, the final regulations modify the rules that apply to mid-year amendments reducing or suspending safe harbor matching contributions so that the requirements that apply to a mid-year reduction or suspension of safe harbor nonelective contributions are not stricter than those that apply to a mid-year reduction or suspension of safe harbor matching contributions. Thus, safe harbor matching contributions may be reduced or suspended under a mid-year amendment only if either (i) the employer is operating at an economic loss as described in section 412(c)(2)(A), or (ii) the notice provided to participants before the beginning of the plan year discloses that the contributions might be reduced or suspended mid-year, that participants will receive a supplemental notice if that occurs, and that the reduction or suspension will not apply until at least 30 days after the supplemental notice is provided. Because this requirement is a new limitation on the ability of an employer to amend its plan to reduce or suspend safe harbor matching contributions, the change is first effective for plan years beginning on or after January 1, 2015.²

The final regulations also provide that guidance of general applicability published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)) may set forth additional situations in which a plan that includes provisions satisfying the requirements of § 1.401(k)-3 will not fail to satisfy the requirements of section 401(k) for a plan year even if the plan is amended during the plan year to implement a mid-year change to those provisions. This will provide the IRS with greater flexibility to develop rules to address special circumstances under which a mid-year change to a section 401(k) safe harbor plan is appropriate, such as an amendment to the plan in connection with a mid-year corporate transaction. This flexibility also extends to mid-year changes to a safe harbor plan under section 401(m) of the Code.

Under the proposed regulations, the reduction or suspension of safe harbor nonelective or matching contributions could not be effective “earlier than the later of 30 days after eligible employees are provided the supplemental notice

² The preamble to the proposed regulations indicated that the IRS and Treasury were considering adding a requirement that employers provide advance notice regarding the possibility of reduced or suspended safe harbor contributions.

. . . and the date the amendment is adopted.” The final regulations clarify the intention that the reduction or suspension cannot be effective earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice. Thus, the minimum 30-day waiting period applies solely with respect to the date the supplemental notice is provided and not the date the amendment is adopted.

The preamble to the proposed regulations stated that a plan that is amended during the plan year to reduce or suspend safe harbor contributions (whether nonelective contributions or matching contributions) must prorate the otherwise applicable compensation limit under section 401(a)(17) in accordance with the requirements of § 1.401(a)(17)-1(b)(3)(iii)(A). Some commentators asked for clarification as to how these rules apply. Such an explanation of the application of the rules of section 401(a)(17) is beyond the scope of these section 401(k) and (m) regulations.

Some commentators requested that the regulations permitting a mid-year amendment reducing or suspending safe harbor nonelective contributions apply with respect to amendments adopted before the proposed regulations were published in the **Federal Register**. Because the regulations in effect before the proposed regulations were published clearly prohibited such a plan amendment, any employer that adopted such a plan amendment violated the rules applicable under section 401(k) and, if applicable, section 401(m). The Employee Plans Compliance Resolution System (EPCRS) provides a method to correct such a violation. See Appendix A.05(2)(d)(iii) of Rev. Proc. 2013-12 (2013-4 IRB 313, 367), see § 601.601(d)(2).

Applicability Dates

These regulations generally apply to amendments adopted after May 18, 2009, the effective date previously provided in the proposed regulations. The amendments to the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions apply for plan years beginning on or after January 1, 2015.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply

to these regulations. It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that small employers that take advantage of the provisions in these regulations will likely see a modest reduction in the cost of providing pensions to their employees. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel of Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are William D. Gibbs and Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the sectional authority for § 1.401(k)-3 to read as follows:

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

Section 1.401(k)-3 is also issued under 26 U.S.C. 401(m)(9).

■ **Par. 2.** Section 1.401(k)-0 is amended by revising the entries for § 1.401(k)-3(g), (g)(1) and (g)(2) to read as follows:

§ 1.401(k)-0. Table of contents.

* * * * *

§ 1.401(k)-3 Safe harbor requirements.

* * * * *

(g) Permissible reduction or suspension of safe harbor contributions.

(1) General rule.

(i) Matching contributions.

(ii) Nonelective contributions.

(2) Supplemental notice.

* * * * *

■ **Par. 3.** Section 1.401(k)-3 is amended by:

■ 1. Revising the second sentence in paragraph (e)(1).

- 2. Revising paragraphs (e)(4)(i) and (e)(4)(ii).
- 3. Revising paragraph (g).

The revisions read as follows:

§ 1.401(k)-3 Safe harbor requirements.

* * * * *

(e) * * * (1) * * * In addition, except as provided in paragraph (g) of this section or in guidance of general applicability published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), a plan which includes provisions that satisfy the rules of this section will not satisfy the requirements of § 1.401(k)-1(b) if it is amended to change such provisions for that plan year. * * *

* * * * *

(4) * * *

(i) The plan would satisfy the requirements of paragraph (g) of this section, treating the termination of the plan as a reduction or suspension of safe harbor contributions, other than the requirements of paragraph (g)(1)(i)(A) or (g)(1)(ii)(A) of this section (relating to the employer's financial condition and information included in the initial notice for the plan year) and paragraph (g)(1)(i)(D) or (g)(1)(ii)(D) of this section (requiring that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections); or

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship comparable to a substantial business hardship described in section 412(c).

* * * * *

(g) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions.* A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions (and, if applicable, employee contributions) provided that—

(A) In the case of plan years beginning on or after January 1, 2015, the employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during

the plan year to reduce or suspend safe harbor matching contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions.* For amendments adopted after May 18, 2009, a plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section for the plan year will not fail to satisfy the requirements of section 401(k)(3) merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer either—
(1) Is operating at an economic loss, as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (d) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (g)(2) of this section;

(C) The reduction or suspension of safe harbor nonelective contributions is

effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (g)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(k)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (g)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice.* The supplemental notice requirement of this paragraph (g)(2) is satisfied if each eligible employee is given a notice (in writing or such other form as prescribed by the Commissioner) that explains—

(i) The consequences of the amendment that reduces or suspends future safe harbor contributions;

(ii) The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and

(iii) The effective date of the amendment.

* * * * *

■ **Par. 4.** Section 1.401(m)-0 is amended by revising the entries for § 1.401(m)-3(h), (h)(1) and (h)(2), and adding entries for § 1.401(m)-3(h)(1)(i) and (h)(1)(ii), to read as follows:

§ 1.401(m)-0 Table of contents.

* * * * *

§ 1.401(m)-3 Safe harbor requirements.

* * * * *

(h) *Permissible reduction or suspension of safe harbor contributions.*

- (1) *General rule.*
- (i) *Matching contributions.*
- (ii) *Nonelective contributions.*
- (2) *Supplemental notice.*

* * * * *

■ **Par. 5.** Section 1.401(m)-3 is amended by:

- 1. Revising the second sentence in paragraph (f)(1).

- 2. Revising paragraphs (f)(4)(i) and (f)(4)(ii).

- 3. Revising paragraph (h).

The revisions read as follows:

§ 1.401(m)-3 Safe harbor requirements.

* * * * *

(f) * * * (1) * * * In addition, except as provided in paragraph (h) of this section or in guidance of general applicability published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), a plan which includes provisions that satisfy the rules of this section will not satisfy the requirements of § 1.401(m)-1(b) if it is amended to change such provisions for that plan year. * * *

(4) * * *

(i) The plan would satisfy the requirements of paragraph (h) of this section, treating the termination of the plan as a reduction or suspension of safe harbor contributions, other than the requirements of paragraph (h)(1)(i)(A) or (h)(1)(ii)(A) of this section (relating to the employer's financial condition and information included in the initial notice for the plan year) and paragraph (h)(1)(i)(D) or (h)(1)(ii)(D) of this section (requiring that employees have a reasonable opportunity to change their cash or deferred elections and, if applicable, employee contribution elections); or

(ii) The plan termination is in connection with a transaction described in section 410(b)(6)(C) or the employer incurs a substantial business hardship, comparable to a substantial business hardship described in section 412(c).

* * * * *

(h) *Permissible reduction or suspension of safe harbor contributions*—(1) *General rule*—(i) *Matching contributions*. A plan that provides for safe harbor matching contributions intended to satisfy the requirements of paragraph (c) of this section for a plan year will not fail to satisfy the requirements of section 401(m)(2) merely because the plan is amended during the plan year to reduce or suspend safe harbor matching contributions on future elective deferrals (and, if applicable, employee contributions) provided that—

(A) In the case of plan years beginning on or after January 1, 2015, the employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (e) of this section, a statement that the plan may be amended during the plan year to reduce or suspend safe harbor matching contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that

satisfies the requirements of paragraph (h)(2) of this section;

(C) The reduction or suspension of safe harbor matching contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of safe harbor matching contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(m)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to amounts deferred through the effective date of the amendment.

(ii) *Nonelective contributions*. For plan amendments adopted after May 18, 2009, a plan that provides for safe harbor nonelective contributions intended to satisfy the requirements of paragraph (b) of this section will not fail to satisfy the requirements of section 401(m)(2) for the plan year merely because the plan is amended during the plan year to reduce or suspend safe harbor nonelective contributions provided that—

(A) The employer either—

(1) Is operating at an economic loss as described in section 412(c)(2)(A) for the plan year; or

(2) Includes in the notice described in paragraph (e) of this section a statement that the plan may be amended during the plan year to reduce or suspend safe harbor nonelective contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension;

(B) All eligible employees are provided a supplemental notice that satisfies the requirements of paragraph (h)(2) of this section;

(C) The reduction or suspension of safe harbor nonelective contributions is effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice described in paragraph (h)(2) of this section;

(D) Eligible employees are given a reasonable opportunity (including a

reasonable period after receipt of the supplemental notice) prior to the reduction or suspension of nonelective contributions to change their cash or deferred elections and, if applicable, their employee contribution elections;

(E) The plan is amended to provide that the ACP test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method described in § 1.401(m)-2(a)(2)(ii); and

(F) The plan satisfies the requirements of this section (other than this paragraph (h)) with respect to safe harbor compensation paid through the effective date of the amendment.

(2) *Supplemental notice*. The supplemental notice requirement of this paragraph (h)(2) is satisfied if each eligible employee is given a notice that satisfies the requirements of § 1.401(k)-3(g)(2).

* * * * *

Beth Tucker,

Deputy Commissioner for Operations Support.

Approved: June 17, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013-27452 Filed 11-14-13; 8:45 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in December 2013. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective December 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202-326-

4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: PBGC’s regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions — including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC’s Web site (<http://www.pbgc.gov>).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC’s historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit

payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for December 2013.¹

The December 2013 interest assumptions under the benefit payments regulation will be 1.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit’s placement in pay status. In comparison with the interest assumptions in effect for November 2013, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during December 2013, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

- 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

- 2. In appendix B to part 4022, Rate Set 242, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* 242	* 12-1-13	* 01-1-14	* 1.75	* 4.00	* 4.00	* 4.00	* 7	* 8

- 3. In appendix C to part 4022, Rate Set 242, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* 242	* 12-1-13	* 01-1-14	* 1.75	* 4.00	* 4.00	* 4.00	* 7	* 8

¹ Appendix B to PBGC’s regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing

benefits under terminating covered single-employer plans for purposes of allocation of assets under

ERISA section 4044. Those assumptions are updated quarterly.

Issued in Washington, DC, on this day of November 12, 2013.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013-27385 Filed 11-14-13; 8:45 am]

BILLING CODE 7709-02-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2012-0427; FRL-9392-1]

Tebuconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tebuconazole in or on the fruiting vegetable group 8-10 and amends the existing tolerances for barley grain and the cucurbit vegetable group 9. Interregional Research Project Number 4 (IR-4) requested this tolerance and amendment under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 15, 2013. Objections and requests for hearings must be received on or before January 14, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2012-0427, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7090; email address: RDfrNotices@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's eCFR site at http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2012-0427 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 14, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2012-0427, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of August 22, 2012 (77 FR 50661) (FRL-9358-9), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8012) by Interregional Research Project Number 4 (IR-4), 500 College Road East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.474 be amended by establishing tolerances for residues of the fungicide tebuconazole, alpha-[2-(4-chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, including its metabolites and degradates, in or on barley, grain at 0.3 parts per million (ppm); vegetable, cucurbit group 9 at 0.4 ppm; and vegetable, fruiting group 8-10 at 1.3 ppm. The petition also requested the removal of the established tolerance, in or on vegetable, fruiting, group 8 at 1.3 ppm once the proposed tolerance for vegetable, fruiting group 8-10 at 1.3 ppm, has been established since the proposed new tolerance will supersede the existing tolerance. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information.” This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tebuconazole including exposure resulting from the tolerances established by this action. EPA’s assessment of exposures and risks associated with tebuconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Tebuconazole has low acute toxicity by the oral and dermal routes of exposure and moderate toxicity by the inhalation route. It is not a dermal sensitizer nor a dermal irritant; however, it is slightly to mildly irritating to the eye. The primary target organs of tebuconazole toxicity are the liver, the adrenals, the hematopoietic system, and the nervous system. Effects on these target organs were seen in both rodent and non-rodent species. In addition, ocular lesions were seen in

dogs (including lenticular degeneration and increased cataract formation) following subchronic or chronic exposure.

Oral administration of tebuconazole caused developmental toxicity in all species evaluated (rat, rabbit and mouse), with the most prominent effects in the nervous system. The developmental toxicity studies, including the developmental neurotoxicity study, demonstrated an increase in susceptibility in developing fetuses both quantitatively and qualitatively.

Tebuconazole was classified as a Group C possible human carcinogen, based on an increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in male and female mice. This classification is generally used for chemicals with limited evidence of carcinogenicity in animals in the absence of human data. EPA has determined that quantification of risk using a non-linear approach, i.e., reference dose (RfD), for tebuconazole will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to tebuconazole. That conclusion is based on the following considerations: (1) No carcinogenic response was seen in either sex in an acceptable rat cancer study; (2) the tumors found in the mouse are commonly seen in the mouse; (3) both tumor types were found only at the high dose, which was considered to be excessive for carcinogenicity testing based on the non-neoplastic findings; and (4) tebuconazole is not mutagenic.

Specific information on the studies received and the nature of the adverse effects caused by tebuconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in docket ID

number EPA-HQ-OPP-2012-0427 on pages 33–36 of the document titled “Tebuconazole: Human Health Risk Assessment for Tolerance Increases Based on Submission of Condition of Registration Requirements for Barley and Cantaloupe; and Crop Group Expansion for Fruiting Vegetable Crop Group 8–10.”

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for tebuconazole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEBUCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	LOAEL = 8.8 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF (UF _L) = 3x	Acute RfD = 0.029 mg/kg/day. aPAD = 0.029 mg/kg/day	Developmental Neurotoxicity Study—Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Chronic dietary (All populations).	LOAEL = 8.8 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF (UF _L) = 3x	Chronic RfD = 0.029 mg/kg/day. cPAD = 0.029 mg/kg/day	Developmental Neurotoxicity Study—Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Incidental oral short-term (1 to 30 days).	LOAEL = 8.8 mg/kg/day UF _A = 10x UF _H = 10x FQPA SF (UF _L) = 3x	LOC for MOE = 300	Developmental Neurotoxicity Study—Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEBUCONAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Dermal short-term (1 to 30 days).	Oral study LOAEL = 8.8mg/kg/day (dermal absorption rate = 13%. UF _A = 10x UF _H = 10x FQPA SF (UF _L) = 3x	LOC for MOE = 300	Developmental Neurotoxicity Study—Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Inhalation short-term (1 to 30 days).	Oral study LOAEL = 8.8 mg/kg/day. UF _A = 10x UF _H = 10x FQPA SF (UF _L) = 3x	LOC for MOE = 300	Developmental Neurotoxicity Study—Rat. LOAEL = 8.8 mg/kg/day based on decreases in body weights, absolute brain weights, brain measurements and motor activity in offspring.
Cancer (Oral, dermal, inhalation).	Classification: Group C- possible human carcinogen based on statistically significant increase in the incidence of hepatocellular adenoma, carcinoma, and combined adenoma/carcinomas in both sexes of NMRI mice. The chronic risk assessment is considered to be protective of any cancer effects; therefore, a separate quantitative cancer risk assessment is not required.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tebuconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing tebuconazole tolerances in 40 CFR 180.474. EPA assessed dietary exposures from tebuconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for tebuconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, a somewhat refined, acute probabilistic dietary exposure assessment was conducted for all existing food uses of tebuconazole. EPA assumed tolerance levels residues for some commodities and used field trial and USDA PDP data for others. EPA also assumed 100% crop treated levels for most commodities and used percent crop treated (PCT) data for other commodities as described in Unit III.C.1.iv. below.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the 2003–2008 NHANES/WWEIA. As to residue levels

in food, a somewhat refined chronic dietary exposure assessment was conducted for all existing food uses of tebuconazole. EPA assumed tolerance levels residues for some commodities and used field trial and USDA PDP data for others. EPA also assumed 100% crop treated levels for most commodities and used PCT data for other commodities as described in Unit III.C.1.iv. below.

iii. *Cancer.* The Agency determined that cancer dietary risk concerns due to long-term consumption of tebuconazole residues are adequately addressed by the chronic dietary exposure analysis using the reference dose; i.e., the chronic dietary risk assessment is considered to be protective of any cancer effects, and therefore, a separate cancer dietary exposure analysis was not performed.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the acute assessment, the Agency estimated the PCT for existing uses as follows:

Grapes: 25%; grape, raisin: 25%; nectarine: 25%; peach: 20%; peanuts: 45%.

For the chronic assessment, the Agency estimated the PCT for existing uses as follows:

Grapes: 15%; grape, raisin: 15%; nectarine: 20%; peach: 15%; peanuts: 35%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most

recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency also used 2006 PCT information for tebuconazole on the following uses for the acute dietary assessment (apples, 44%; apricots 56%; cherries, (babyfood), 42%; cherries (all other food forms), 100%; corn, sweet, 22%; hops 64%; plum 26%; turnip 68%) and for the chronic dietary assessment (apples, 41%; apricots, 43%; cherries, (babyfood), 37%; cherries (all other food forms), 66%; corn, sweet, 14%; hops, 64%; plum, 24%; turnip, 44%). For further explanation of EPA's process for developing these PCT estimates, see the 2011 final rule for tebuconazole tolerances (76 FR 54127) (August 31, 2011) and its supporting documents.

Subsequently, EPA considered the maximum and average PCT estimates for tebuconazole from the most recent (2011) screening level usage analysis available. Based on that information, EPA concludes that its risk assessments do not underestimate the overall actual PCT for uses of tebuconazole or exposure from the use of tebuconazole.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no

regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tebuconazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tebuconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tebuconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of tebuconazole for acute exposures are estimated to be 96.6 parts per billion (ppb) for surface water and 1.56 ppb for ground water and for chronic exposures are estimated to be 59 ppb for surface water and 1.56 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment a distribution of 30-year daily surface water concentrations was estimated for the EDWCs of tebuconazole. For chronic dietary risk assessment, the water concentration of value 59 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Tebuconazole is currently registered for the following uses that could result in residential exposures: Turf, flower gardens, trees, ornamentals, and pressure-treated wood. EPA assessed residential exposure using the following assumptions: For residential handlers, exposure is expected to be short-term. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Dermal and inhalation exposures were combined since the same endpoint and point of departure (POD) is used for both routes of exposure. Residential dermal and incidental oral post-application exposure was assessed for

adults and children golfing, working in gardens, and performing physical activities on pressure-treated wood after application of tebuconazole may receive exposure to tebuconazole residues. Post-application exposure is expected to be short-term in duration. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

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

Tebuconazole is a member of the triazole-containing class of pesticides, the conazoles. Although conazoles act similarly in plants by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events. In conazoles, however, a variable pattern of toxicological responses is found; some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events, including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no conclusive data to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

Tebuconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for

triazole-derivative pesticides, including tebuconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (e.g., use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (i.e., high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X FQPA safety factor for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at <http://www.regulations.gov>, docket ID number EPA-HQ-OPP-2005-0497.

An updated dietary exposure and risk analysis for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP) was conducted and completed in May 2013, in association with a registration request for several other triazole fungicides. That analysis concluded that risk estimates were below the Agency's level of concern for all population groups. After addition of tolerances associated with this action to the exposure analyses, the increased tolerances for tebuconazole in/on barley, grain and vegetables, cucurbits, group 9 along with the crop group conversion covered by this action do not significantly <http://www.regulations.gov> by searching for the following titles and docket numbers: "Common Triazole Metabolites: Updated Aggregate Human Health Risk Assessment to Address The New Section 3 Registrations For Use of Prothioconazole on Bushberry Crop Subgroup 13-07B, Low Growing Berry, Except Strawberry, Crop Subgroup 13-07H, and Cucurbit Vegetables Crop Group 9; Use of Flutriafol on Coffee; and Ipconazole on Crop Group 6" (located in docket ID number EPA-HQ-OPP-2012-0876); "Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address the Revised Tolerance for Residues of Fenbuconazole in Peppers" (docket ID number EPA-HQ-OPP-2012-0520).

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFCA provides that EPA shall apply

an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicity database for tebuconazole includes prenatal developmental toxicity studies in three species (mouse, rat, and rabbit), a reproductive toxicity study in rats, acute and subchronic neurotoxicity studies in rats, and a developmental neurotoxicity study in rats. The data from prenatal developmental toxicity studies in mice and a developmental neurotoxicity study in rats indicated an increased quantitative and qualitative susceptibility following *in utero* exposure to tebuconazole. The NOAELs/LOAELs for developmental toxicity in these studies were found at dose levels less than those that induce maternal toxicity or in the presence of slight maternal toxicity. There was no indication of increased quantitative susceptibility in the rat and rabbit developmental toxicity studies, the NOAELs for developmental toxicity were comparable to or higher than the NOAELs for maternal toxicity. In all three species, however, there was indication of increased qualitative susceptibility. For most studies, minimal maternal toxicity was seen at the LOAEL (consisting of increases in hematological findings in mice, increased liver weights in rabbits and rats, and decreased body weight gain/food consumption in rats) and did not increase substantially in severity at higher doses. However, there was more concern for the developmental effects at each LOAEL, which included increases in runts, increased fetal loss, and malformations in mice; increased skeletal variations in rats; and increased fetal loss and frank malformations in rabbits. Additionally, more severe developmental effects (including frank malformations) were seen at higher doses in mice, rats and rabbits. In the developmental neurotoxicity study, maternal toxicity was seen only at the high dose (decreased body weights, body weight gains, and food consumption, prolonged gestation with

mortality, and increased number of dead fetuses), while offspring toxicity (including decreases in body weight, brain weight, brain measurements and functional activities) was seen at all doses.

Available data indicated greater sensitivity of the developing organism to exposure to tebuconazole, as demonstrated by increases in qualitative sensitivity in prenatal developmental toxicity studies in rats, mice, and rabbits, and by increases in both qualitative and quantitative sensitivity in the developmental neurotoxicity study in rats with tebuconazole. However, the degree of concern is low because the toxic endpoints in the prenatal developmental toxicity studies were well characterized with clear NOAELs established and the most sensitive endpoint, which is found in the developmental neurotoxicity study, has been used for overall risk assessments. Therefore, there are no residual uncertainties for prenatal and/or postnatal susceptibility.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 3x. That decision is based on the following findings:

i. The toxicity database for tebuconazole is considered complete. An immunotoxicity study in rats has been submitted to the Agency and the study is currently under review. With preliminary evaluation, tebuconazole tested up to 1,000 ppm (78.4 milligrams/kilogram/day (mg/kg/day) produced no immunotoxicity under the conditions of this study.

ii. Tebuconazole demonstrated neurotoxicity in the acute neurotoxicity study in rats; the LOAEL of 100 mg/kg/day was based on increased motor activity in male and female rats and decreased footsplay in female rats. Malformations indicative of nervous system development disruption were seen in developmental toxicity studies in mice, rats, and rabbits. Neurotoxicity was also seen in offspring in the developmental neurotoxicity study in rats. The LOAEL of 8.8 mg/kg/day was based on decreases in body weights, decreases in absolute brain weights, changes in brain morphometric parameters, and decreases in motor activity. A NOAEL could not be established. However, the LOAEL (8.8 mg/kg/day) was employed as the point of departure in assessing the risk for all exposure scenarios, and the FQPA SF is retained as a UF_L (i.e., use of a LOAEL to extrapolate a NOAEL). A Benchmark Dose (BMD) analysis of the datasets relevant to the adverse offspring effects

(decreased body weight and brain weight) seen at the LOAEL in the DNT study was conducted. All of the BMDLs (benchmark dose limit) modeled successfully on statistically significant effects are 1–2X lower than the LOAEL. The results also indicate that an extrapolated NOAEL is not likely to be 10X lower than the LOAEL and that use of an UF_L of 3X would not underestimate risk. Therefore, the analysis supports reducing the UF_L from 10X to 3X. Using an UF_L of 3X in risk assessment ($8.8 \text{ mg/kg/day} \div 3x = 2.9 \text{ mg/kg/day}$) is further supported by other studies in the tebuconazole toxicity database: Those studies with the lowest NOAELs were a developmental toxicity study in mice at 3 mg/kg/day and a chronic toxicity study in dogs at 2.9 mg/kg/day, with effects being seen at respective LOAELs of 10 and 4.5 mg/kg/day.

iii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of tebuconazole. The degree of concern for residual uncertainties for prenatal and/or postnatal toxicity is low.

iv. There are no residual uncertainties identified in the exposure databases. EPA utilized a tiered approach in estimating exposure to tebuconazole. While some refinements were incorporated into dietary and residential exposure calculations, EPA is confident that the aggregate risk from exposure to tebuconazole in food, water and residential pathways will not be underestimated. The acute and chronic dietary exposure assessments incorporated refined estimates of residues in food commodities from reliable field trial data reflecting maximum use conditions, recent monitoring data from USDA's Pesticide Data Program (PDP), and relevant market survey data on the percentage of crops treated. Estimated concentrations of tebuconazole in drinking water were incorporated into the chronic dietary analysis as the upper bound point estimate and into the probabilistic acute dietary analysis as a distribution. For the residential exposure pathway (ornamentals, golf course turf, and treated wood products), potential exposure resulting from tebuconazole outdoor uses in the residential setting was assessed using screening-level inputs that assumes an adult or child will come in contact with turf and other surfaces immediately after application.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tebuconazole will occupy 55% of the aPAD for children 12 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tebuconazole from food and water will utilize 14% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of tebuconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Tebuconazole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to tebuconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined chronic food, water, and short-term residential exposures result in aggregate MOEs of 1,500 for adult handlers; 400 for children 11–16 years old (post-application); 360 for children 6–11 years old (post-application); 310 for adults (post-application); and 330 for children 3–5 years old (post-application). Because EPA's level of concern for tebuconazole is a MOE of 300 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic

exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, tebuconazole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for tebuconazole.

5. *Aggregate cancer risk for U.S. population.* Tebuconazole has been classified as a possible human carcinogen based on statistically significant increase in the incidence of hepatocellular adenoma, carcinoma, and combined adenoma/carcinomas in both sexes of NMRI mice. The Agency has determined that the chronic risk assessment is considered to be protective of any cancer effects; therefore, a separate quantitative cancer risk assessment is not required.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tebuconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Gas Chromatography/Nitrogen Phosphorus Detector (GC/NPD)) 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; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDC section 408(b)(4).

The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex MRLs have been established for residues of tebuconazole in or on barley grain at 2 ppm. The Codex MRLs are based on field trials conducted in Europe with a maximum of two foliar applications and a pre-harvest interval (PHI) of 28 days. The U.S. tolerance of 0.3 ppm for barley grain is based on field trials conducted in the U.S. and Canada on barley as a single application with a 30-day PHI. The U.S. use pattern has a total seasonal application rate 25% of that of Europe. This explains the large difference in the recommended U.S. tolerance and the Codex MRL, and thus, harmonization is not possible.

Codex MRLs are established on cucumber (0.15 ppm), summer squash (0.2 ppm), and melons (except watermelon) (0.15 ppm), which are crops included in EPA crop group vegetable, cucurbit, group 9. The Codex MRLs are based on field trials conducted in Europe with a maximum of four foliar applications and a PHI of 3 days for cucumbers and squash and 7 days for melon. The U.S. tolerance for vegetable, cucurbit, group 9 is based on field trials conducted in the U.S. on cucumber, summer squash, and melons where tebuconazole was applied three times with a 2–8 day PHI. A tolerance of 0.4 ppm is recommended for cucurbit vegetables using the OECD statistical calculation procedures. Harmonization cannot be achieved since Codex MRLs are established on individual crops rather than on crop groups and have lower MRLs.

Codex MRLs are established for sweet peppers (1 ppm), and tomatoes (0.7 ppm), which are crops included in EPA's crop grouping of vegetable, fruiting, group 8–10. The Codex MRLs are based on field trials conducted in Europe with a maximum of three foliar applications and a PHI of 3–7 days. The U.S. tolerance (1.3 ppm) was based on field trials conducted in the U.S. on bell peppers, non-bell peppers, and tomatoes where tebuconazole was applied as six broadcast foliar applications with a 6–7 day PHI. Harmonization cannot be achieved since Codex MRLs are established on individual crops rather

than on crop groups and have lower MRLs.

V. Conclusion

Therefore, a tolerance is established for residues of tebuconazole, alpha-[2-(4-chlorophenyl)ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol, including its metabolites and degradates, in or on the vegetable, fruiting group 8–10 at 1.3 ppm. The existing tolerance for barley, grain is modified from 0.15 ppm to 0.3 ppm; and the existing tolerance for vegetable, cucurbit group 9 is modified from 0.09 ppm to 0.4 ppm. Also, due to the establishment of the crop group tolerance for the vegetable, fruiting, group 8–10, the existing tolerances on okra and the vegetable, fruiting, group 8 are removed as unnecessary.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by

Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), 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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 30, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.474, the table in paragraph (a) is amended by:

- a. Revising the entries for “Barley, grain”, and “Vegetable, cucurbit, group 9.”
- b. Removing the entries for “Okra” and “Vegetable, fruiting, group 8.”

■ c. Adding alphabetically the commodity “Vegetable, fruiting, group 8–10.”

The amendments read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Barley, grain	0.3
* * * * *	
Vegetable, cucurbit, group 9	0.4
Vegetable, fruiting, group 8–10	1.3
* * * * *	

[FR Doc. 2013–27147 Filed 11–14–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0189]

RIN 2127–AL13

Federal Motor Vehicle Safety Standards; Designated Seating Positions

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document completes the agency’s response to petitions for reconsideration of an October 2008 final rule that amended the definition of the term, “designated seating position,” as used in the Federal motor vehicle safety standards, to facilitate the determination of which areas within the interior of a vehicle meet that definition. The final rule made the new definition applicable to vehicles manufactured on and after September 1, 2010. Previously, the agency granted petitions requesting one year of additional lead time until the new definition became applicable, removal the portion of the regulatory text stating that State tort law requirements are preempted, and technical corrections. This final rule addresses the remaining issues raised in the petitions for reconsideration and

makes clarifying changes to the manner in which designated seating positions are measured. We are also including technical corrections addressing side-facing seats and longer seating surfaces.

DATES: The effective date of this final rule is December 16, 2013.

Petitions for reconsideration must be received not later than December 30, 2013.

ADDRESSES: Petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Louis Molino of the NHTSA Office of Crashworthiness Standards by telephone at (202) 366–1740, and by fax at (202) 493–2739.

For legal issues, you may contact David Jasinski of the NHTSA Office of Chief Counsel by telephone at (202) 366–2992, and by fax at (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Petitions for Reconsideration
- III. Analysis of Petitions for Reconsideration
 - A. Definition of DSP
 - B. Analysis of Safety Problem
 - C. Seating Surface Measuring Procedure
 - 1. Determination of the “Front Leading Surface”
 - 2. Determination of Seating Surface Width
 - 3. Interior Trim at the Seating Surface Outer Edges
 - 4. Seating Surface Interrupted by Interior Trim
 - 5. Voids and Seat Separation
 - 6. H-Point Interruptions
 - 7. Folding, Removable, and Adjustable Seats
 - 8. Closely Adjoining Seat Belt Buckles
 - D. Calculating the Number of DSPs
 - E. Consumer Information Label
 - F. SAE J1100
 - G. Technical Correction for Side-Facing Seats
- IV. Rulemaking Analyses and Notices

I. Background

On October 8, 2008, NHTSA published in the **Federal Register** a final rule (October 2008 final rule) revising the definition of “designated seating position” (DSP), as that term is used in the Federal motor vehicle safety standards (FMVSS), and providing a calculation procedure for determining the number of seating positions at a seat

location.¹ The revised definition specifies more clearly the areas within the interior of a vehicle that are regarded as being designated seating positions for trucks, multipurpose passenger vehicles, passenger cars, and buses. The rule also established a calculation procedure for determining the number of DSPs at a seat location for trucks and multipurpose passenger vehicles with a gross vehicle weight rating less than 4,536 kilograms (10,000 pounds), passenger cars, and buses.

The designation of a seating position has important safety consequences. Under the FMVSSs, motor vehicle manufacturers must meet various performance requirements for each interior location designated as a seating position. For example, FMVSS No. 208, *Occupant Crash Protection*, requires that each DSP in a light vehicle be provided with the appropriate occupant crash protection system (e.g., air bag, seat belts or both). Clarity in the definition of DSP is important for the purposes of that standard because if a vehicle has fewer DSPs than the number of individuals able to sit in it, one or more of those individuals would not be protected by seat belts and/or other crash protection systems.

In the October 2008 final rule, the agency stated that the revised definition of “designated seating position” added clarity to the existing definition and was not expected to have a substantial impact on current vehicle designs. The degree to which seat designs exhibited the characteristics that gave rise to the agency’s concerns had significantly lessened in the fleet. Manufacturers had either reduced the width of the seating area to more accurately reflect the intended occupancy or had provided additional DSPs.

The October 2008 final rule noted that the inclusion of auxiliary seats in the definition of “designated seating position” and the newly established procedure for determining the number of DSPs would require minor redesign of a small number of vehicles. To allow manufacturers the opportunity to make such redesigns, the agency provided approximately two years of lead time, such that, on September 1, 2010, all vehicles would need to comply with the new requirements.

II. Petitions for Reconsideration

We received ten petitions for reconsideration of the October 2008 final rule. The petitioners are SAE International (SAE), BMW North America (BMW), the Alliance of

¹ 73 FR 58887 (Oct. 8, 2008) (Docket No. NHTSA–2008–0059).

Automobile Manufacturers (Alliance), Volkswagen of America (Volkswagen), the Association of International Automobile Manufacturers (now Global Automakers), the American Association for Justice (AAJ), Safety Research and Strategies (SRS), Toyota Motor North America (Toyota), Mitsubishi Motors R&D of America (Mitsubishi), and Public Citizen.² Toyota also expressed its support for the Alliance's petition. The petitions filed by SAE International and Toyota were styled both as requests for interpretation and, alternatively if the agency did not agree with their suggested interpretation, as petitions for reconsideration.

In a December 23, 2009 final rule,³ we provided a partial response to these petitions. In response to petitions by the Alliance, Global Automakers, Mitsubishi, and Volkswagen that sought additional lead time for implementing the new definition of "designated seating position" via a phase-in, we provided one year additional lead time so that vehicle manufacturers would need to comply with the new rule on September 1, 2011. In response to petitions from the AAJ and Public Citizen, we removed language from the text of the DSP definition stating that any State requirement, including any determination under State tort law, premised on there being more DSPs than the number contemplated in the definition, was preempted. We also addressed a technical error pointed out in petitions from SAE, the Alliance, and Global Automakers by correcting an erroneous cross reference.

III. Analysis of Petitions for Reconsideration

A. Definition of DSP

Prior to September 1, 2011, the basis for determining whether a location was considered a designated seating position was whether it was a plan (i.e., side) view location capable of accommodating a person at least as large as a 5th percentile adult female if the configuration and design of the vehicle were such that it was likely to be used as a seating position while the vehicle is in motion. The October 2008 final rule replaced this definition with one setting forth a more objective manner of determining whether a seating surface is

considered a DSP. As defined in the October 2008 final rule, a designated seating position is a seat location with a seating surface width of at least 330 mm.

Global Automakers petitioned the agency to replace the 330 mm seat cushion width specification with the prior language relying on the capability of accommodating a 5th percentile adult female. Global Automakers stated that this prior definition would achieve the agency's intended goal because the formula for counting DSPs would still be specified in section 571.10.

The agency is denying the petition to amend section 571.3 to revert to the prior definition. We continue to believe that the seating surface width measurement better reflects a location's ability to accommodate an occupant. We also believe that the new definition is more consistent with the seating width-based manner for calculating the number of DSPs in section 571.10.

Global Automakers did not provide a compelling reason to revert to the old definition. Its only assertion is that the DSP definition would explain the agency's concept of a DSP. It is true that the 330 mm specification for a DSP in the new definition was consistent with the hip measurement of a 5th percentile adult female. However, as we stated in the October 2008 final rule, our intent was to provide both a more objective definition of DSP and a more objective method for determining the number of DSPs at a seating location.⁴ The current 330 mm specification better implements the agency's intent. Accordingly, we are denying Global Automakers' request.

B. Analysis of Safety Problem

Two petitioners, Public Citizen and SRS, petitioned the agency to amend the DSP definition, asserting that adequately updated data and sound scientific techniques were not employed in developing the final rule.

Public Citizen expressed its belief that the October 2008 final rule did not close the regulatory gap regarding the provision of enough seat belts for the number of designated seating positions. Public Citizen asserted that the agency has not provided sufficient analysis to support its assertions that the change in average seat width between 2001 and 2006 has reduced the safety problem. Public Citizen also stated that the agency did not consider human factors related to reduced seat belt use rates when a third occupant is seated in a seating area with two DSPs. Public Citizen claimed that the agency did not investigate whether the options of a

void space or impediment would discourage occupants from sitting in a space that is not a DSP, nor did the agency have sufficient data to conclude that the reduction in seating width has solved the problem of too many occupants sitting in a seating area.

SRS also questioned the data that NHTSA used to reach its conclusions. SRS reiterated concerns expressed in its comments on the NPRM that the proposed impediment and void specifications were based on inaccurate data. SRS also questioned the agency's reliance on these measures in the absence of any scientific human factors analysis of the potential effectiveness of designs to keep occupants from occupying a non-DSP.

NHTSA addressed many of these issues in the October 2008 final rule. Public Citizen and SRS did not provide any additional information to the agency nor did they provide any suggested changes to the requirements. In response to SRS's comments regarding the accuracy of the data related to the Acura Integra 2-Door, the agency stated:

Safety Research and Strategies also stated that its analysis of the data indicated that the incident rate of three occupants seated at the 2-DSP rear seat of the Acura Integra 2-Door was twice as high as presented in the PRE. The incident rates of the Acura were relied upon by the agency in developing the impediment countermeasure. However, it is unclear whether Safety Research and Strategies evaluated data from the same period as in the agency's analysis.⁵

Although SRS characterized the agency's response as inadequate, in response to SRS's comment, the agency's technical staff reviewed the data in question for the inaccuracies cited by SRS and concluded that the agency's original analysis was valid. Our position has not changed. We do not believe any type of measure is necessary for all rows with two DSPs. A measure, including an impediment, is only required if a seating surface area is otherwise wide enough to be considered to have three DSPs and the manufacturer does not want to add a third seat belt. The purpose of the measure is to make clear to the consumer that the seating surface is only intended for two occupants at a time.

We also believe that Public Citizen's and SRS's expectations for the effectiveness of measures are overstated. In our Final Regulatory Evaluation (FRE), we stated that we could not estimate the benefit of the impediment/

² The AAJ petition was jointly filed by the AAJ, the Association of Trial Lawyers of America—New Jersey, Consumer Attorneys of California, Consumers for Auto Reliability and Safety, the New York State Trial Lawyers Association, the Pennsylvania Association for Justice, and the Washington State Trial Lawyers Association. Public Citizen's petition was filed jointly by Public Citizen and the Consumer Federation of America.

³ 74 FR 68185.

⁴ See 73 FR 58888.

⁵ 73 FR 58889 n.2.

void option.⁶ However, we do believe that impediments and voids could reduce the risk of crash injuries because passengers would be less likely to occupy unprotected spaces that are either unavailable (because of a void between seating positions) or uncomfortable (because of an impediment).

The agency did not conduct a human factors analysis because we identified a small target population in the FRE. The specifications proposed in the NPRM and adopted in the final rule were largely based upon vehicles that were identified as having low fatality rates and employed an impediment or void in the second row. The agency attributed the lower fatality rate to the impediment installed in the seating surface, which deterred overcapacity and misuse. We continue to believe that a human factors study is not necessary to achieve the aim of the final rule, which is the identification of DSPs and improved enforceability.

Based upon the agency's fleet survey, we did not expect impediments or voids to be used in many vehicles. However, when used, we believed their function was to provide consumers with information regarding the vehicle's seating capacity. It was not the agency's intent for impediments and voids to act as physical barriers or make it impossible for a vehicle to be overloaded or misused. In the unlikely event that an occupant considers sitting on an impediment or void and then cannot locate a seat belt, we believe that it should be reasonably obvious to the occupant that the location is not intended for occupancy while the vehicle is in motion.

In the FRE, the agency identified a significant decrease in the seat belt usage rate when comparing incidents in which two passengers occupied a two-DSP seating area compared to incidents in which three passengers occupied a two-DSP seating area. We believe this explains a drop in the seat belt usage rate in these cases from 53.25 percent to 27.67 percent. It is reasonable to assume that this drop in usage rate was due to the unavailability of a third seat belt in the row and the possible inability of other passengers to use the seat belts that are provided because of lack of physical space. We do not believe a human factors study is necessary to explain this reduced seat belt use rate.

Public Citizen asserted that second rows of two-door SUVs had two-DSP second rows. However, this is contrary to the agency's findings. Most existing

vehicles that did not comply with the new requirements were sport coupes with non-traditional second row bench seats and third-row seats on SUVs that were intended to have two DSPs, but the seating surface width was sufficient to have three DSPs. The agency did not identify any sedans or SUVs with a bench seating surface that had a second row with two DSPs.

It remains the view of the agency that the reduced seat size combined with the presence of only two seat belts will more clearly indicate to occupants the capacity for which crash protection is provided. This will prevent manufacturers from including wide bench seats with only two seat belts unless an impediment or void is used that will interrupt the seating surface. Although we expect the new definition and requirements for seat separation to aid in eliminating uncertainty as to the number of DSPs at a seating location, it is not practical to require designs that would completely prevent consumers from attempting to seat more occupants than a row or seat is designed for.

C. Seating Surface Measuring Procedure

A number of the petitions raised issues related to the seating surface measuring procedure. We have grouped these petitions into seven separate issues, which we address below.

1. Determination of the "Front Leading Surface"

SAE requested clarification on how the agency intends to determine the "front leading surface." The front leading surface is referenced in determining the boundaries of the area in which the seating surface width is measured. Specifically, section 571.10(c)(1) provides that the "seating surface width" is the maximum width of a seating surface in a zone extending from a transverse vertical plane 150 mm (5.9 inches) behind the front leading surface of a seating surface to a transverse vertical plane 250 mm (9.8 inches) behind that front leading surface, measured horizontally and longitudinally.

SAE stated that it interpreted the "front leading surface" as the frontmost edge of the soft trim of the seat cushion, but would not include the forward edge of unpadded components such as seat shields, seat adjusters, or adjuster covers. SAE asked for confirmation of its interpretation.

We agree with SAE that the "front leading surface" would include soft trim, but would not include the unpadded trim components such as decorative seat shields, seat adjusters, or

adjuster covers. To reflect this intent, we are amending the language of section 571.10(c) to make clear that these unpadded trim components would not be considered part of the seating surface for the purpose of determining the "front leading surface."

Furthermore, SAE requested the agency's position on how the "front leading surface" would be defined when seats are angled such that the centerline of the seat is not parallel with the centerline of the vehicle. SAE asked the agency for confirmation of its interpretation that an "X" plane tangent to the frontmost edge of the seat cushion is used to measure the 150 mm and 250 mm distance from the front leading edge.

With respect to angled seats, the agency did not intend the "front leading surface" to be defined in the manner described by SAE. Rather, the agency intended the measurement zone to be determined from the front leading surface of the seat in its "forward" facing direction as defined in S4.3 of FMVSS No. 210, regardless of how the seat may be oriented in the vehicle. That is, "forward" refers to the direction in which the seat faces, rather than the direction the vehicle faces, and the measurement zone would be oriented perpendicular to that direction.

To reflect this interpretation, we are making an amendment to section 571.10(c)(1). We believe the effects from this amendment will be minimal because angled seats are not common.

2. Determination of Seating Surface Width

Global Automakers and Toyota requested that the agency clarify its position on how the seating surface width is measured. Global Automakers raised two specific scenarios. The first scenario involves seat cushions whose outer edge slopes downward. Global Automakers was not certain whether the measurement will be made from the outer edge of the seat cushion (identified in A in Figure 1) or the point where the top surface of the cushion begins sloping downward toward the side of the seat (identified as B in Figure 1). Toyota interprets the language as contemplating the seating surface width measurement to take place between the vertical planes tangent to the outboard edges of the seat, as indicated in Figure 2. Toyota stated that if its interpretation is not correct, it was petitioning the agency to adopt its position.

⁶Docket No. NHTSA-2008-0059-0002.

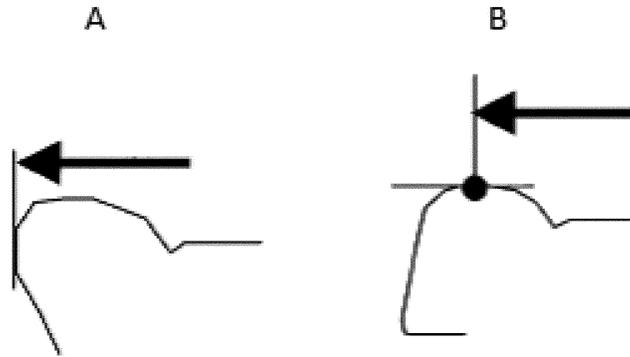


Figure 1: Global Automakers Seat Surface Width Measurement Example

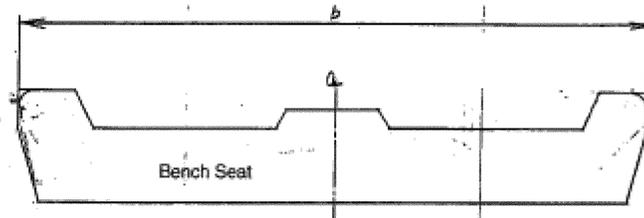


Figure 2: Toyota Seat Surface Width Measurement Example

NHTSA agrees with Toyota's interpretation that the seating surface width will be determined from the maximum width between the vertical planes tangent to the outboard edges of the seat. We note that in the context of seat width measurement, the determination of what is outboard is made with respect to the seat orientation and may not align with what is outboard with respect to the vehicle. This measurement procedure is more

objective than the other measurement procedure suggested by Global Automakers. It is not always clear at what point the top surface of the seat cushions begin to slope downward to the side because such surfaces may be rounded or uneven and seat cushions can be pliable.

3. Interior Trim at the Seating Surface Outer Edges

Global Automakers also requested that the agency clarify its interpretation

on how the measurement will be taken for seat cushions whose outer edge extends underneath interior trim. Global Automakers noted that, in some cases (one of which is illustrated in Figure 3 below), the interior trim interrupts the "nominal hip room" using the SAE H-point machine and that an occupant could not use the seating surface under the trim.

Shaded area is body-side armrest. 'B' cannot accommodate 3-D manikin in void between armrest and seating surface.

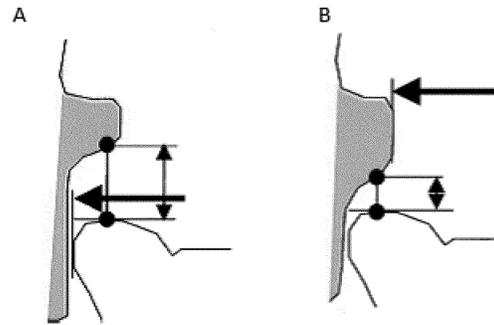


Figure 3: Global Automakers Seat Surface Width Measurement with Armrest

Although the agency agrees that, in Global Automakers' example, some portion of the "seating surface" may not be a location where an occupant could actually sit, the amendment to the DSP definition was designed to make the definition more objective. The new definition is not based upon non-objective concepts such as the usability of the seating surface by the occupant or "nominal hip room." Manufacturers will have to consider the usability of the space in designing the vehicle; however, the DSP definition and measuring procedure make no allowance for seating space that is made unusable by the positioning of trim components such as body-side armrests.

NHTSA would measure the seating surface width from the plane indicated in drawing A on Figures 1 and 3 above. NHTSA would only consider a trim component in the determination of the seating surface width if the trim makes contact with the top of the seat within the measurement zone. To make this clearer, we are adding specificity to the determination of the "seating surface width."

We clarify that the determination of the seating surface width is a comparative measurement of all possible width measurements within the measurement zone, given specific constraints. The seating surface width is the maximum width determined by these comparisons. The constraints on the measurements are that they are

made between vertical planes that intersect the outboard seat edges, unless the outboard edge is interrupted by interior trim in contact with the top edge of the seat.

If the seating surface is interrupted by outboard interior trim in contact with the top edge of the seat, the vertical plane used in determining the seating surface width will be the plane that intersects the most inboard point of contact between the interior trim and the point of contact with the top of the seat. We have also added a figure to the regulatory text to illustrate the measurement procedure, including how trim components making contact with the seating surface affect the measurement.

4. Seating Surface Interrupted by Interior Trim

Section 571.10(c)(2)(i)(A) provides an exception to the general rule that adjacent seating surfaces are considered to form a single, continuous seating surface. If adjacent seating surfaces are separated by a fixed trimmed surface that has an unpadded top surface and a width of not less than 140 mm (5.5 inches), those surfaces will not be considered to be continuous.

Public Citizen petitioned the agency to eliminate the option to separate adjacent seating surfaces with unpadded fixed trim. Public Citizen stated its belief that, if a seat contains three 330 mm seating spaces, the manufacturer should be required to have three DSPs

with three seat belt assemblies. Otherwise, Public Citizen argued that manufacturers should be required to use voids to interrupt a seating surface.

We are denying Public Citizen's request to remove the option to separate seating surfaces with unpadded fixed trim. It is not practicable in all vehicle types with a bench seat where the seating cushion width would require three DSPs to provide restraints for three DSPs, particularly in the case of rear seats of convertibles and sport coupes. These seats are often close to the vehicle floor, where it would be impractical or impossible to include a void in the seat cushion. We also believe that a child seat positioned in the rear seat, which may extend over the void, could be unstable during use and in a crash. We are also concerned that, if such seats were required to have three DSPs, three occupants would not be able to be seated comfortably, which could reduce seat belt usage at such seating positions. We believe that allowing manufacturers options for interrupting otherwise continuous seating surfaces is the best approach to improving the identification of DSPs by consumers.

SAE requested clarification on how the agency would consider trim when measuring the seating surface. SAE provided two illustrated examples, shown below, and asked for NHTSA's clarification on how "trim" would be defined.

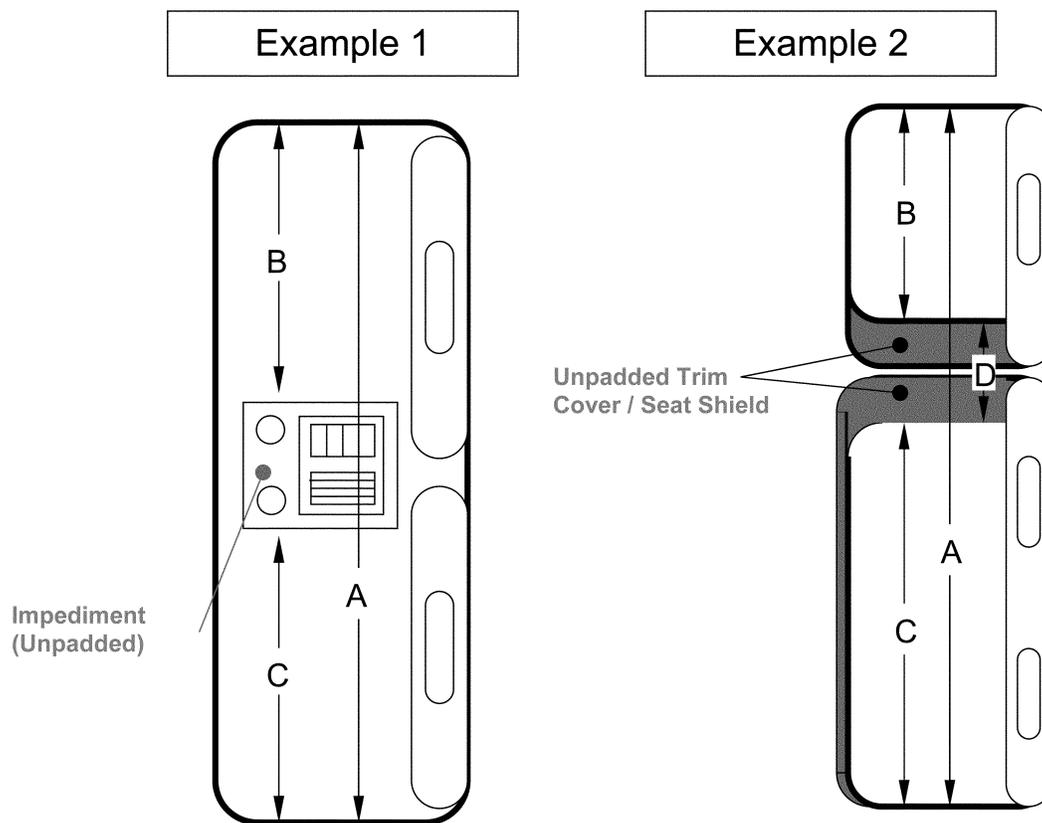


Figure 4: SAE Examples of Seat Measurement with Trim
(Seats in both examples are viewed from above)

In Example 1, SAE described an impediment in the middle of the seat as an “embedded convenience system.” During the seating surface measurement, the agency would first determine if the impediment meets the requirements of sections 571.10(c)(2)(i)(A) or 571.10(c)(2)(ii). SAE stated in its request that it was assumed that the conditions of section 571.10(c)(2)(ii) were not met by the impediment.⁷ Therefore, a determination would need to be made as to whether the impediment was “a fixed trimmed surface whose top surface is unpadded and that has a width not less than 140 mm (5.5 inches), as measured in each transverse vertical plane within that measurement zone.” Such a determination is impossible to make from the schematic provided and may only be possible from a physical examination of the impediment. If the impediment satisfied the criteria, the seating width would end at the impediment’s edge, as shown by dimension “B” and “C.” However, if the impediment did not satisfy the criteria, the agency would define the maximum seating surface width as shown by

distance “A” in Example 1. We think this is clear from a reading of section 571.10(c)(2).

SAE asked about the measurement procedure with respect to Example 2. We believe this has been made clear both in the regulation and the agency’s test procedure. Assuming the shaded area is fixed, unpadded trim surface, the determination of seat surface width depends on whether the length of “D” is less than 140 mm. If “D” is less than 140 mm, then seating surfaces “B” and “C” form a continuous seating surface and the number of DSPs would be calculated using measurement “A.” If “D” is at least 140 mm, seating surfaces “B” and “C” would have sufficient separation such that the number of DSPs for seating surfaces “B” and “C” would be calculated separately based on the length of “B” and “C.”

SAE also asked whether the use of the word “unpadded” meant the trim had to be uncovered or whether a fabric with minimal foam backing would be considered unpadded. In the October 2008 final rule, the agency merely defined the footprint that a trim impediment must cover to allow manufacturers a degree of flexibility in

assigning this space.⁸ For example, a fixed unpadded trim surface could be used for a convenience function such as a cup holder, tray, or storage and also serve to divide seating surfaces.

The agency did not define the term “unpadded trim” or provide examples in the October 2008 final rule. This was intentional. We did not want to be unnecessarily design restrictive or prevent manufacturers from implementing creative solutions that would appeal to consumers and still provide visual cues regarding the number of DSPs in a given row. To address SAE’s question, we do not intend the term “unpadded” to mean that the trim cannot be covered. Unpadded trim, even if covered with material such as fabric, leather, or vinyl solely for aesthetic purposes, will be significantly harder than the more pliable foam and covering used for the seat cushion and would make sitting on the surface unwelcoming, which would deter its use as a seating surface.

5. Voids and Seat Separation

Toyota requested clarification regarding the width measurement of a

⁷ We address issues related to section 571.10(c)(2)(ii) in section III.C.5.

⁸ See 73 FR 58891.

void defined in section 571.10(c)(2)(i)(B). That section states that seating surfaces can be separated by [a] void whose cross section in each transverse vertical plane within that measurement zone is a rectangle that is not less than 140 mm (5.5 inches) wide and not less than 140 mm (5.5 inches) deep. The top edge of the cross section in any such plane is congruent with the transverse horizontal line that intersects the lowest point on the portion of the top profile of the seating surfaces that lie within that plane.

Toyota interpreted this language to mean that the width measurement of the void is taken between planes tangent to the seat edges on either side of the void. This means that, where the seat edges adjacent to a void are sloped downward toward the edge of the seat before turning downward, the measurement between the seat edges would be made from the outer edge of the seat rather than from where the seat surface begins to slope downward.

This issue has been clarified in NHTSA's test procedure with illustrated examples. We believe it is clear that the width of the void area would be measured between the adjacent edges of the two adjacent seating surfaces.

SAE also requested clarification regarding voids. It interpreted section 571.10(c)(2)(i)(B) as applicable to seating rows that have three or more seats. It reasoned that, when two or more seats are at least 140 mm apart, section 571.10(c)(2)(iii) would apply, which relates specifically to the seat cushion separation requirement for outboard seats. SAE asked for clarification on how NHTSA would interpret two adjacent seating surfaces that are not separated by 140 mm.

We do not agree with SAE's interpretation of the applicability of section 571.10(c)(2)(i)(B). The applicability of section 571.10(c)(2)(i)(B) is not limited to rows with certain numbers of DSPs. Rather, we anticipate that seating surfaces with "voids" would generally be used by a manufacturer when otherwise there would be a single seating surface that would require more DSPs than the manufacturer intends. In contrast, the seat cushion separation in section 571.10(c)(2)(iii) only applies to adjacent outboard seating surfaces and does not limit the measurement zone. However, when adjacent seating surfaces are not separated by 140 mm, the agency would consider the seating surface between the two seats to be continuous. We believe this issue has been addressed by specific examples in the agency's test procedure.

6. H-Point Interruptions

SAE and Toyota requested clarification of section 571.10(c)(2)(ii) as it applies to interrupting the H-point between two adjacent DSPs. SAE expressed uncertainty as to whether the agency intended that the interruption be at the location of the H-point or within a larger area such as the 101 mm height or 76 mm fore-aft distance of the hip room zone. We believe the regulatory text is clear that the actual location of the H-point must be interrupted by interior trim. This was further illustrated in the agency's test procedure, which was published after we received SAE's request for clarification.

Toyota interpreted the measurement procedure as using the two outboard seating position H-points to determine the "X" plane location. We agree with Toyota that we would use the outboard DSPs to determine the "X" plane location. However, we would also define the H-point for any adjacent DSPs, even if they are not both outboard. To clarify this, we are amending section 571.10(c)(2)(ii). Furthermore, the H-point for adjacent DSPs may not necessarily fall on the same plane, or even planes that pass through each other. In such a case, interior trim can interrupt the "X" plane if it interrupts the "X" planes of both adjacent seating positions.

7. Folding, Removable, and Adjustable Seats

SAE requested that the agency clarify the applicability of section 571.10(c)(3), which specifies the manner in which folding, removable, and adjustable seats are considered. This section provides that folding, removable, and adjustable seats are measured in the configuration that results in the single largest maximum seating surface width.

First, SAE questioned what effect folding or removable seats have on the seating surface width. That is, SAE noted that when such seats are folded or removed, manufacturers do not intend for people to sit on the back of the seat or in the area where the seat previously occupied. The agency's intent, with respect to seats that are designed to fold or be removed from the vehicle, such as seats in the second or third row of minivans or sport utility vehicles, was that the seats be configured such that the maximum possible seating surface width is measured for that row when measuring seating surface width.

Second, SAE noted that seats that adjust backwards and forwards or up and down do not cause the seat cushion itself to become wider. SAE asked what

range, including seat rotation, in the case of swiveling seats, to take into account when measuring surface width. We recognize that adjusting split bench seats or seats that can slide, depending on how the seats are positioned, may result in changes to the total seating surface width, and consequently may alter the calculated number of DSPs. When adjusting seat positions that may result in changing the number of DSPs, as with folding seats, we would determine the number of DSPs by adjusting the seats in a manner that produces the maximum number of DSPs. With respect to seats that adjust up and down, we note that the height of the seat is not taken into account.

Third, SAE suggested that, if NHTSA intends to use section 571.10(c)(3) to determine whether a seat is adjacent, the language would be better placed within the list specified under paragraph (c)(2) of that section. We disagree. Paragraph (c)(2) states the general rule that adjacent seating surfaces are considered to be a single, continuous seating surface and then lists three exceptions. The language in paragraph (c)(3) sets forth the configuration of certain types of seats, but does not itself define when a seating surface is (or is not) a continuous seating surface. Thus, we believe it is better to separate the rules for considering folding and adjustable seats from the exceptions stated in paragraph (c)(2).

8. Closely Adjoining Seat Belt Buckles

BMW petitioned the agency to allow two "closely adjoining" seat belt buckles at the center of a seating row with a seating surface width of less than 1,200 mm to be considered a seating surface with two DSPs. Under section 571.10, as currently written, such a seating surface, if at least 1050 mm, would have three DSPs. BMW reasoned that such closely adjoining seat belt buckles, which are raised from the surface of the seat, would serve as a visual cue and an impediment to using the area in between as a seat.

We are denying BMW's request. Although it is possible that adjoining seat belt buckles may provide a visual cue to some occupants as to what is or is not a DSP, BMW provided no data to establish the validity of this assumption. We are also not convinced that adjoining seat belt buckles will provide an impediment to seating, as suggested by BMW. Therefore, we do not believe that adopting BMW's suggested language will solve the safety problem that the new DSP definition was intended to resolve. In the October 2008 final rule, we noted that the agency received a

complaint regarding the 2-door 2001 Ford Explorer, where consumers had believed the rear seating was sufficient for three people, even though there were only two DSPs and, consequently, two seat belt buckles.⁹ The seating surface width of the 2001 Ford Explorer is 1,270 mm, which is only 70 mm more than the maximum seating surface width that BMW proposes to allow. It is reasonable to believe that a situation similar to the 2001 Ford Explorer could occur again if NHTSA adopts BMW's suggested regulatory text.

D. Calculating the Number of DSPs

The new procedure for calculating the number of DSPs uses one of two calculations depending on the overall seating surface width. For adjacent seats with a continuous seating surface with a width less than 1,400 mm, the seating surface width is divided by 350 mm and rounded down to the nearest whole number to determine the number of DSPs. For adjacent seats with a continuous seating surface width of 1,400 mm or more, the measured surface is divided by 450 mm and rounded down to the nearest whole number.

Volkswagen questioned the use of the 350 mm divisor because the petitioner stated that the value is inconsistent with the prior DSP definition and manufacturer design parameters. The prior definition of designated seating position stated that seats with more than 127 cm (1,270 mm) of hip room shall not have less than three DSPs. Volkswagen reasoned that, applying this width to the new DSP definition, a divisor of 423 mm (1,270 mm divided by 3) would be appropriate. Volkswagen also stated that the design program used by many manufacturers provides 354 mm as the ergonomic design value for the 5th percentile female seating hip room. Volkswagen believes that a divisor in the range of 360 to 400 mm should be established for seating surface widths less than 1,400 mm.

We are denying Volkswagen's petition to change the divisor for determining the number of DSPs. In the October 2008 final rule, the agency noted that a survey of the model year 2006 fleet supported the use of a 350 mm divisor.¹⁰ The average width of a two-DSP seating surface location in a vehicle dropped from 1,118 mm in model year 2001 sport-utility vehicles to 979 mm in comparable model year 2006 vehicles. We observed that the reduced seat size more clearly indicated to occupants the capacity for which crash protection is provided. Based upon this survey, we

continue to believe that a 350 mm divisor is consistent with existing design practice.

Global Automakers petitioned the agency to correct an anomaly in the calculation for the number of DSPs in a seating surface width between 330 and 349 mm. Using the formula for seating surface widths less than 1,400 mm specified in section 571.10(b)(1), the number of DSPs for such a seating surface would be zero (330 mm divided by 350 mm, rounded down to the nearest whole number). Global Automakers believes that the agency intended such seating surfaces to have one DSP.

We agree with Global Automakers and are adopting their suggested regulatory text correction. Although the definition of DSP in section 571.3 states that a DSP is a seating location with a seating surface width at least 330 mm, the formula for calculating the number of DSPs for a seating location with a seating surface width of at least 330 mm, but less than 350 mm, would produce a value of zero. This was not the agency's intended result. To correct this anomaly, we are amending section 571.10(b)(1) to establish a minimum of one DSP.

We are also making a technical correction to the calculation of the number of DSPs for seating locations with a seating surface width of 1,400 mm. This issue arose in interpretation requests received by the agency from Nissan North America, Inc. (Nissan) and Girardin Minibus (Girardin).¹¹ Nissan and Girardin both raised the issue of seating surfaces longer than 1,400 mm (1,700 mm and 1,778 mm, respectively) and asked NHTSA to confirm that such a seating surface could have four DSPs. Using the formula set forth in section 571.10(b)(2), the seating surfaces would have three DSPs.¹²

In response, the agency noted that the definition of "designated seating position" was changed because of a concern that, in certain situations, the number of people occupying a seating surface area exceeded the number of DSPs for that area. Particularly, the agency was concerned with seating surfaces that could accommodate three people, but had only two DSPs. Nissan and Girardin put forward a scenario in the opposite direction, a scenario in which a manufacturer wants to designate more DSPs than the number

required by the formula in section 571.10(b) and where the seating area is specifically designed for that greater number of occupants. We stated that it was not our intent to limit manufacturers from designating more DSPs than specified by the formula in section 571.10(b)(2). Moreover, we noted that the data do not demonstrate a problem with four people occupying a seat with three DSPs.¹³ The agency chose the 450 mm divisor for such seats based on the width typically used by seating manufacturers.

In light of the issue raised by Nissan and Girardin, we are clarifying that the calculation procedure in section 571.10(b)(2) for seating surfaces of 1,400 mm or more is intended to be a minimum and manufacturers can provide more DSPs than the number calculated by the formula for these longer seating surfaces.

E. Consumer Information Label

Public Citizen petitioned the agency to require labeling of non-DSP locations, such as voids separating adjacent DSPs, to reflect that the location is not a seat and that sitting in the location while the vehicle is in motion is dangerous. Public Citizen believes that the label would provide a clear and unambiguous indication that such an area is not a seat.

We are denying Public Citizen's request. Although we agree that the labeling of non-DSP locations is consistent with the agency's intent of providing visual cues that a non-DSP location should not be used as a seat, we believe that this suggestion is outside of the scope of this rulemaking procedure. We did not propose labels as a countermeasure in the NPRM and did not seek public comment on the use of labels.

In the October 2008 final rule, we discussed an option in FMVSS No. 207, *Seating Systems*, that allows manufacturers of motor homes to place a label on a seating location that is not to be used while the vehicle is in motion, instead of identifying the seating location as a DSP and installing a seat belt. The Recreational Vehicle Industry Association had expressed its concern that the agency's NPRM had proposed eliminating this option.

We believe that the labeling of non-DSP locations for passenger vehicles is different because the FMVSS No. 207 option for labeling applies to actual seats and chairs intended to be used as such by occupants, albeit when the vehicle is not in motion. In the case of light vehicles, we believe that the

¹¹ NHTSA's response to these interpretation requests can be found at <http://isearch.nhtsa.gov/files/09-003169%20nissan.draft.dj.aug20.htm> and <http://isearch.nhtsa.gov/files/09-000724%20fortin.draft.dj.aug20.htm>.

¹² A seating surface width of at least 1,800 mm would be required to have four DSPs.

¹³ See 73 FR 58889.

⁹ See 73 FR 58889.

¹⁰ See 73 FR 58889.

locations in which one of the agency's specified impediment countermeasures is used would be locations that would not comfortably seat an occupant.

F. SAE J1100

SAE stated that it would like to include new definitions and dimensions related to the October 2008 final rule in the newest version of SAE J1100—Motor Vehicle Dimensions. In addition, SAE stated that it would like SAE J1100 to be consistent with the agency's intentions regarding the new DSP definition. SAE created draft definitions of "seating surface" and "seating surface width" and requested that the agency express its agreement with these definitions. We believe our response to the specific concerns and questions raised by SAE and other petitioners and information in the agency's published test procedure offer the guidance SAE seeks on the definitions of "seating surface" and "seating surface width." In the event that SAE desires NHTSA's interpretation regarding specific examples, SAE can request the agency's interpretation.

G. Technical Correction for Side-Facing Seats

The revised DSP definition eliminated the exclusion of auxiliary seat accommodations such as temporary or folding jump seats. In the October 2008 final rule, we amended the test procedure in S5 of FMVSS No. 210, *Seat Belt Assembly Anchorages*, to specify that, for side-facing seats, the specified force would be applied in the direction that the seat faces in a vertical plane perpendicular to the longitudinal centerline of the vehicle. However, we did not amend the strength requirement itself to remove the exception for side-facing seats. We were clear in both the NPRM and final rule that side-facing seats would need to comply with the seat belt anchorage requirements of FMVSS No. 210.¹⁴ We are including in this response a technical correction to S4.2.1 and S4.2.2 of FMVSS No. 210 to correct this oversight.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the DOT's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under Executive Order 12866. The agency has considered the

impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them.

This action completes the agency's response to petitions for reconsideration of the October 2008 final rule amending the definition of "designated seating position." This final rule merely clarifies existing regulatory text to be more clear and consistent with the agency's intention. Today's action will not have any cost impacts for vehicle manufacturers. This action will not have any safety impacts.

B. Privacy Act

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit <http://docketsinfo.dot.gov/>.

C. Other Rulemaking Analyses and Notices

In the October 2008 final rule and in the December 2009 final rule providing a partial response to the petitions for reconsideration, the agency discussed relevant requirements related to the Regulatory Flexibility Act, Executive Order 13132 (Federalism),¹⁵ Civil Justice Reform, the National Environmental Policy Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). As today's final rule merely clarifies regulatory text to reflect the agency's intent in the October 2008 final rule, it will not have any effect on the agency's analyses in those areas.

List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. In § 571.10, revise paragraphs (b)(1), (b)(2), (c)(1), and (c)(2)(ii) and add paragraphs (c)(1)(i) through (iii) and Figure 1 to read as follows:

§ 571.10 Designation of seating positions.

* * * * *

(b) * * *

(1) For seat locations with a seating surface width, as described in paragraph (c), of less than 1400 mm (55.2 inches): N = The greater of 1 or [seating surface width (in mm)/350] rounded down to the nearest whole number;

(2) For seat locations with a seating surface width, as described in paragraph (c), greater than or equal to 1400 mm (55.2 inches): N = No less than [seating surface width (in mm)/350] rounded down to the nearest whole number.

(c) * * *

(1) As used in this section, "seating surface" only includes the seat cushion and soft trim and excludes unpadded trim components such as a decorative seat shield, seat adjusters, or adjuster covers. As used in paragraphs (c)(1)(ii) and (iii) of this section, "outboard" and "inboard" are determined with respect to the measurement zone established in paragraph (c)(1)(i) of this section. As used in this section, "seating surface width" is the maximum horizontal width of a seating surface determined by the following procedure:

(i) Establish a measurement zone bounded by two vertical planes oriented perpendicular to the direction the seat is facing. One is located 150 mm (5.9 inches) behind the front leading surface of the seat and the other is located 250 mm (9.8 inches) behind the front leading surface of the seat. A measurement location within this zone is any vertical plane parallel to the planes establishing the boundary of the zone.

(ii) For each measurement location within the zone, establish vertical reference planes parallel to the direction the seat faces that intersect the most outboard point on each side of the seating surface at that measurement location. If outboard interior trim contacts the top surface of the seat cushion, establish another vertical plane parallel to the direction the seat faces that intersects the most inboard point of contact between outboard interior trim and the top surface of the seat cushion.

¹⁵ The issue of preemption was addressed in the preamble of the December 2009 final rule. See 74 FR 68187–89.

¹⁴ See 70 FR 36097–98; 73 FR 58892–93.

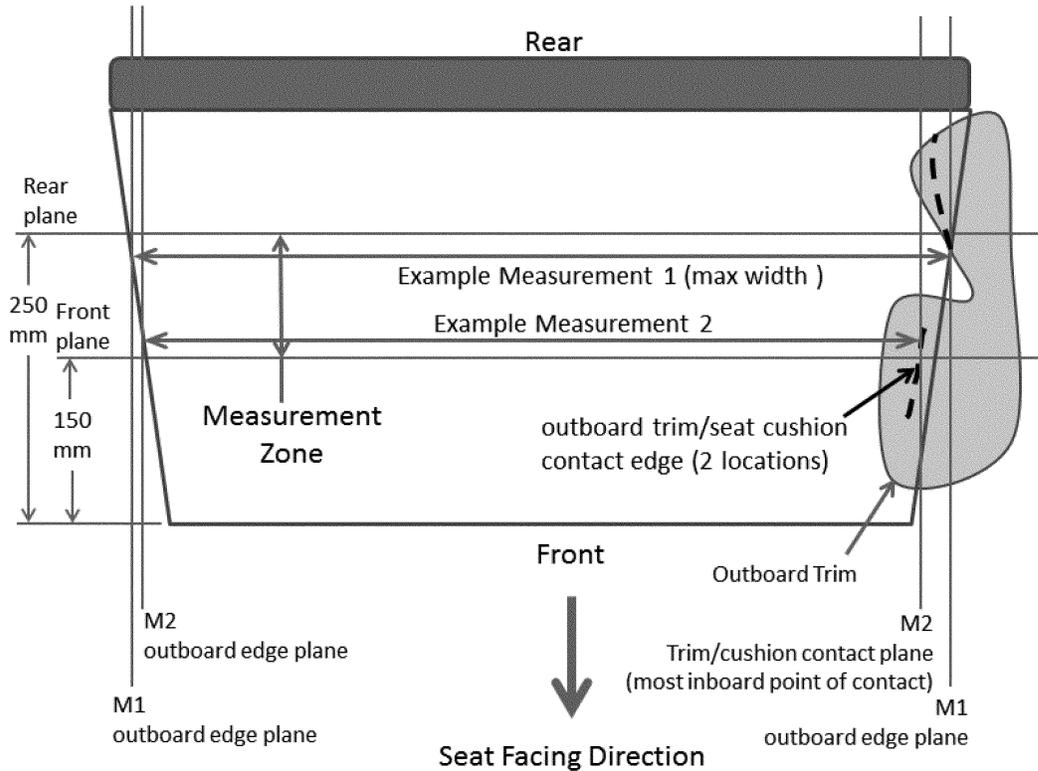
(iii) For measurement within the zone, measure horizontally between and perpendicular to the most inboard vertical reference planes established in (ii), as shown in Figure 1 (provided for illustration purposes).

(2) * * *
(i) * * *

(ii) Interior trim interrupts the measurement of the nominal hip room between adjacent seating surfaces, measured laterally along the "X" plane through the H-point. For purposes of this paragraph, the H-point is located using the SAE three-dimensional H-point machine per Society of

Automotive Engineers (SAE) Surface Vehicle Standard J826, revised July 1995, "Devices for Use in Defining and Measuring Vehicle Seating Accommodation" (incorporated by reference, see section 571.5) with the legs and leg weights removed, or
* * * * *

FIGURE 1: Example Measurements for Seat Cushion Width



Plan view of a seat showing several example measurement locations for the determination of seating surface width. Measurement 1 is the seat surface width for this illustration.

■ 3. Amend § 571.210 by revising the introductory paragraphs to S4.2.1 and S4.2.2 to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S4.2.1 Except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall withstand a 5,000 pound force when tested in accordance with S5.1 of this standard:

* * * * *

S4.2.2 Except as provided in S4.2.5, the anchorages, attachment hardware, and attachment bolts for any of the following seat belt assemblies shall

withstand a 3,000 pound force applied to the lap belt portion of the seat belt assembly simultaneously with a 3,000 pound force applied to the shoulder belt portion of the seat belt assembly, when tested in accordance with S5.2 of this standard:

* * * * *

Issued in Washington, DC, on November 5, 2013 under authority delegated in 49 CFR 1.95.

David L. Strickland,
Administrator.

[FR Doc. 2013-27105 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130426413-3934-02]

RIN 0648-BD24

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Final rule.

SUMMARY: NMFS is modifying the reporting requirements for vessels required to use Vessel Monitoring System (VMS) units in Atlantic Highly Migratory Species (HMS) fisheries. This final rule requires vessel owners or operators, who have been issued HMS permits and are required to use VMS, to provide hourly position reports 24 hours a day, 7 days a week (24/7) via VMS. The final rule also allows the vessel owners or operators of such vessels to declare out of the HMS fishery when not fishing for or retaining HMS for a period of time encompassing two or more trips. This final action will continue to provide NOAA Office of Law Enforcement needed information on the target fishery and gear possessed in order to facilitate enforcement of closed areas and other HMS regulations, while reducing the reporting burden on vessel owners and operators. This action will also bring HMS fisheries regulations in line with VMS regulations in other fisheries. This rule affects all owners and/or operators of permitted vessels that fish for HMS and are required to use VMS.

DATES: This final rule is effective December 16, 2013, except for amendatory instruction 2 to § 635.69, which is effective November 14, 2013.

ADDRESSES: Supporting documents and compliance guides are available from Cliff Hutt and Karyl Brewster-Geisz, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East West Highway, Silver Spring, MD 20910. These documents and others also may be downloaded from the HMS Web site at www.nmfs.noaa.gov/sfa/hms/. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Office of Sustainable Fisheries and by email to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: For information on this rule and requirements for Atlantic HMS fisheries contact, Cliff Hutt or Karyl Brewster-Geisz by phone at 301-427-8503 or by fax at 301-713-1917. For information on NMFS's VMS program, contact Pat O'Shaughnessy at NOAA OLE by phone at 800-758-4833 or by fax at 727-824-5318.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, management measures must be

consistent with ten National Standards, and fisheries must be managed to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce shall promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Background

On August 29, 2013, NMFS published a proposed rule (78 FR 53397) that considered a series of modifications to reporting requirements in Atlantic HMS fisheries. Three alternatives were analyzed in the proposed rule: Require VMS hourly position reporting 24 hours a day, 7 days a week (24/7), whether the vessel is at sea or in port; require vessel owners or operators to hail-in (i.e., declare their return date, location, and time of landing as required at 50 CFR 635.69(e)(3)) no more than 12 hours, and no less than three hours, before landing; and give vessel owners or operators who will not be fishing for or retaining HMS for periods of time encompassing two or more fishing trips the option to declare out of the fishery. The proposed rule contained details regarding the alternatives considered and a brief summary of the recent management history. Those details are not repeated here.

This final rule finalizes the provisions proposed in the August 29, 2013, rule without change. The purpose of this final action is to continue to provide NOAA Office of Law Enforcement needed information on the target fishery and gear possessed in order to facilitate enforcement of closed areas and other HMS regulations, and to bring HMS fisheries regulations in line with VMS regulations placed on other fisheries, while reducing the reporting burden on vessel owners or operators. All of the new requirements such as 24/7 reporting and changes to the hail in and hail out procedures will take effect on December 16, 2013 except that vessel owners or operators could begin to declare out of HMS fisheries on November 14, 2013.

With this final rule, NMFS is requiring that as of December 16, 2013 all VMS units in Atlantic HMS fisheries remain on to provide hourly position reports 24 hours a day, 7 days a week, whether the vessel is at sea or in port. The change to 24/7 location reporting eliminates the requirement to hail out at least two hours before leaving port, and allows vessel operators to hail out (i.e.,

declare their target species and gear type as required by regulations at 50 CFR 635.69 (e)(2)) when actually leaving port. Consistent with existing regulatory requirements regarding times that VMS must be used by particular fisheries, vessels with pelagic longline gear onboard, which are required to use VMS units year round, now will be required to provide 24/7 location reporting year round. Vessels with a shark limited access permit (LAP) and gillnet gear onboard now will be required to provide 24/7 location signals from November 15 through April 15 of each year. Vessels with a shark LAP and bottom longline gear onboard that operate between 33°00' N. latitude and 36°30' N. latitude now will be required to provide 24/7 location signals from January 1 through July 31 each year. Vessel owners or operators must request and receive a documented "power down" exemption for a vessel to be exempt from the VMS requirements if they need to turn off their VMS unit for reasons such as placing the vessel in drydock for repairs or suspending all fishing activity for an extended period. Under those or similar situations, vessel owners or operators should contact NOAA OLE (see **FOR FURTHER INFORMATION CONTACT**) to request a documented power down exemption. Additionally, as of December 16, 2013, vessel owners or operators must hail in no more than 12 hours, and no less than three hours, before landing.

Finally, as of November 14, 2013, vessel owners or operators that will not be fishing for or retaining HMS for periods of time encompassing two or more fishing trips may declare out of the fishery. Once a vessel owner or operator declares a vessel out, that vessel would be exempt from the HMS hail-in/hail-out VMS requirements. If a vessel is declared out of the fishery, but incidentally catches any HMS while fishing that the vessel owner or operator wishes to retain, the vessel owner or operator must declare the vessel back in to the fishery by issuing a "hail out" to specify the target species and fishing gear used while at sea before landing with any HMS. The vessel must also hail-in on that trip consistent with the timing requirements of this final rule to report advance notice of HMS landing to NMFS. Before leaving for the next trip, the vessel owner or operator must declare the vessel out of the HMS fishery again if the vessel will not be fishing for or retaining HMS for a period of time encompassing two or more trips. If the vessel does not declare out of the HMS fishery, the vessel owner or operator then needs to hail out

consistent with the timing requirements in this rule, before leaving on the next fishing trip. It is important to note that declaring out of the HMS fishery exempts the vessel owner or operator only from the HMS VMS hail in/hail out requirements; the vessel's VMS unit must remain on and must continue to provide hourly position reports. All other requirements and restrictions for vessels that have an HMS permit still apply (e.g., those vessels are not allowed in relevant closed or gear restricted areas), and other applicable VMS requirements for any other fisheries they are participating in still apply. Vessels that have declared out of the HMS fishery must resume hailing-in and hailing-out for each fishing trip before again fishing for or retaining HMS.

Comments and Responses

NMFS received three written and several verbal comments from non-governmental organizations, fishermen, and other interested parties on the proposed rule. NMFS heard comments from constituents during a public webinar/conference call and at the Atlantic HMS Advisory Panel meeting. A summary of the comments received on the proposed rule during the public comment period is provided below with NMFS's response. Some of the comments received were in regard to issues outside the scope of this rulemaking (e.g., the use of VMS to protect right whales in their calving grounds off Georgia and whether the regulations will be enough to protect calving right whales if the Navy builds its planned submarine training ground next to the calving area) and are not summarized below. All written comments submitted during the comment period can be found at <http://www.regulations.gov/> by searching for RIN 0648-BD24.

Comment 1: Requiring vessels to provide hourly location signals whether at sea or in port will increase costs for commercial HMS fishermen, but allowing for documented power down exemptions when vessels remain in port for extended periods will help to reduce some of those costs.

Response: Requiring vessels to provide hourly position reports via VMS could result in minor increased costs for vessel owners whose VMS service plans charge per report. For plans that charge per position report, the costs are approximately \$0.06 per report or \$1.44 per day. However, most VMS service plans charge a flat monthly rate for hourly position reporting, and vessel owners with these plans will experience no change in their reporting costs. Additionally, NMFS has received

comments in the past that some HMS vessel owners/operators already leave their VMS units on while at port, so the changes in this rule would not result in any increased reporting costs for them. NMFS agrees that allowing for documented power down exemptions could help reduce costs for those vessel owners that have VMS service plans that charge per position report, although such exemptions are granted only in limited circumstances. OLE may grant "power down exemptions" to vessels if they need to turn off their VMS unit for reasons such as placing the vessel in drydock for repairs or suspending fishing activity for an extended period. It should be noted that a "power down" exemption is different from declaring out of the HMS fishery when not fishing for HMS for two or more trips. A "declaration out" of the HMS fishery only exempts a vessel from the requirement to hail in and hail out of the HMS fishery; the vessel's VMS unit must remain on and must continue to provide hourly position reports even during its time out of the HMS fishery.

Comment 2: Allowing HMS fishermen to hail out as they are leaving port as opposed to two hours in advance of leaving port will shorten the lead time that fishermen must arrive at their vessel prior to departing on a trip.

Response: NMFS received feedback on several occasions from Atlantic HMS fishermen indicating that the requirement to issue a hail-out declaration two hours before leaving port was especially burdensome because of the lead time required prior to trip departure. This final rule allows vessel owners and operators to hail-out when leaving port instead of requiring them to do so two hours in advance. The previous requirement to hail-out two hours in advance of leaving port was meant to ensure NOAA OLE received at least one position report from the vessel while it was still in port. Thus, requiring 24/7 hourly position reports makes hailing-out two hours prior to leaving port unnecessary to accomplish NOAA OLE's enforcement needs.

Comment 3: NMFS received a comment in support of the proposed VMS rule as it allows regulators to better monitor the activities of commercial operators and thus has the potential to provide better protection of at-risk species in the opinion of the commenter.

Response: NMFS agrees that the changes this rule makes to VMS reporting requirements in Atlantic HMS fisheries will allow NMFS and NOAA OLE to better monitor the activities of vessels fishing for or retaining Atlantic HMS, and enforce Atlantic HMS

regulations and closed areas. In doing so, this action may well provide for better protection of any "at risk" species affected by Atlantic HMS fisheries.

Comment 4: NMFS should require half-hourly reporting including speed and location which is especially important for pelagic fisheries to gather information about fishing effort, logbook data, and to effectively implement and enforce time/area closures. Half-hourly reporting is consistent with other federally managed fisheries (e.g., it is required in scallop fisheries) to facilitate enforcement of time/area closures.

Response: While this rulemaking specifies when owners or operators of HMS-permitted vessels are required to provide position reports, it was not the objective of this rulemaking to change the time interval between individual position reports. The time between position reports (i.e., polling frequency) is different for different fisheries. While half-hourly location signals may be practical and necessary in fisheries involving multiple, short dredge tows each day, at this time, such frequent position reports are not necessary to monitor fisheries that use gears that are fished multiple hours at a time as is the case in Atlantic HMS fisheries. In general, most HMS fishing activities, such as steaming to fishing location or setting the gear, are conducted over multiple hours, so having a time interval shorter than an hour between individual position reports is not considered necessary in the HMS fishery at this time to aid in the enforcement of closed areas.

Additionally, many of the closed areas established for HMS fisheries (e.g., § 635.21(c)(2)) encompass large areas that cannot be crossed by fishing vessels in less than an hour. If NOAA OLE determines that changes in the reporting frequency of location signals are necessary in Atlantic HMS fisheries due to enforcement concerns, or if other relevant issues arise, NMFS could revisit this issue in the future.

Comment 5: NMFS needs to provide guidance in the regulations on what commercial fishermen should do when their VMS units are not operating properly due to loss of power resulting from electrical malfunctions or maintenance.

Response: This rulemaking does not change the existing regulations that require affected vessels to possess and use type-approved VMS units. It is the vessel owner's or operator's responsibility to ensure that a VMS unit is working properly. Vessel owners and/or operators experiencing unanticipated power outages, or malfunctions in their VMS units should contact NOAA OLE

to notify them of the situation as soon as possible at 888-219-9228 or 727-824-5344.

Changes From the Proposed Rule

Except for the administrative changes needed to implement portions of the regulations at different times and editorial changes to add clarity, there are no changes from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final action is consistent with the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments, the MSA and National Standards, and other applicable law.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0372. Public reporting burden for hail-out and hail-in declarations are estimated to average 2 minutes per response, or 4.10 hours per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS estimates that the final action, which would allow for long-term declarations out of the fishery, which would exempt vessel owners and operators from hailing in and out for each trip during that time frame, could theoretically reduce the average reporting burden hours for each vessel that declares out of the HMS fishery long-term declaration by as much as 4 hours if it declares out for the entire HMS fishing season. Hourly position reports are not considered a form of reporting burden because they are issued automatically by the VMS unit. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) or by email to *OIRA_Submission@omb.eop.gov*, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB control number.

Regulatory Flexibility Act

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), as required by 5 U.S.C. 604 of the Regulatory Flexibility Act (RFA), to analyze the economic impacts that this final rule would have on small entities. The full FRFA is included below.

Section 604(a)(1) of the RFA requires that the Agency describe the need for, and objectives of, the final rule. A description of the final action, why it is being considered, and the legal basis for this final action are summarized here and described in more detail in the preamble to the proposed rule. The purpose of this final rulemaking, consistent with the MSA and the 2006 Consolidated HMS FMP and its amendments, is to aid NOAA OLE in compliance monitoring and enforcement of HMS fisheries regulations while also minimizing the reporting burden on vessel owners or operators. The final action would provide vessel owners or operators with additional flexibility regarding the hail-out requirement and require that the VMS remain on at all times that VMS use is required unless the vessel operator has obtained a documented power down exemption from NOAA OLE. Specifically, HMS-permitted vessels that are required to use VMS could declare out of the fishery if they do not intend to fish for or retain HMS for two or more consecutive trips. Declaring out exempts the vessel from the requirement to hail-out before every trip (which can be daily for some fisheries) and hail-in before returning from every trip, but does not exempt them from other applicable HMS regulations (e.g., gear requirements, time/area closures, etc.) or from applicable regulations in other fisheries, including VMS requirements. Additionally, the vessel's VMS unit would still need to remain on 24 hours a day, 7 days a week to provide hourly position reports for the duration of the long-term declaration out of the fishery. Requiring VMS units to remain on at all times would mean vessel owners or operators could hail-out when they are actually leaving port rather than having to do so at least two hours in advance. These changes will not affect enforcement capabilities and are, in part, a result of public feedback indicating that the previous hail-out requirements were burdensome. Vessel owners or operators would still be required to hail-in at least three hours before landing, but would also be required to do so no more than 12 hours

before landing. These changes considered the need of NOAA OLE agents to have information on target species and gear being deployed in order to facilitate enforcement of closed areas and other regulations. VMS reporting facilitates monitoring and enforcement of closed areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA.

Section 604(a)(2) requires a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) and statement of any changes made in the proposed rule as a result of such comments. The Agency received comments concerning the IRFA stating that requiring 24/7 hourly position reports would increase reporting costs for Atlantic HMS vessel owners, but that allowing for documented power down exemptions when a vessel remains in port for an extended period will help reduce some of those costs. Requiring vessel owners or operators to provide hourly position reports will result in minor increased costs for some vessel owners whose VMS service plans charge per report. On average, these plans charge approximately \$0.06 per position report or \$1.44 per day, and these costs and the ability of vessel owners to obtain exemptions allowing for a vessel to be powered down for extended periods were reflected in the analysis provided in the IRFA and proposed rule. Also, most VMS service plans charge a flat monthly rate of hourly position reports, and vessel owners with these plans will experience no change in their reporting costs. As such, NMFS did not alter the cost analysis in the FRFA and final rule. No other comments regarding the economic impact were received.

Under 5 U.S.C. 604(a)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. Previously, a business involved in fish harvesting was classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. In addition, SBA

has defined a small charter/party boat entity (NAICS code 713990, recreational industries) as one with average annual receipts of less than \$7.0 million. On June 20, 2013, SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398; June 20, 2013). The rule increased the size standard for Finfish Fishing from \$ 4.0 to 19.0 million, Shellfish Fishing from \$ 4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they all would continue to be considered small under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action. NMFS estimates that this final rule would require 308 vessels deploying either pelagic longline, bottom longline, or gillnet gear in HMS fisheries to use their VMS units to send hourly location reports 24 hours a day, 7 days a week. The action would also allow vessel owners and operators the option to declare out of the HMS fishery for a period of time encompassing two or more trips during which the vessel will not be fishing for or retaining HMS. Such a declaration would exempt the vessel owner or operator from hail-in and hail-out requirements until the vessel resumes fishing for and retaining HMS at which time the vessel will need to resume hailing-out and hailing-in for each trip.

Under section 604(a)(4), Federal agencies must provide a description of the projected reporting, recordkeeping, and other compliance requirements of the rule. This final action will give vessel owners and operators that do not plan to fish for or retain HMS for a period of time encompassing two or more trips the option to declare out of the HMS fishery, which would exempt them from having to hail-out and hail-in for each trip. Additionally, the 308 HMS vessels currently required to use VMS units will be required to leave their VMS units on 24 hours a day, 7 days a week, to issue hourly position reports. This requirement will also allow vessels fishing for HMS to wait until they leave port to hail-out as opposed to being required to do so at least two hours before leaving port. Finally, this final rule will also require vessel owners or operators to hail-in at least three hours before landing, but no more than 12 hours before doing so.

One of the requirements of a FRFA is to describe any alternatives to the rule

that accomplish the stated objectives and that minimize any significant economic impacts (5 U.S.C. 604(a)(5)). These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603 (c)(1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. Thus, none of the alternatives being considered fall under the first and fourth categories described above. Furthermore, because the purpose of this rulemaking is to modify existing VMS reporting requirements, the use of performance standards, such as those mentioned in the third category above, would not be suitable to achieve the goals of this rulemaking. Finally, the modification to the hail-out/hail-in requirement is expected to reduce the burden of reporting for vessels not fishing for or retaining HMS and provide NOAA OLE agents with additional information to accurately monitor fishing activities. Furthermore, the requirement for vessel owners/operators to keep the VMS unit on 24 hours a day, 7 days a week will not increase reporting burden over the current requirement (i.e., only having the VMS on while away from port and at least two hours before leaving port) because the hourly position reports are automated. This action would also eliminate the need for vessel owner or operators to hail-out at least two hours before leaving port, and hourly position reports are included in the base cost of the VMS unit plans offered by most providers. Since the purpose of the requirement to hail-out at least two hours before leaving port was to ensure NOAA OLE received at least one position report from a vessel before it left port, switching to 24 hours a day, 7 days a week reporting under this final rule would make advance hail-outs unnecessary. As such, NMFS has

determined that this rulemaking meets the objectives stated in the second category. NMFS analyzed several alternatives in this rulemaking, and the rationale for selecting the preferred alternatives is provided below.

NMFS considered two categories of issues related to the use of VMS by vessels permitted to fish for Atlantic HMS; each issue had its own set of alternatives. The first category (Alternatives A1–A2) addressed the required frequency of hourly position reports issued by VMS units used by HMS-permitted vessels, and whether vessel operators should be allowed to power down their VMS units between trips. The second category (Alternatives B1–B3) addressed hail-out/hail-in requirements, and proposed the addition of long-term declarations (i.e., ‘declare out of fishery’ option) to the options available to vessels operating under HMS commercial permits. The preferred alternatives included Alternative A2 and Alternative B2. The potential economic impacts that would occur under these preferred alternatives were compared with the other alternatives to determine if economic impacts to small entities could be minimized while still accomplishing the goals of this rule.

For the hourly position reports, Alternative A1, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries which allow vessel operators to power down their VMS units while at port, and require them to power them back on at least two hours before leaving port for their next trip. Alternative A2, the preferred alternative, would require that Atlantic HMS vessels provide hourly position reports 24/7, during those periods of the year in which they are required to use VMS, unless extenuating circumstances (e.g., scheduled maintenance, putting the boat in drydock) warrant powering the VMS unit down. In such circumstances, vessel operators would need to contact NOAA OLE to request a documented power down exemption. Additionally, this alternative would eliminate the requirement for vessel operators to hail-out at least two hours before leaving port, and would instead allow them to wait until they are actually leaving port to hail-out. The justification for the current requirement to hail-out two hours before leaving port was to ensure that VMS units would transmit at least one position report while the vessel was still in port. The proposed change to 24/7 location reporting would obviate the need for this requirement. Alternative A2 would also require vessel operators to hail-in at least three hours before

landing, but no more than 12 hours before doing so. NMFS proposed this change because the open-ended requirement previously specified in the regulations allowed vessel operators to submit hail-in declarations days before landing, making it difficult for enforcement agents to determine when a vessel would actually land.

NMFS estimated the costs of 24/7 hourly position reports for all vessels by calculating the average monthly costs from the five main providers of VMS units and services. The monthly cost of these plans ranges from \$35 to \$50 per month (average cost \$44 per month) and include 24/7 hourly position reports and data costs associated with electronic messaging. It is likely that this pricing model has been adopted because most fisheries using VMS already require 24/7 reporting. Annual costs of compliance for both alternatives for vessel owners are estimated to be \$528, \$308, and \$220 per vessel for pelagic longline, bottom longline, and shark gillnet vessels, respectively (Table 1). NMFS does not anticipate these costs to be different from current monthly VMS costs for most HMS vessel owners since most VMS providers use plans

that include 24/7 hourly position reports and data (for making hail-in/hail-outs and other declarations). For purposes of estimation, NMFS assumed continuous reporting over the course of the year, or that portion of the year in which HMS-permitted vessels are required to use VMS. Additionally, maintenance costs for VMS units are estimated at \$500 per vessel per year, but changing to 24/7 reporting is not expected to affect these costs. Changing to 24/7 position reporting would, however, eliminate the need for vessel operators to hail-out at least two hours before leaving port, thus giving them greater flexibility in scheduling trips. The preferred alternative was selected over the no action alternative because it will provide better reporting information to NOAA OLE for enforcement purposes, reduces the reporting burden on HMS vessel owners and operators, and is not estimated to represent a significant increase in costs for HMS vessel owners and operators.

Next, NMFS considered alternatives to modify hail-in/hail-out reporting requirements to include declarations that can apply to multiple trips. Alternative B1, the no action alternative,

would maintain the requirement to hail-in/hail-out for each fishing trip. HMS vessel owners and operators required to use VMS were required to hail-out before each fishing trip to report which species they will be targeting, and the type of gear they will be fishing, and hail in prior to landing to indicate the location, date, and approximate time they will return to port. Alternative B2, the preferred alternative, would allow vessels not fishing for or retaining HMS for two or more trips to advise NMFS as such by declaring out of the HMS fishery. Vessels that declare out of the fishery would be exempted from hailing-in/hailing-out each trip, but would still be required to follow all other Atlantic HMS regulations including continuing to provide 24/7 position reports on their VMS units. Vessels that have declared out of the fishery would still have the option to land HMS if they catch them incidentally, but would have to first declare back into the HMS fishery by hailing out consistent with 50 CFR 635.69 (e)(5)(ii), and then hailing in at least three hours, and no more than 12 hours, before landing.

TABLE 1—ESTIMATED COSTS OF COMPLIANCE UNDER CURRENT VMS REGULATIONS IN AFFECTED HMS FISHERIES. NO CHANGE IN COSTS IS EXPECTED UNDER THE FINAL RULE FOR MOST VESSELS

	Pelagic longline vessels	Shark bottom longline vessels	Shark gillnet vessels
Monthly E—MTU VMS Unit Plans average including 24/7 Position Reports and data.	\$44.00	\$44.00	\$44.00.
Estimated Days (Months) Fishing/Year	324 (12)	212 (7)	152 (5).
Annual Compliance Costs/Vessel (\$44/month * months fishing/year).	\$528/vessel	\$308/vessel	\$220/vessel.
Annual Compliance Costs + Maintenance Costs (\$500/year).	\$1,028	\$808	\$720.
Annual Number of Fishing Trips	36	212	152.
Number of Affected Vessels	253	25	30.
Annual Cost for all Vessels	\$260,084	\$20,200	\$21,600.

* The declaration costs per trip will vary based upon the number of target species and gear types possessed onboard as operators would be required to submit one declaration for each target fishery/fishing gear type possessed.

Based on public comments received prior to this rulemaking, NMFS assumed that many, if not all, shark gillnet and bottom longline vessel owners or operators would declare out of the HMS fishery for at least part of the season in which they are required to use VMS. NMFS expects few, if any, vessel owners or operators using pelagic longline to declare out of the HMS fishery as most of these vessels target HMS almost exclusively. Therefore, to assess the effect of Alternatives B2 on reporting burden, NMFS estimated the total number of HMS fishing trips that bottom longline vessels from Virginia to South Carolina and shark gillnet vessels could take annually and thus be

required to make daily hail-in/hail-outs (Table 1). The estimates vary by gear type possessed onboard. Bottom longline vessels primarily target large coastal sharks (LCS) and Council-managed species (snapper/grouper, tilefish, etc.). Bottom longline vessels from Virginia to South Carolina (between 33°00' N. latitude and 36°30' N. latitude) are required to use VMS to provide hourly position reports from January 1st to July 31st of each year to facilitate enforcement of the Mid-Atlantic bottom longline closed area. In recent years, except for 2013, the season for LCS in the Atlantic region has not opened until July 15, resulting in a two-week period where vessels could be

fishing for or retaining LCS with bottom longline gear and would be required to use VMS. However, seasons for small coastal sharks (SCS), pelagic sharks, and Council-managed species also require consideration as affected vessels may be fishing for other species with bottom longline gear onboard. NMFS assumes that approximately 50 bottom longline vessels could be fishing (day trips) in the vicinity (between 33°00' N. latitude and 36°30' N. latitude) of the Mid Atlantic bottom longline closed area where VMS is required during the entire 212 day-closure (January 1–July 31), resulting in 212 trips per year. Shark gillnet vessels can target LCS, SCS, and Council-managed species, but have

targeted sharks less in recent years. The gillnet fishery primarily targets SCS and blacktip sharks (included in the aggregate LCS management group in the Atlantic region and as its own management group in the Gulf of Mexico region). Season length for the different shark management groups varies annually based on quota availability, catch rates, and other considerations. Many shark gillnet vessels have been issued permits that allow them to participate in other fisheries using gillnet gear; therefore, to estimate burden, NMFS assumed that affected vessels could be engaged in fishing activities and subject to VMS requirements from November 15–April 15 for the duration of this time period every year (152 days). NMFS also assumed that gillnet and bottom longline vessels would land once every 24 hours to offload catch and procure supplies. Based on public comments received prior to this rulemaking, NMFS expects that many gillnet and bottom longline vessel owners and operators would make long-term declarations out of the fishery if given the option, which would require them to make only one declaration report. However, if HMS are caught during a trip and the vessel operator wishes to land them, they must hail out to declare back into the HMS fishery and then hail in with NOAA OLE at least three hours, and no more than 12 hours, before landing. While NMFS does not expect there to be a difference in costs for vessel owners between Alternatives B1 and B2, Alternative B2 could result in a substantial reduction in reporting burden for vessels not fishing for or retaining HMS. For this reason and because the enforcement capabilities are the same under either alternative, we selected Alternative B2.

Finally, Alternative B3 would have allowed vessels fishing for the same HMS with the same gear for two or more consecutive trips to make long-term declarations into the HMS fishery which would exempt them from making daily hail out declarations, but would still require them to hail in before landing HMS. NMFS determined that pelagic longline vessel owners or operators would be most likely to take advantage of a long-term declaration into the HMS fishery as many of those vessels target HMS almost exclusively. Logbook data (2006–2009) for pelagic longline vessels indicates that across all regions and months of the year, vessels make approximately 6.7 sets per trip. Each set takes approximately one day. For the purpose of estimation, seven sets per trip were used in the following

calculations. Vessels would require at least one day transiting to and from fishing grounds and at least one day in between fishing trips for offloading. Therefore, NMFS estimates that average pelagic longline trips are 10 days (7 days fishing + 2 days transit + 1 day offload/resupply) in duration, meaning vessels could make up to 36 complete trips per year (365 days per year/10 days per trip). Under Alternative B3, aside from the initial long-term declaration into the fishery, declaration reports would only be required prior to landing (1 declaration/trip). Assuming the vessels make 36 trips per year, they would submit 37 declarations (36 trips per year * 1 declaration per trip + 1 long-term declaration into the fishery = 37 declarations per year), which are included in the cost of the VMS unit plans offered by most providers. These calculations would represent a maximum possible burden on pelagic longline vessels in Alternative B3 were adopted. NMFS assumed that costs will vary slightly among individual vessel owners based on the number of days at sea per year, the VMS provider, and the number of messages and reports sent and received using the VMS unit. While NMFS does not expect there to be a difference in costs for vessel operators between Alternatives B1 and B3, Alternative B3 would result in a reduction in reporting burden for vessels exclusively fishing for HMS as they would only have to make one declaration per trip. However, because this alternative would potentially complicate NOAA OLE's ability to monitor vessels fishing for HMS by reducing the frequency of communication with vessel owners or operators, and eliminating notification of when HMS trips are beginning, this alternative was not selected.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

Administrative Procedure Act

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the

30-day delay in effective date for the provision of this rule that allows vessel owners/operators to declare out of the HMS fishery. Under current regulations, vessel owners or operators who have been issued HMS permits but who do not fish for or retain HMS exclusively must hail out every time they leave for a fishing trip. The new "declare out" process in this rule would reduce regulatory burden: under this provision, vessel owners/operators would not be subject to unnecessary reporting requirements when their vessels are not fishing for HMS. There is a need to make this provision effective quickly, because gillnet vessels with a directed shark LAP are required to resume reporting with VMS on November 15, 2013, and NMFS wants to ensure that the declare out optional process is available at that time as the shark fisheries they pursue (Atlantic small and large coastal sharks) are closed until January 1, 2014. Vessel owners/operators will not need time to come into compliance with or take other action with regard to the provision. It is optional, and vessel owners/operators can "declare out" using their existing approved VMS units. For the above reasons, the delay in effective date is waived for the "declare out" provision, and the provision will be effective immediately upon the filing of this final rule with the Office of the Federal Register.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: November 12, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.69, effective November 14, 2013, paragraph (e)(4) is added and reserved, and paragraph (e)(5) is added to read as follows:

§ 635.69 Vessel monitoring systems.

* * * * *

(e) * * *

(4) [Reserved]

(5) Vessel owners or operators that decide not to fish for or retain HMS for a period of time encompassing two or more trips may follow the requirements of this paragraph (e)(5) in lieu of paragraphs (e)(2) and (e)(3) of this section.

(i) If a vessel owner or operator decides not to fish for or retain HMS for a period of time encompassing two or more trips, that owner or operator may choose to "declare out" of the fishery. To "declare out," the vessel owner or operator must contact NMFS using an attached VMS terminal to indicate the operator does not plan to fish for or retain HMS. By "declaring out" of the HMS fishery, the vessel owner or operator is exempt from the requirements of paragraphs (e)(2) and (e)(3) of this section, unless the circumstances described in paragraph (e)(5)(ii) of this section apply, but must still comply with all other HMS regulations that are applicable to the vessel including area and gear closures.

(ii) If a vessel owner or operator has advised NMFS that it will not be fishing for or retaining HMS as described in paragraph (e)(5)(i) of this section, but incidentally catches and retains any HMS while fishing, the vessel owner is required to change the target species declaration and advise NMFS, as described in paragraph (e)(2) of this section while at sea before landing with any HMS. The vessel must also report advance notice of landing to NMFS as described in paragraph (e)(3) of this section.

(iii) Once the vessel owner or operator changes the declaration per paragraph (e)(5)(ii) of this section, that vessel is assumed to be fishing under the requirements of paragraphs (e)(1) through (e)(3) of this section until the vessel owner or operator makes another declaration under paragraph (e)(5) of this section.

* * * *

■ 3. In § 635.69, effective December 16, 2013, paragraphs (a)(1) through (3), the introductory text of paragraph (d), and paragraphs (e)(1) through (3) are revised, to read as follows:

§ 635.69 Vessel monitoring systems.

(a) * * *

(1) Whenever the vessel has pelagic longline gear on board;

(2) Whenever a vessel issued a directed shark LAP, has bottom longline gear on board, is located between 33°00' N. lat. and 36°30' N. lat., and the mid-Atlantic shark closed area is closed as specified in § 635.21(d)(1); or

(3) Whenever a vessel issued a directed shark LAP has gillnet gear on board from November 15–April 15.

* * * *

(d) *Installation and activation.* Only an E-MTU VMS that has been approved by NMFS for Atlantic HMS Fisheries may be used. Any VMS unit must be installed by a qualified marine electrician. When any NMFS-approved E-MTU VMS is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

* * * *

(e) * * *

(1) Owners or operators of vessels subject to requirements specified in paragraph (a) of this section must ensure the VMS unit is on so that it will submit automatic position reports every hour, 24 hours a day. Except as otherwise noted in this paragraph (e)(1), the VMS unit must always be on, operating and reporting without interruption, and NMFS enforcement must receive hourly position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement. Owners of vessels may request a documented power down exemption from NMFS enforcement if the vessel will not be fishing for an extended period of time. The request must describe the reason an exemption is being requested; the location of the vessel during the time an exemption is sought; the exact time period for which an exemption is needed (*i.e.*, the time the VMS signal will be turned off and turned on again); and sufficient information to determine that a power down exemption is appropriate. Approval of a power down must be documented and will be granted, at the discretion of NMFS enforcement, only in certain circumstances (*e.g.*, when the vessel is going into dry dock for repairs, or will not be fishing for an extended period of time).

(2) *Hailing out.* Prior to departure for each trip, a vessel owner or operator must initially report to NMFS declaring any highly migratory species the vessel will target on that trip and the specific type(s) of fishing gear that will be on board the vessel, using NMFS-defined gear codes. If the vessel owner or operator participates in multiple HMS fisheries, or possesses multiple fishing gears on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. If, during the trip, the vessel switches to a gear type or species group not reported on

the initial declaration, another declaration must be submitted before this fishing begins. This information must be reported to NMFS using an attached VMS terminal or using another method as instructed by NMFS enforcement.

(3) *Hailing in.* A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this paragraph (e)(3), landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours and no more than 12 hours in advance of landing regardless of trip duration. This information must be reported to NMFS using an attached VMS terminal and must include the date, approximate time, and location of landing.

* * * *

[FR Doc. 2013-27418 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130528511-3935-02]

RIN 0648-BD31

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Commercial, Limited Entry Pacific Coast Groundfish Fishery; Program Improvement and Enhancement

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

ACTION: Final rule.

SUMMARY: This action implements revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program, and includes clarifications of regulations that affect the limited entry trawl and limited entry fixed gear sectors managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action implements trailing actions for the program that are either original provisions of the program, such as quota share (QS) permit application and transfer regulations, or are provisions that increase flexibility or efficiency, or address minor revisions/clarifications.

DATES: Effective on January 1, 2014, except for the amendments to § 660.140(e)(3)(iii)(B), which will be effective December 15, 2013.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; or by phone at 206-526-6150. Copies of the Small Entity Compliance Guide are also available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/index.html>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, and to OMB by email to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206-526-4491; (fax) 206-526-6736; Ariel.Jacobs@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented the trawl rationalization program for the Pacific coast groundfish fishery's trawl fleet (75 FR 78344; Dec. 15, 2010). The program was adopted in 2010 through Amendments 20 and 21 to the FMP and consists of an Individual Fishing Quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Since that time, the Pacific Fishery Management Council (Council) and NMFS have been addressing implementation issues as they arise, some of which are the subject of this final rule. This action includes the following, by category of (A) implementation of original program, (B) increasing flexibility or efficiency, and (C) minor revisions/clarifications:

(A) Implementation of Original Program

1. Establish quota share (QS) permit application and QS transfer regulations.

(B) Increasing Flexibility or Efficiency

2. Clarify exceptions for lenders from control rules,

3. Change the opt-out requirement for quota pound (QP) deficits,

4. Eliminate double filing of co-op reports (November and March),

5. Revise first receiver site license requirements (FRSL), including site inspection and expiration date, and

6. Remove end of the year ban on QP transfers between vessel accounts.

(C) Minor Revisions/Clarifications

7. Remove the term "permit holder" from groundfish regulations and replace with "vessel owner," "permit owner," or "owner of a vessel registered to a limited entry permit," as applicable,

8. Revise the process for a permit holder (vessel owner) to change their vessel ownership,

9. Clarify that the processor obligation may be to more than one MS permit,

10. Revise the mothership catcher vessel (MS/CV) endorsement restriction given severability,

11. Clarify sorting requirement for full retention so "predominant species" means only one species,

12. Clarify the accumulation limits calculation for compliance with the annual QP vessel limit in vessel accounts,

13. Add a prohibition against failing to establish a new vessel account, following a change in vessel ownership, prior to fishing in the Shorebased IFQ program, and

14. Add a prohibition against landing fish from an IFQ trip to a first receiver without a valid FRSL.

Each of these items, along with additional background information, was described in detail in the proposed rule (78 FR 43125, July 19, 2013), and that information is not repeated here.

NMFS is currently involved in ongoing litigation regarding the initial allocation of whiting quota to the shoreside and mothership sectors of the trawl rationalization program. The outcome of this litigation may affect existing quota share allocation amounts, and could potentially affect or delay quota share trading, which is scheduled to begin January 1, 2014 under existing regulations (78 FR 18879).

Comments and Responses

NMFS solicited public comment on the second program improvement and enhancement rule ("PIE 2") (78 FR 43125, July 19, 2013). The proposed rule also included a collection-of-information requirement subject to review and approval under the Paperwork Reduction Act (PRA). Public comment was also sought regarding potential impacts to the public due to this collection of information requirement. The comment period ended on August 19, 2013; no public comments were received on either the proposed rule or the collection of information requirement.

Changes From the Proposed Rule

No changes were made from the proposed rule.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP. The Amendment 20 and 21 EISs are available on the Council's Web site at <http://www.pcouncil.org/>. The regulatory changes in this rule were categorically excluded from the requirement to prepare a NEPA analysis.

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

The preamble to the proposed rule (78 FR 43125, July 19, 2013) included a detailed summary of the analyses contained in the IRFA. NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared a FRFA in support of this rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA, per the requirements of 5 U.S.C. 604(a), follows:

As described above, this action implements revisions to the Pacific Coast Groundfish Trawl Rationalization Program (program), a catch share program. This action implements trailing actions that either implement original provisions of the program, modify it to increase the industry's flexibility or efficiency, or make minor revisions/clarifications to the existing regulations. There were no significant issues raised by the public comments in response to the IRFA. No public comments were received on either the proposed rule or the collection of information requirement.

As discussed in the proposed rule, this rule affects the following sectors/programs: Shorebased Individual Fishing Quota (IFQ) Program—Trawl Fishery, Mothership Coop (MS) Program—Whiting At-sea Trawl Fishery, and Catcher-Processor (C/P) Coop Program—Whiting At-sea Trawl Fishery. In 2012, these fleets generated about \$79 million in ex-vessel revenue: \$11 million by the MS sector, \$16 million by the CP sector, and \$52 million by the Shorebased IFQ Program. This rule also affects lenders that provide short-term inventory, credit, agricultural lending, and consumer cash

lending secured by personal property (NAICS 522298—All Other Nondepository Credit Intermediation).

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the US, including fish harvesting and fish processing businesses. However, since publication of the proposed rule, a final rule was issued by the SBA that increased the size standard for Finfish Fishing from \$4.0 million to \$19 million (78 FR 37398). A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$19.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. Prior to SBA's recent changes to the size standards for commercial harvesters, a business involved in both the harvesting and processing of seafood products, also referred to as a catcher/processor (CP), was considered a small business if it met the \$4.0 million criterion for commercial fish harvesting operations. In light of the new size standards for commercial harvesters, NMFS is reviewing the size standard for CPs. However, for purposes of this rulemaking, NMFS is applying the \$19.0 million standard because whiting CPs are involved in the commercial harvest of finfish. For NAICS 522298 lenders, the size standard is \$7.0 million.

As part of the permit application processes for the non-tribal fisheries, applicants are asked if they considered themselves a "small" business and to provide detailed ownership information. Many companies participate in two or more of these sectors. All MS/CV participants are involved in the shorebased IFQ sector while two of the three CP companies also participate in both the shorebased IFQ sector and in the MS sector. Many companies own several QS accounts and vessel accounts. Taking into account cross participation, multiple accounts, and affiliation between entities, NMFS estimates that there are 145 fishery related entities directly affected by these proposed regulations, 102 of which are considered to be "small" businesses. Overall, NMFS estimates that there are approximately 730 affected entities, 695 of which are "small" businesses.

The change in the size standard for vessels that harvest finfish does not change NMFS' conclusions about this rule. This rule is administrative in nature and will not have a significant, negative impact on small entities. Some of these changes were recommended by the industry to increase flexibility or efficiency. This rule is likely to have beneficial effects on small entities. Instituting provisions that allow fishermen to trade their quota shares should allow fishermen and the fishery to achieve the full benefits of the IFQ program as identified in (75 FR 78344; Dec. 15, 2010). Increasing the availability of loans to fishermen by providing non-traditional lenders increased opportunity to make additional loans should also be beneficial to small entities.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office, and the guide will be sent to all limited entry and quota share permit owners, vessel account holders, and first receiver site license holders for the fishery. The guide and this final rule will also be available on the West Coast Region's Web site (see **ADDRESSES**) and upon request.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been approved by OMB under control number 0648-0620. NMFS received no comments on the proposed rule regarding this information collection. Public reporting burden for the QS permit/account application form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the online QS transfer form is estimated to average 10 minutes per response, including the time for

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the online QP transfer form (from a QS account to a vessel account, or vessel account to another vessel account) is estimated to average 8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the trawl identification of ownership interest form for new entrants, including lenders, is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the first receiver site license application form for re-registering applicants is estimated to average 110 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the mothership cooperative permit application form is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public reporting burden for the catcher/processor cooperative permit application form is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS, West Coast Region at the **ADDRESSES** above, and email to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule was developed after meaningful collaboration, through the Council process, with the tribal

representative on the Council. The regulations have no direct effect on the tribes.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: November 8, 2013.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

§ 660.11 [Amended]

■ 2. In § 660.11, remove the definition for “Permit holder”.

■ 3. In § 660.12, revise paragraph (a)(8) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(8) Fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, ACT, ACL or OY applied; except as specified at § 660.130(d).

* * * * *

■ 4. In § 660.25:

- a. Revise paragraphs (b)(3)(ii), (b)(3)(iv)(C)(4), (b)(3)(vii), and the heading of paragraph (b)(4);
- b. Add paragraph (b)(4)(i)(G); and
- c. Revise the heading of paragraph (b)(4)(iv), and paragraphs (b)(4)(iv)(A) through (C), (b)(4)(v)(B) and (D), (b)(4)(vi)(B), (b)(4)(vii) introductory text, (b)(4)(vii)(A) through (C), (b)(4)(viii), and (g)(1).

The revisions and addition read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(3) * * *

(ii) *Gear endorsement.* There are three types of gear endorsements: Trawl, longline, and pot (trap). When limited

entry “A”-endorsed permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry “A”-endorsed permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry “A”-endorsed permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, fixed gear primary fishery for sablefish described at § 660.231, a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. Vessels registered to limited entry permits may be used to fish with open access gear, subject to the crossover provisions at § 660.60(h)(7)(ii), except that vessels registered to sablefish-endorsed permits fishing in the sablefish primary season described at § 660.231, may not fish with open access gear against those limits. An MS permit does not have a gear endorsement.

* * * * *

(iv) * * *

(C) * * *

(4) Any partnership or corporation with any ownership interest in a limited entry permit with a sablefish endorsement or in the vessel registered to the permit shall document the extent of that ownership interest with NMFS via the Identification of Ownership Interest Form sent to the permit owner through the annual permit renewal process and whenever a change in permit owner, vessel owner, and/or vessel registration occurs as described at paragraph (b)(4)(iv) and (v) of this section. NMFS will not renew a sablefish-endorsed limited entry permit through the annual renewal process described at paragraph (b)(4)(i) of this section, or approve a change in permit owner, vessel owner, and/or vessel registration unless the Identification of Ownership Interest Form has been completed. Further, if NMFS discovers through review of the Identification of Ownership Interest Form that an individual person, partnership, or corporation owns or holds more than 3 permits and is not authorized to do so under paragraph (b)(3)(iv)(C)(2) of this section, the individual person, partnership or corporation will be notified and the permits owned or held by that individual person, partnership, or corporation will be void and reissued

with the vessel status as “unidentified” until the permit owner owns and/or holds a quantity of permits appropriate to the restrictions and requirements described in paragraph (b)(3)(iv)(C)(2) of this section. If NMFS discovers through review of the Identification of Ownership Interest Form that a partnership or corporation has had a change in membership since November 1, 2000, as described in paragraph (b)(3)(iv)(C)(3) of this section, the partnership or corporation will be notified, NMFS will void any existing permits, and reissue any permits owned and/or held by that partnership or corporation in “unidentified” status with respect to vessel registration until the partnership or corporation is able to register ownership of those permits to persons authorized under this section to own sablefish-endorsed limited entry permits.

* * * * *

(vii) *Endorsement and exemption restrictions.* “A” endorsements, gear endorsements, sablefish endorsements and sablefish tier assignments, and C/P endorsements may not be registered to another permit owner (i.e., change in permit ownership or ownership interest) or to another vessel (i.e., change in vessel registration) separately from the limited entry permit. At-sea processing exemptions, specified at paragraph (b)(6) of this section, are associated with the vessel and not with the limited entry permit and may not be registered to another permit owner or to another vessel without losing the exemption.

(4) *Limited entry permit actions—renewal, combination, stacking, change of permit owner or vessel owner, and change in vessel registration.*

(i) * * *

(G) At the time of renewal, NMFS will notify owners of limited entry permits and vessel owners if vessel ownership information for a vessel registered to the permit is not current. NMFS will not renew a limited entry permit registered to a vessel for which vessel ownership information is not current.

* * * * *

(iv) *Changes in permit owner and/or vessel owner — (A) General.* Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(vii) and (viii) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in

permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), and § 660.150(f)(3), respectively. NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with USCG or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

(B) *Effective date.* The change in permit ownership or change in the vessel holding the permit will be effective on the day the change is approved by NMFS, unless there is a concurrent change in the vessel registered to the permit. Requirements for changing the vessel registered to the permit are described at paragraph (b)(4)(v) of this section.

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new permit owner or vessel owner during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the

applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(v) * * *

(B) *Application.* Change in vessel registration applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(vii) and (viii) of this section. At a minimum, a permit owner seeking to change vessel registration of a limited entry permit shall submit to NMFS a signed application form and his/her current limited entry permit before the first day of the cumulative limit period in which they wish to fish. If a permit owner provides a signed application and current limited entry permit after the first day of a cumulative limit period, the permit will not be effective until the succeeding cumulative limit period. NMFS will not approve a change in vessel registration until it receives a complete application, the existing permit, a current copy of the USCG 1270, and other required documentation.

* * * * *

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through October 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(vi) * * *

(B) *Limited entry fixed gear and trawl-endorsed permits (without MS/CV or C/P endorsements).* Limited entry fixed

gear and trawl-endorsed permits (without MS/CV or C/P endorsements) may not be registered for use with a different vessel more than once per calendar year, except in cases of death of a vessel owner or if the vessel registered to the permit is totally lost as defined in § 660.11. The exception for death of a vessel owner applies for a vessel owned by a partnership or a corporation if the person or persons with at least 50 percent of the ownership interest in the entity dies.

* * * * *

(vii) *Application and supplemental documentation.* Permit owners may request a change in vessel registration and/or change in permit owner or vessel owner by submitting a complete application form. In addition, a permit owner applying for a change in vessel registration and/or change in permit owner of a limited entry permit has the burden to submit evidence to prove that qualification requirements are met. If a change in vessel owner occurs, the new vessel owner has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

(A) For a request to change a vessel registration and/or change a permit owner or vessel owner, the permit owner must provide NMFS with a current copy of the USCG Form 1270 for vessels of 5 net tons or greater, or a current copy of a state registration form for vessels under 5 net tons.

(B) For a request to change a vessel registration and/or change a permit owner or vessel owner for sablefish-endorsed permits with a tier assignment for which a corporation or partnership is listed as permit owner and/or vessel owner, an Identification of Ownership Interest Form must be completed and included with the application form.

(C) For a request to change a permit owner for an MS permit or for a request to change a vessel registration and/or change a permit owner or vessel owner for an MS/CV-endorsed limited entry trawl permit, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

(viii) *Application forms available.* Application forms for a change in vessel registration, permit owner, or vessel owner are available at: NMFS West Coast Region, Sustainable Fisheries Division, ATTN: Fisheries Permit Office, 7600 Sand Point Way NE., Seattle, WA 98115; or http://www.westcoast.fisheries.noaa.gov/fisheries/management/groundfish_permits/limited_entry_permits.html.

Contents of the application, and required supporting documentation, are also specified in the application form. Only complete applications will be processed.

* * * * *

(g) * * *

(1) *General.* For permit actions, including issuance, renewal, change in vessel registration and/or change in permit owner or vessel owner, and endorsement upgrade, the Assistant Regional Administrator for Sustainable Fisheries will make an IAD on the action. In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs regarding issuance, renewal, change in vessel registration and/or change in permit owner or vessel owner, and endorsement upgrade, will be made in writing by the Regional Administrator acting on behalf of the Secretary of Commerce and will state the reasons therefore. This section describes the procedures for appealing the IAD on permit actions made in this title under subparts C through G of part 660. Additional information regarding appeals of an IAD related to the trawl rationalization program is contained in the specific program sections under subpart D of part 660.

* * * * *

■ 5. In § 660.111, under the definition of "Accumulation limits", revise paragraph (1)(ii) to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Accumulation limits * * *

(1) * * *

(ii) *Vessel limits* means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year, and specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit), as described at § 660.140(e)(4). Compliance with the QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account.

* * * * *

■ 6. In § 660.112, add paragraphs (b)(1)(xvi) and (xvii), and revise paragraph (b)(2)(ii) to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(b) * * *

(1) * * *

(xvi) Fail to establish a new registered vessel account in the name of the

current vessel owner, following a change in ownership of a vessel, prior to fishing in the Shorebased IFQ Program with that vessel.

(xvii) Land groundfish taken and retained during an IFQ trip, from the vessel that harvested the fish, to a first receiver that does not hold a valid first receiver site license for the physical location where the IFQ landing occurred.

* * * * *

(2) * * *

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.130(d)(2) for the Shorebased IFQ Program, with the following exception. Vessels with a valid Shorebased IFQ Program declaration as specified at § 660.13(d)(5)(iv)(A) making an IFQ landing, may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all catch in the landing other than the single predominant species must then be reweighed. The weight of a single predominant species is determined by deducting the weight of all other species from the total weight of the landing.

* * * * *

■ 7. In § 660.113, revise paragraphs (c)(3) and (d)(3) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(c) * * *

(3) *Annual coop report.* The designated coop manager for the mothership coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

- (i) The mothership sector's annual allocation of Pacific whiting and the permitted mothership coop allocation;
- (ii) The mothership coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;
- (iii) A description of the method used by the mothership coop to monitor performance of coop vessels that participated in the fishery;
- (iv) A description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; and
- (v) Plans for the current year's mothership coop fishery, including the

companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

* * * * *

(d) * * *

(3) *Annual coop report.* The designated coop manager for the C/P coop must submit an annual report to NMFS and the Council by March 31 each year, before a coop permit is issued for that year. The annual coop report will contain information about the previous year's fishery, including:

- (i) The C/P sector's annual allocation of Pacific whiting;
- (ii) The C/P coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;
- (iii) A description of the method used by the C/P coop to monitor performance of cooperative vessels that participated in the fishery;
- (iv) A description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; and
- (v) Plans for the current year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

* * * * *

■ 8. In § 660.130, revise paragraphs (d)(2)(i), (d)(2)(ii) and (d)(3)(i) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) * * *

(2) * * *

(i) *First receivers.* Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, with the following exception. Vessels with a valid Shorebased IFQ Program declaration as specified at § 660.13(d)(5)(iv)(A) making an IFQ landing, may weigh catch on a bulk scale or automatic hopper scale before sorting as described at § 660.140(j)(2)(viii), for Pacific whiting taken with midwater trawl gear, and at § 660.140(j)(2)(ix)(A), for all other IFQ landings. For this exception, all catch in the landing other than the single predominant species must then be reweighed. The weight of a single predominant species is determined by deducting the weight of all other species from the total weight of landing.

(ii) *Catcher vessels.* All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

(3) * * *

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for and the weight of incidental catch deducted from the total catch weight to derive the weight of a single predominant species.

* * * * *

- 9. In § 660.140,
- a. Revise paragraph (b)(1)(iii);
- b. Add paragraph (d)(2)(iii), revise paragraphs (d)(3)(i)(A) and (C), (d)(3)(ii)(B)(2) and (d)(3)(ii)(B)(3)(ii), remove paragraph (d)(3)(ii)(B)(3)(iii), and revise paragraph (d)(4)(iii);
- c. Revise paragraphs (e)(3)(iii)(B), (e)(4)(i), and (e)(5)(ii)(A);
- d. Revise paragraphs (f)(2)(ii), (f)(3) introductory text, (f)(3)(i) and (ii), (f)(3)(iii)(A) and (B), add paragraph (f)(3)(iii)(C)(12), and revise paragraph (f)(3)(iii)(D);
- e. Revise paragraphs (f)(5) and (f)(6); and
- f. Revise paragraphs (j)(2)(viii) and (j)(2)(ix)(B), to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(b) * * *

(1) * * *

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 calendar days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover provision at paragraph (e)(5) of this section, in which case the vessel account owner must declare out of the Shorebased IFQ Program, and must eliminate the deficit prior to re-entry

into the fishery in the current year, or within 30 days after the issuance of QP or IBQ pounds for the following year.

* * * * *

(d) * * *

(2) * * *

(iii) *QS permit application process.* NMFS will accept a QS permit application from January 1 to November 30 of each calendar year. QS permit applications received between December 1 and December 31 will be processed by NMFS in the following calendar year. NMFS will issue only one QS permit to each unique person, as defined at § 660.11 subject to the eligibility requirements at paragraph (d)(2)(i) of this section. Each applicant must submit a complete application. A complete application includes a QS permit application form, payment of required fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under paragraph (d)(4)(iv) of this section, and a complete economic data collection form if required under § 660.114. NMFS may require additional documentation as it deems necessary to make a determination on the application. The QS permit application will be considered incomplete until the required information is submitted.

(A) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the QS permit serves as the IAD. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) *Effective date.* The QS permit is effective on the date given on the permit and remains effective until the end of the calendar year.

(C) *Appeals.* If NMFS does not accept the QS permit application, the applicant may appeal the IAD consistent with the general permit appeals process defined at § 660.25(g).

(3) * * *

(i) * * *

(A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in effect the following year. A complete QS permit renewal package must be received by NMFS no later than November 30 to be accepted by NMFS. A QS permit owner may submit a paper renewal package after January 1 of the

following year as described in paragraph (d)(3)(i)(C) of this section.

* * * * *

(C) A complete QS permit renewal package must be received by November 30 of each calendar year. If a complete QS permit renewal package is not received by November 30, NMFS will not renew the QS permit, the associated QS account will not be activated in the following calendar year, and QS may not be transferred. NMFS will not issue QP or IBQ pounds associated with the non-renewed QS permit for that year. Any QP or IBQ pounds derived from the QS or IBQ in the inactive QS account will be distributed to the active QS accounts in proportion to the QS or IBQ for each IFQ species given on the renewed QS permit. If a QS permit is not renewed during the October 1 through November 30 renewal period, the QS permit owner may renew after January 1 in the following year by submission of a paper renewal application, or may renew the QS permit during the next October 1 through November 30 renewal period. For renewals submitted after January 1, QPs allocated as specified at paragraph (d)(1) of this section will not be allocated to the QS account in that year. The QS permit owner will be able to transfer QS percentages from the time the QS account is activated until November 30 of that calendar year.

* * * * *

(ii) * * *

(B) * * *

(2) *Transfer of QS or IBQ between QS accounts.* Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. The prohibition on transferability of widow rockfish QS is extended indefinitely pending final action on reallocation of widow rockfish QS, or a NMFS determination that no such reallocation will occur, except under U.S. court order or authorization and as approved by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (i.e., greater than or equal to 0.001%). QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the

following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

* * * * *

(3) * * *

(i) The QS account transfer function will be reactivated by NMFS from the date that QS accounts are credited with additional QP to allow QS permit owners to transfer QP to vessel accounts only for those IFQ species with additional QP.

(4) * * *

(iii) *Control*. Control means, but is not limited to, the following:

(A) The person has the right to direct, or does direct, in whole or in part, the business of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(B) The person has the right to limit the actions of or replace, or does limit the actions of or replace, the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(C) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans as described under paragraph (d)(4)(iii)(G) of this section, has the right to direct, or does direct, and/or the right to prevent or delay, or does prevent or delay, the transfer of QS or IBQ, or the resulting QP or IBQ pounds;

(D) The person, through loan covenants or any other means, has the right to restrict, or does restrict, and/or has a controlling influence over the day to day business activities or management policies of the entity to which the QS or IBQ are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(E) The person, has the right to restrict, or does restrict, any activity related to QS or IBQ or QP or IBQ pounds, including, but not limited to, use of QS or IBQ, or the resulting QP or IBQ pounds, or disposition of fish harvested under the resulting QP or IBQ pounds, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(F) The person has the right to control, or does control, the management of, or to be a controlling factor in, the entity to which the QS or IBQ, or the resulting QP or IBQ pounds, are registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section;

(G) The person, excluding banks and other financial institutions that rely on QS or IBQ as collateral for loans, has the right to cause or prevent, or does cause or prevent, the sale, lease or other disposition of QS or IBQ, or the resulting QP or IBQ pounds; and

(1) To qualify for this exception, a bank or other financial institution must be regularly or primarily engaged in the business of lending and not engaged in or controlled by entities whose primary business is the harvesting, processing, or distribution of fish or fish products.

(2) Any state or federally chartered bank or financial institution that meets the requirement of paragraph (d)(4)(iii)(G)(1) of this section does not need to submit additional information to NMFS.

(3) Any entity that is not a state or federally chartered bank or financial institution, must submit a letter requesting the exception and disclose the identity and interest share of any shareholder with a 2% or more ownership interest in the lender through submission of the Trawl Identification of Ownership Interest Form (see paragraph (d)(4)(iv) of this section). The lender must make subsequent annual submissions of the letter and Trawl Identification of Ownership Interest Form to maintain the exception. Letters requesting the exception and complete Trawl Identification of Ownership Interest Forms may be submitted to NMFS, West Coast Region, Permits Office, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only accept complete applications.

(H) The person has the ability through any means whatsoever to control or have a controlling influence over the entity to which QS or IBQ is registered, with the exception of those activities allowed under paragraphs (d)(4)(iii)(C) and (G) of this section.

* * * * *

(e) * * *

(3) * * *

(iii) * * *

(B) *Transfer procedures*. QP or IBQ pound transfers from one vessel account to another vessel account must be accomplished via the online vessel account. To make a transfer, a vessel account owner must initiate a transfer

request by logging onto the online vessel account. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: IFQ species, amount of QP or IBQ pounds to be transferred for each IFQ species (in whole pound increments); name and any other identifier of the eligible transferee (e.g., USCG documentation number or state registration number, as applicable) of the eligible vessel account receiving the transfer; and the value of the transferred QP or IBQ pounds. The online system will verify whether all information has been entered and whether the transfer complies with vessel limits, as applicable. If the information is not accepted, an electronic message will record as much in the transferor's vessel account explaining the reason(s). If the information is accepted, the online system will record the pending transfer in both the transferor's and the transferee's vessel accounts. The transferee must approve the transfer by electronic signature. If the transferee accepts the transfer, the online system will record the transfer and confirm the transaction in both accounts through a transaction confirmation notice. Once the transferee accepts the transaction, the transaction is final and permanent. QP or IBQ pounds may be transferred between vessel accounts at any time during January 1 through December 31 each year unless otherwise notified by NMFS.

* * * * *

(4) * * *

(i) *Vessel limits*. For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

* * * * *

(5) * * *

(ii) * * *

(A) The vessel account owner declares out of the Shorebased IFQ Program for the year in which the deficit occurred. The vessel account owner must submit a signed, dated, and notarized letter to OLE, declaring out of the Shorebased IFQ Program for the remainder of the

year and invoking the carryover provision to cover the deficit. Signed, dated, and notarized letters may be submitted to NMFS, West Coast Region, Office of Law Enforcement, ATTN VMS, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. If the vessel account owner covers the deficit later within the same calendar year, the vessel may re-enter the Shorebased IFQ Program. If the deficit occurs less than 30 days before the end of the calendar year, exiting out of the Shorebased IFQ Program for the remainder of the year is not required.

* * * * *

- (f) * * *
(2) * * *

(ii) An IFQ first receiver must have a separate first receiver site license for each unique physical location where the IFQ first receiver will receive, purchase or take custody, control, or take possession of an IFQ landing from a vessel.

* * * * *

(3) Application process. Persons interested in being licensed as an IFQ first receiver for a specific physical location must submit a complete application for a first receiver site license to NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115. NMFS will only consider complete applications for approval. A complete application includes:

(i) State license. The license owner must provide a copy of a valid license issued by the state in which they operate that allows the person to receive fish from a catcher vessel.

(ii) Application form. A completed IFQ first receiver application form provided by NMFS, signed and dated by an authorized representative of the first receiver. To be considered complete, the form must also be notarized.

* * * * *

- (iii) * * *

(A) Catch monitoring plan review process. NMFS will accept a catch monitoring plan if it includes all the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. A site inspection is required for new first receiver site licenses. For re-registration of an existing first receiver site license, the site must be inspected at least once every three years or more frequently, as deemed necessary by NMFS, or by a NMFS designated representative. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be required of the first receiver.

(B) Arranging a site inspection. After receiving a complete application for a first receiver site license, if a site inspection is required, NMFS will contact the applicant to schedule a site inspection. A complete application for a first receiver site license must include the proposed catch monitoring plan. NMFS may request a representative of the first receiver to be at the site at the time of inspection. If the requested representative of the first receiver is not made available for the inspection, the site inspection may be postponed until the requested representative of the first receiver is made available.

(C) * * *

(12) Applicant contact. Print the name of the first receiver, physical location of the first receiver, name and phone number of the applicant, and the date of the application. The applicant must sign the catch monitoring plan.

(D) Catch monitoring plan acceptance period and changes. NMFS will accept a catch monitoring plan if it includes the required elements specified in paragraph (f)(3)(iii)(C) of this section and conforms with the actual operations and layout at the site. For the first receiver site license to remain in effect, the owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

* * * * *

(5) Effective dates. The first receiver site license is valid from the effective date identified on the license until June 30, or until the state license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. A first receiver site license may not be valid for more than 365 days.

(6) Re-registration of FRSL in subsequent years. Existing first receiver site license holders must reapply annually by following the application process specified in paragraph (f)(3) of this section. If the existing license holder fails to reapply, the first receiver site license will expire as specified in paragraph (f)(5) of this section. For existing first receiver site license holders to continue to receive IFQ landings without a lapse in the effectiveness of their first receiver site license, the following re-registration deadlines apply:

(i) NMFS will mail a first receiver site license application to existing license holders on or about February 1 each year.

(ii) Applicants who want to have their new license effective for July 1 must submit their complete re-registration application to NMFS by April 15. For

those first receiver site license holders who do not submit a complete re-registration application by April 15, NMFS may not be able to issue the new license by July 1 of that calendar year, and will issue the new license as soon as practicable.

* * * * *

- (j) * * *
(2) * * *

(viii) Pacific whiting. For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use an in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified at § 660.130(d) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of a single predominant species.

(ix) * * *

(B) An in-line conveyor or automatic hopper scale may be used to weigh the single predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

* * * * *

■ 10. In § 660.150, revise paragraphs (c)(7)(i), (d)(1)(iii)(A)(1)(j), and (g)(2)(iv)(D) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

- (c) * * *
(7) * * *

(i) Processor obligation. Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment.

* * * * *

- (d) * * *
(1) * * *
(iii) * * *
(A) * * *
(1) * * *

(j) A list of all vessels and permit owners participating in the coop and their share of the allocated catch history assignments which must match the amount distributed to individual permit owners by NMFS.

* * * * *

- (g) * * *

- (2) * * *
- (iv) * * *

(D) A limited entry trawl permit owner with multiple MS/CV-endorsements and associated CHA on a single permit may assign each distinct MS/CV endorsement and catch history assignment separately to coop(s) or the non-coop fishery. In such cases, as part of the coop permit application process, specified at paragraph (d)(1)(iii) of this section, the permit owner must specify on the coop permit application form which MS/CV endorsement and associated CHA is specifically registered to a particular coop.

* * * * *

■ 11. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

- (d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through October 31 or,

for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

■ 12. In § 660.216, revise paragraph (a)(1) to read as follows:

§ 660.216 Fixed gear fishery—observer requirements.

- (a) * * *

(1) When NMFS notifies the vessel owner, operator, or the manager of a catcher vessel, specified at § 660.16(c), of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

* * * * *

■ 13. In § 660.231, revise paragraph (b)(1) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

- (b) * * *

(1) *Season dates.* North of 36° N. lat., the sablefish primary season for the limited entry, fixed gear, sablefish-

endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on October 31, or closes for an individual vessel owner when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

* * * * *

■ 14. In § 660.316, revise paragraph (a)(1) to read as follows:

§ 660.316 Open access fishery—observer requirements.

- (a) * * *

(1) When NMFS notifies the vessel owner, operator, or the vessel manager of a catcher vessel, specified at § 660.16(c), of any requirement to carry an observer, the catcher vessel may not be used to fish for groundfish without carrying an observer.

* * * * *

[FR Doc. 2013-27417 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 78, No. 221

Friday, November 15, 2013

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

[NRC–2012–0031]

RIN 3150–AJ11

Onsite Emergency Response Capabilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Preliminary proposed rule language.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is making available preliminary proposed rule language that would strengthen and integrate onsite emergency response capabilities. The NRC will periodically make publicly available a series of documents related to the ongoing proposed rulemaking effort to amend its regulations regarding onsite emergency response capabilities. The availability of these documents provides increased awareness to interested stakeholders and provides preparatory material for future public meetings. The NRC does not plan to institute a public comment period for these materials when making them publicly available.

DATES: At this time, the NRC is not soliciting public comments on the materials identified in this document. There will be an opportunity for public comment on the proposed rule when it is published in the **Federal Register**.

ADDRESSES: Please refer to Docket ID NRC–2012–0031 when contacting the NRC about the availability of information for this document. You may access publicly available information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0031. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this final rule.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search*." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer Tobin, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328; email: Jennifer.Tobin@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

As a result of the events at the Fukushima Dai-ichi Nuclear Power Plant in 2011, the NRC's Near-Term Task Force (NTTF) created a series of recommendations intended to outline a path to increased readiness of nuclear power plants to respond to severe accidents. In its report, "Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident" (ADAMS Accession No. ML111861807), the NTTF proposed developing additional requirements to strengthen and integrate licensees' onsite emergency response capabilities. Specifically, this proposal, called Recommendation 8 in the NTTF report, identified four areas of focus for onsite emergency response: accident mitigating procedures, command and control structures, training and qualification programs, and severe accident exercises. In response to the NTTF report, the NRC staff developed SECY–11–0137, "Prioritization of Recommended Actions to be Taken in Response to

Fukushima Lessons Learned" (ADAMS Accession No. ML11269A204). The NRC staff recommended issuing an Advance Notice of Proposed Rulemaking (ANPR) to initiate regulatory action to address NTTF Recommendation 8. Following Commission approval of the staff's recommendation, the NRC issued the ANPR on April 18, 2012 (77 FR 23161), as the first step in the rulemaking process. After receiving stakeholder comments on the ANPR, the NRC drafted a regulatory basis with the goals of identifying any regulatory deficiencies in the area of onsite emergency response capabilities and developing a revised regulatory approach. The regulatory basis was published on October 25, 2013 (78 FR 63901), at which time, the proposed rule stage of the rulemaking process began.

II. Preliminary Proposed Rule Language

As the NRC continues its ongoing proposed rulemaking effort to amend portions of parts 50 and 55 of Title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is making documents publicly available on the Federal rulemaking Web site, www.regulations.gov, under Docket ID NRC 2012–0031. The NRC is now making preliminary proposed rule language that would require licensees to: (1) Have strategies and guidance for mitigating the consequences of severe accidents; (2) integrate event and accident mitigating procedures; (3) identify command and control roles, responsibilities, and authorities during the progression of an event or accident; (4) conduct related drills, exercises or both; (5) provide training; and (6) incorporate severe accident situations in written examinations and operating tests for all types of operators.

This preliminary proposed rule language does not represent a final NRC staff position, nor has it been reviewed by the Commission. Therefore, the preliminary proposed rule language may undergo significant revision during the rulemaking process. The NRC is not requesting public comments on the preliminary proposed rule language.

III. Petitions for Rulemaking

Included in the regulatory basis for this proposed rulemaking (ADAMS Accession No. ML13101A324) is a discussion of a petition for rulemaking (PRM), PRM–50–102 (76 FR 58165;

September 20, 2011), submitted by the Natural Resources Defense Council (NRDC). The NRDC requested that the NRC conduct a rulemaking to address training and exercise requirements for severe accident mitigation guidelines and extensive damage mitigation guidelines. The NRC determined that the issues raised in PRM-50-102 are appropriate for consideration and will be considered in this Onsite Emergency Response Capabilities rulemaking.

IV. Publicly Available Documents

By making documents publicly available, the NRC seeks to inform stakeholders of the current status of the NRC's rulemaking development activities and to provide preparatory material for future public meetings. The NRC is not instituting a public comment period on these materials, but the public is encouraged to participate in related public meetings. In addition, the public will be given opportunity to provide comments on the proposed rule upon its publication in the **Federal Register**. The NRC may post additional materials, including other preliminary rule language, to the Federal rulemaking Web site at <http://www.regulations.gov>, under Docket ID NRC-2012-0031. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2012-0031); (2) click the "Email Alert" link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. Although regulations are exempt under the Act, the NRC is applying the same principles to its rulemaking documents. Therefore, the NRC has written this document, including the preliminary proposed rule language, to be consistent with the Plain Writing Act. There will be an opportunity for public comment on the use of plain language when the proposed rule is published in the **Federal Register**.

Dated at Rockville, Maryland, this 7th day of November, 2013.

For the Nuclear Regulatory Commission.

Shana Helton,

Acting Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013-27449 Filed 11-14-13; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA-2013-0898; Notice No. 25-13-33-SC]

Special Conditions: Airbus, Model A350-900 Series Airplane; Composite Fuselage In-Flight Fire/Flammability Resistance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A350-900 series airplanes. This airplane will have a novel or unusual design features associated with the in-flight fire and flammability resistance of the composite fuselage. Experience has shown that eliminating fire propagation on the surface of interior and insulating materials enhances survivability since the threats from an in-flight fire (e.g., toxic gas emission and smoke obscuration) are typically by-products of a propagating fire. The Airbus Model A350-900 series airplanes must provide protection against an in-flight fire propagating along the surface of the fuselage. Special conditions are needed to address this design feature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send your comments on or before December 30, 2013.

ADDRESSES: Send comments identified by docket number FAA-2013-0898 using any of the following methods:

- *Federal eRegulations Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12-140, West

Building Ground Floor, Washington, DC, 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477-19478), as well as at <http://DocketsInfo.dot.gov/>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe/Cabin Safety, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057-3356; telephone (425) 227-2136; facsimile (425) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will consider all comments we receive on or before the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On August 25, 2008, Airbus applied for a type certificate for their new Model A350-900 series airplane. Later, Airbus requested and the FAA approved an

extension to the application for FAA type certification to June 28, 2009, The Model A350-900 series has a conventional layout with twin wing-mounted Rolls Royce Trent engines. It features a twin aisle 9-abreast economy class layout, and accommodates side-by-side placement of LD-3 containers in the cargo compartment. The basic Model A350-900 series configuration will accommodate 315 passengers in a standard two-class arrangement. The design cruise speed is Mach 0.85 with a Maximum Take-Off Weight of 602,000 lbs. Airbus proposes the Model A350-900 series to be certified for extended operations (ETOPS) beyond 180 minutes at entry into service for up to a 420-minute maximum diversion time.

Experience has shown that eliminating fire propagation on the surface of interior and insulating materials enhances survivability since the threats from an in-flight fire (e.g., toxic gas emission and smoke obscuration) are typically by-products of a propagating fire. The Airbus Model A350-900 series airplane must provide protection against an in-flight fire propagating along the surface of the fuselage.

In the past, fatal in-flight fires have originated in inaccessible areas of the aircraft where the thermal/acoustic insulation located adjacent to the aluminium aircraft skin has been the path for flame propagation and fire growth. Concern over the fire performance of thermal/acoustic insulation was initially raised by five incidents in the 1990's which revealed unexpected flame spread along the insulation film covering material. In all cases, the ignition source was relatively modest and, in most cases, was electrical in origin (e.g., electrical short circuit, arcing caused by chafed wiring, ruptured ballast case). From 1972 until 2003 these materials were required to comply with a basic "Bunsen burner" requirement per Title 14 Code of Federal Regulations (14 CFR) 25.853(a), 25.855(d), and part 25, Appendix F, part I, paragraph (a)(1)(ii). These requirements prescribed that insulation materials must be self-extinguishing after having been subjected to the flame of a Bunsen burner for 12 seconds, in accordance with the procedures defined in part 25, Appendix F, part I, paragraph (b)(4). The average burn was not to exceed eight inches and the average flame time after removal of the flame source was not to exceed 15 seconds. Drippings from the test specimen were not to continue to flame for more than an average of five seconds after falling.

Further concern with the flammability of thermal/acoustic insulation was

raised by the Transportation Safety Board (TSB) of Canada during their investigation of the fatal Swiss Air MD-11 in-flight fire accident that occurred in September 1998 and involved 229 fatalities. TSB investigators reported that the fatal fire appeared to have been confined to the area above the cockpit and forward cabin ceiling and involved the insulation blankets. On August 21, 2001, the TSB recommended that flammability standards for interior materials should be based on realistic ignition scenarios and prevent the use of materials that sustain or propagate a fire.

In 1996, the FAA Technical Center began a program to develop new fire test criteria for insulation films directly relating to the resistance of in-flight fire propagation. The current test standard was evaluated as well as another small-scale test method that has been used by airplane manufacturers to evaluate flame propagation on thermal/acoustic insulation materials. An inter-laboratory comparison of these methods revealed a number of deficiencies. Other small-scale tests developed by the FAA Technical Center did demonstrate that some insulation films would ignite and propagate flame in a confined space. As a result, a series of large-scale fire tests were conducted in a mock-up of the attic area above the passenger cabin ceiling. In a confined space, ignition and flame propagation may occur because of more extensive radiating heat and the trapping of melted film/scrim. Temperature (heat release) data was recorded and the degree of flame propagation was observed from the large-scale tests. A radiant panel test standard for flooring materials was a test method that provided good correlation to the large-scale model. The test method involved subjecting a material to a pilot flame while the material is heated by a radiant panel.

The previously described development program resulted in a new test method (radiant panel test) and test criteria specifically established for improving the in-flight fire ignition/flame propagation of thermal/acoustic insulation materials. A new part 25 airworthiness standard, § 25.856, became effective in September 2003, Amendment 25-111, requiring that all thermal/acoustic insulation materials installed in the fuselage must comply to this flammability and flame propagation requirement. The proposed standards are intended to "reduce the incidence and severity of cabin fires, particularly those ignited in inaccessible areas where thermal acoustic insulation materials are typically installed."

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350-900 series airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-128.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model A350-900 series because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the proposed special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and proposed special conditions, the Model A350-900 series must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92-574, the "Noise Control Act of 1972."

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Airbus Model A350-900 series airplane will incorporate the following novel or unusual design features: fuselage fabricated with composite materials.

Discussion

The Airbus Model A350-900 series airplane will make extensive use of composite materials in the fabrication of the majority of the wing, fuselage skin, stringers, spars, and most other structural elements of all major sub-assemblies of the airplane. Despite the major change from aluminum to composite material for the fuselage, the Model A350-900 series must have in-flight survivability such that the composite fuselage does not propagate a fire. A methodology for assessing the in-flight fire survivability of an all-composite fuselage is therefore needed.

The FAA believes that one way to assess the survivability within the cabin of the Model A350-900 series airplane is to conduct large-scale tests. This large-scale test would utilize a mock-up

of an Airbus Model A350-900 series airplane fuselage skin/structure section of sufficient size to assess any tendency for fire propagation. The fire threat used to represent the realistic ignition source in the airplane would consist of a 4" x 4" x 9" polyurethane foam block and 10 ml of Heptane. This ignition source provides approximately three minutes of flame time and would be positioned at various points and orientations within the mocked up installation to impinge on those areas of the fuselage considered to be most crucial.

This fire threat was established based on an assessment of a range of potential ignition sources, coupled with possible contamination of materials. The FAA considers this a severe fire threat, encompassing a variety of scenarios. However, should ignition or fire sources of a greater severity be identified, the special condition or its method of compliance would need to be modified in order to take the more severe threat into account.

Applicability

As discussed above, these proposed special conditions apply to Airbus Model A350-900 series airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the proposed special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Airbus Model A350-900 series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for Airbus Model A350-900 series airplanes.

Composite Fuselage In-Flight Fire/Flammability Resistance

In addition to the requirements of § 25.853(a) governing material flammability, the following special condition applies:

The Airbus Model A350 composite fuselage structure must be shown to be resistant to flame propagation under the fire threat used to develop § 25.856(a). If

products of combustion are observed beyond the test heat source, they must be evaluated and found acceptable.

Issued in Renton, Washington, on November 12, 2013.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013-27413 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2013-0891; Airspace Docket No. 12-ASO-37]

RIN 2120-AA66

Proposed Establishment of Area Navigation (RNAV) Routes; Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish nine low-altitude RNAV routes (T-routes) in the Atlanta, GA area. The new routes would support the Atlanta Optimization of Airspace and Procedures in a Metroplex (OAPM) project. The proposed routes would have connectivity to the current airway structure and would provide routing through, around and over the busy Atlanta Metroplex airspace.

DATES: Comments must be received on or before December 30, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; telephone: (202) 366-9826. You must identify FAA Docket No. FAA-2013-0891 and Airspace Docket No. 12-ASO-37 at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

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

Communications should identify both docket numbers (FAA Docket No. FAA-2013-0891 and Airspace Docket No. 12-ASO-37) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2013-0891 and Airspace Docket No. 12-ASO-37." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish nine low altitude RNAV routes (T-routes) in the Atlanta, GA area. Since there are no published routes currently available for aircraft to use to circumnavigate the busy Atlanta Metroplex airspace, the Atlanta Air Route Traffic Control Center (ARTCC) (ZTL) and Atlanta Terminal Radar Approach Control (TRACON) (A80) facilities routinely vector and reroute aircraft around areas where high volumes of large aircraft consistently fly. This results in increased track miles flown and air traffic controller and pilot task complexity. The proposed routes would support the Atlanta OAPM project and provide routes through, around and over the Atlanta Metroplex area that are procedurally deconflicted from arrivals, departures and other airspace areas. The following routes are proposed:

T-290: T-290 would provide a route through the southern portion of the Atlanta Metroplex area from the SCAIL, AL, waypoint (WP), near Tallapoosa County, AL, to the JACET, GA, WP, near Augusta, GA.

T-292: T-292 would provide a route through a portion of the Metroplex to the north of Atlanta from the RKMRT, GA, WP (near Polk County Airport, GA) to the JACET, GA, WP.

T-293: T-293 is proposed to provide a route around the west of the Atlanta area from the CHUTT, AL, WP, in Alabama (south of Columbus, GA) to the DAISI, GA, WP (near Pickens County Airport, GA [JZP]). Aligning the route segments between the RTLRY, HONRR and POLLN waypoints would keep T-293 within Atlanta TRACON's airspace and provide vertical and lateral separation from three separate published arrival procedures used by aircraft descending to land at airports within the Metroplex area.

T-294: T-294 would provide an alternative RNAV route through the Metroplex airspace on the southwest side, between the GRANT, GA, WP (near Thomaston, GA) and the HEFIN, AL, WP (near Heflin, AL).

T-296: T-296 would provide a route southeast of Atlanta between the JMPPR, GA, WP (near Woodbury, GA) and the TACKL, GA, WP (southwest of Athens, GA).

T-297: T-297 would provide an alternative route around the west side of the Metroplex airspace between the PAIRA, GA, WP (south of Atlanta, near Geneva, GA) and the REELL, GA, WP (northwest of Athens, GA). The route would have altitude limitations so that T-297 flights would be procedurally separated from all optimized published departure and arrival procedures.

T-319: T-319 would provide an RNAV route directly over the Hartsfield-Jackson Atlanta International Airport (ATL) for aircraft transitioning Class B airspace from north-to-south and vice versa.

T-321: T-321 would provide a north-south oriented route east of ATL, between the BBOAT, GA, WP (near Eatonton, GA) and the BIGNN, GA, WP (abeam Habersham County, GA). The BBOAT and BIGNN waypoints would also connect to T-290 and T-323, respectively, enabling more flexibility in routing options.

T-323: The proposed T-323 would allow aircraft to transition the Metroplex airspace between a point approximately 110 NM northeast of ATL from the HIGGI, NC, WP and a point 110 NM southeast of ATL at the CROCS, GA, WP. T-323 would intersect the proposed T-290 and T-321 enabling alternative routing between the Knoxville, TN, area and locations south of the Atlanta Metroplex area.

RNAV routes are published in paragraph 6011 of FAA Order 7400.9X dated August 7, 2013, and effective September 15, 2013, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as required to enhance the safe and efficient flow of air traffic in the Atlanta, GA area.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9X, Airspace Designations and Reporting Points, Dated August 7, 2013, and effective September 15, 2013, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

T-290 SCAIL, AL to JACET, GA [New]

SCAIL, AL	WP	(Lat. 33°02'01" N., long. 85°39'32" W.)
BBAIT, GA	WP	(Lat. 33°07'14" N., long. 84°46'13" W.)
BBASS, GA	WP	(Lat. 33°11'33" N., long. 83°59'21" W.)
BBOAT, GA	WP	(Lat. 33°16'51" N., long. 83°28'10" W.)

BOBBR, GA	WP	(Lat. 33°19'57" N., long. 83°08'19" W.)
JACET, GA	WP	(Lat. 33°29'41" N., long. 82°06'28" W.)
T-292 RKMRT, GA to JACET, GA [New]		
RKMRT, GA	WP	(Lat. 34°03'37" N., long. 85°15'03" W.)
POLL, GA	WP	(Lat. 34°08'57" N., long. 84°46'50" W.)
CCATT, GA	WP	(Lat. 34°16'15" N., long. 84°09'05" W.)
REELL, GA	WP	(Lat. 34°01'33" N., long. 83°31'44" W.)
TRREE, GA	WP	(Lat. 33°47'15" N., long. 82°55'30" W.)
JACET, GA	WP	(Lat. 33°29'41" N., long. 82°06'28" W.)
T-293 CHUTT, AL to DAISI, GA [New]		
CHUTT, AL	WP	(Lat. 32°13'23" N., long. 85°03'06" W.)
NFTRY, GA	WP	(Lat. 33°02'03" N., long. 85°09'06" W.)
RTLRY, GA	WP	(Lat. 33°45'18" N., long. 85°07'48" W.)
HONRR, GA	WP	(Lat. 33°57'35" N., long. 85°01'28" W.)
POLL, GA	WP	(Lat. 34°08'57" N., long. 84°46'50" W.)
DAISI, GA	WP	(Lat. 34°26'08" N., long. 84°25'51" W.)
T-294 HEFIN, AL to GRANT, GA [New]		
HEFIN, AL	Fix	(Lat. 33°35'55" N., long. 85°25'11" W.)
BBAT, GA	WP	(Lat. 33°07'14" N., long. 84°46'13" W.)
JMPPR, GA	WP	(Lat. 32°57'42" N., long. 84°33'19" W.)
GRANT, GA	Fix	(Lat. 32°49'45" N., long. 84°22'36" W.)
T-296 JMPPR, GA to TACKL, GA [New]		
JMPPR, GA	WP	(Lat. 32°57'42" N., long. 84°33'19" W.)
BBASS, GA	WP	(Lat. 33°11'33" N., long. 83°59'21" W.)
TATRS, GA	WP	(Lat. 33°20'37" N., long. 83°51'37" W.)
TACKL, GA	WP	(Lat. 33°44'25" N., long. 83°30'31" W.)
T-297 PAIRA, GA to REELL, GA [New]		
PAIRA, GA	WP	(Lat. 32°31'48" N., long. 84°31'42" W.)
NFTRY, GA	WP	(Lat. 33°02'03" N., long. 85°09'06" W.)
HEFIN, AL	Fix	(Lat. 33°35'55" N., long. 85°25'11" W.)
RKMRT, GA	WP	(Lat. 34°03'37" N., long. 85°14'03" W.)
CHTTE, GA	WP	(Lat. 34°23'18" N., long. 84°52'55" W.)
DAISI, GA	WP	(Lat. 34°26'08" N., long. 84°25'51" W.)
AWSON, GA	Fix	(Lat. 34°28'49" N., long. 83°59'03" W.)
REELL, GA	WP	(Lat. 34°01'33" N., long. 83°31'44" W.)
T-319 CCLAY, GA to BLEWW, GA [New]		
CCLAY, GA	WP	(Lat. 33°18'11" N., long. 84°24'41" W.)
DUNCS, GA	WP	(Lat. 33°27'34" N., long. 84°25'23" W.)
SHURT, GA	WP	(Lat. 33°32'13" N., long. 84°25'50" W.)
KLOWD, GA	WP	(Lat. 33°43'59" N., long. 84°26'05" W.)
BLEWW, GA	WP	(Lat. 33°58'14" N., long. 84°25'43" W.)
T-321 BBOAT, GA to BIGNN, GA [New]		
BBOAT, GA	WP	(Lat. 33°16'51" N., long. 83°28'10" W.)
TACKL, GA	WP	(Lat. 33°44'25" N., long. 83°30'31" W.)
REELL, GA	WP	(Lat. 34°01'33" N., long. 83°31'44" W.)
BIGNN, GA	WP	(Lat. 34°20'34" N., long. 83°33'07" W.)
T-323 CROCS, GA to HIGGI, NC [New]		
CROCS, GA	WP	(Lat. 32°27'18" N., long. 82°46'29" W.)
BOBBR, GA	WP	(Lat. 33°19'57" N., long. 83°08'19" W.)
BIGNN, GA	WP	(Lat. 34°20'34" N., long. 83°33'07" W.)
ZPPLN, NC	WP	(Lat. 34°59'47" N., long. 83°49'38" W.)
HIGGI, NC	WP	(Lat. 35°26'47" N., long. 83°46'41" W.)

Issued in Washington, DC, on November 4, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC
Procedures Group.

[FR Doc. 2013-27335 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-114122-12]

RIN 1545-BK96

Controlled Group Regulation Examples; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations that propose revisions to examples that illustrate the controlled group rules

related to regulated investment companies.

DATES: The public hearing originally scheduled for December 9, 2013 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Oluwafunmilayo Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on August 2, 2013 (78 FR 46851) announced that a public hearing was scheduled for December 9, 2013, at 10 a.m. in the IRS Auditorium,

Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 851(c) of the Internal Revenue Code.

The public comment period for these regulations expired on October 31, 2013. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, November 8, 2013, no one has requested to speak. Therefore, the public hearing scheduled for December 9, 2013, is cancelled.

Martin V. Franks,

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

[FR Doc. 2013-27451 Filed 11-14-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-120927-13]

RIN-1545-BL61

Treatment of Income From Indian Fishing Rights-Related Activity as Compensation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would clarify that amounts paid to an Indian tribe member as remuneration for services performed in a fishing rights-related activity may be treated as compensation for purposes of applying the limits on qualified plan benefits and contributions. These regulations would affect sponsors of, and participants in, employee benefit plans of Indian tribal governments.

DATES: Comments and requests for a public hearing must be received by February 13, 2014.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-120927-13), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-120927-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at

www.regulations.gov (IRS REG-120927-13).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Sarah Bolen or Pamela Kinard at (202) 622-6060 or (202) 317-6700; concerning the submission of comments or to request a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 or (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Indian tribal governments (ITGs) and individual tribe members conduct fishing activities to generate revenue, protect critical habitats, and preserve tribal customs and traditions. Various treaties, federal statutes, and Presidential executive orders reserve to Indian tribe members the right to fish for subsistence and commercial purposes both on and off reservations. Because many of the treaties, statutes, and executive orders were adopted before passage of the Federal income tax, they often do not expressly address the question of whether income derived by Indians and ITGs from protected fishing activities is exempt from taxation. See H.R. Rep. 100-1104, at p. 77 (1988).

Congress added section 7873 to the Internal Revenue Code as part of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647). Section 7873(a)(1) provides that no income tax shall be imposed on income derived from a fishing rights-related activity of an Indian tribe by (A) a member of the tribe directly or through a qualified Indian entity, or (B) a qualified Indian entity. Section 7873(a)(2) provides that no employment tax shall be imposed on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity. Thus, section 7873(a) exempts income derived from a fishing rights-related activity ("fishing rights-related income") from both income and employment taxes.

Section 7873(b)(1) defines fishing rights-related activity with respect to an Indian tribe as any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of the tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

Section 415(a)(1) provides that a trust that is part of a pension, profit-sharing, or stock bonus plan shall not constitute

a qualified trust under section 401(a) if (A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of section 415(b), or (B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of section 415(c).

Section 415(b)(1) provides that benefits with respect to a participant exceed the annual limitation for defined benefit plans if, when expressed as an annual benefit (within the meaning of section 415(b)(2)), the participant's annual benefit is greater than the lesser of \$160,000 (as adjusted in accordance with section 415(d)(1)) or 100 percent of the participant's average compensation for the participant's high 3 years.

Section 415(b)(3) provides that, for purposes of section 415(b)(1), a participant's high 3 years will be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1) (that is, a self-employed individual treated as an employee), the preceding sentence is applied by substituting for "compensation from the employer" the following: "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)."

Section 415(c)(1) provides that contributions and other additions with respect to a participant exceed the annual limitation for defined contribution plans if, when expressed as an annual addition (within the meaning of section 415(c)(2)) to the participant's account, the participant's annual addition is greater than the lesser of \$40,000 (as adjusted in accordance with section 415(d)(1)) or 100 percent of the participant's compensation. Section 415(c)(3) provides that the term "participant's compensation" means the compensation of the participant from the employer for the year. Section 1.415(c)-2(a) of the Income Tax Regulations generally provides that compensation from the employer within the meaning of section 415(c)(3) includes all items of remuneration described in § 1.415(c)-2(b), but excludes the items of remuneration described in § 1.415(c)-2(c).

Section 1.415(c)-2(b) generally provides that, for purposes of applying the limitations of section 415, the term compensation means remuneration for services. Specifically, under § 1.415(c)-2(b)(1), compensation includes

employee wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income. In addition, § 1.415(c)-2(b)(2) provides that in the case of an employee within the meaning of section 401(c)(1) (a self-employed employee), compensation includes the employee's earned income (as described in section 401(c)(2)) plus amounts deferred at the election of the employee that would be includible in gross income but for the rules of section 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

Section 1.415(c)-2(c) excludes certain items from the definition of compensation under section 415(c)(3). Specifically, § 1.415(c)-2(c)(1) excludes contributions (other than certain elective contributions) made by the employer to a plan of deferred compensation to the extent that the contributions are not includible in the gross income of the employee for the taxable year in which contributed. Likewise, distributions from plans (whether qualified or not) are generally not considered to be compensation for section 415 purposes. Section 1.415(c)-2(c)(2) excludes from compensation amounts realized from the exercise of nonstatutory options and amounts realized when restricted stock or other property held by an employee becomes freely transferable or is no longer subject to a substantial risk of forfeiture. Section 1.415(c)-2(c)(3) excludes from compensation amounts realized from the sale, exchange, or other disposition of stock acquired under a statutory stock option (as defined in § 1.421-1(b)). Finally, § 1.415(c)-2(c)(4) excludes from compensation other amounts that receive special tax benefits, such as certain premiums for group-term life insurance.

Section 1.415(c)-2(d) provides safe harbor definitions that a plan is permitted to use to define compensation in a manner that satisfies section 415(c)(3). Section 1.415(c)-2(d)(2) provides a safe harbor definition of compensation that includes only those items listed in § 1.415(c)-2(b)(1) or (b)(2) and excludes all the items listed in § 1.415(c)-2(c). Section 1.415(c)-2(d)(3) provides a separate safe harbor definition of compensation that includes wages within the meaning of section 3401(a), plus amounts that would be included in wages but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(b), 402(k), or 457(b).

Explanation of Provisions

Because fishing rights-related income is not subject to income tax, an issue has been raised as to whether such income is included as compensation for purposes of section 415(c)(3) and § 1.415(c)-2(b). The proposed regulations would clarify that certain fishing rights-related income is included in the definition of compensation. Specifically, these regulations would provide that amounts paid to a member of an Indian tribe as remuneration for services performed in a fishing rights-related activity (as defined in section 7873(b)(1)) do not fail to be treated as compensation under § 1.415(c)-2(b)(1) and (b)(2) (and are not excluded from the definition of compensation pursuant to § 1.415(c)-2(c)(4)) merely because those amounts are not subject to income tax as a result of section 7873(a)(1). Thus, the determination of whether an amount constitutes wages, salaries, or earned income for purposes of § 1.415(c)-2(b)(1) or (b)(2) is made without regard to the exemption from taxation under section 7873(b)(1) and (b)(2). In addition, by permitting fishing rights-related income to be treated as wages, salaries, or earned income under § 1.415(c)-2(b)(1) and (b)(2), plans that accept contributions of fishing rights-related income would not be precluded from utilizing the safe harbor definitions of compensation under § 1.415(c)-2(d)(2) and (d)(3) of the regulations.

Proposed Applicability Date

These regulations are proposed to apply for taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Taxpayers, however, may rely on these proposed regulations for periods preceding the effective date, pending the issuance of final regulations. If, and to the extent, the final regulations are more restrictive than the rules in these proposed regulations, those provisions of the final regulations will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that 5 U.S.C. 533(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of

information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply and a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Office of Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "ADDRESSES" heading. In addition to general comments on the proposed regulations, the IRS and the Treasury Department request comments on the taxation of qualified plan distributions that are attributable to fishing rights-related income, and the application of section 72(f)(2) (which treats certain amounts as basis for purposes of computing employee contributions if those amounts would have not been includible in income had they been paid directly to the employee). All comments are available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Consultation and Coordination With Indian Tribal Governments

These proposed regulations take into account comments provided through a number of general consultation sessions held with the Indian tribal community in recent years. Consistent with Executive Order 13175, the Treasury Department and the IRS expect to hold a telephone consultation on a date between November 15, 2013 and February 13, 2014. This telephone consultation session will focus principally on the contribution of section 7873 income to qualified retirement plans and the taxation of qualified plan distributions that are attributable to this income. Information relating to the consultation, including the date, time, registration requirements, and procedures for submitting written and oral comments, will be available on the IRS Web site relating to Indian tribal governments at: <http://www.irs.gov/Government-Entities/Indian-Tribal-Governments>.

Drafting Information

The principal author of these regulations is Sarah R. Bolen, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.415(c)-2 is amended by adding paragraphs (g)(9) and (h) to read as follows:

§ 1.415(c)-2 Compensation.

* * * * *

(g) * * *

(9) *Income derived by Indians from exercise of fishing rights.* Amounts paid to a member of an Indian tribe directly or through a qualified Indian entity (within the meaning of section 7873(b)(3)) as compensation for services performed in a fishing rights-related activity (as defined in section 7873(b)(1)) of the tribe do not fail to constitute compensation under paragraphs (b)(1) and (b)(2) of this section and are not excluded from the definition of compensation pursuant to paragraph (c)(4) of this section merely because those amounts are not subject to income or employment taxes as a result of section 7873(a)(1) and (2). Thus, the determination of whether an amount constitutes wages, salaries, or earned income for purposes of paragraph (b)(1) or (a)(2) of this section is made without regard to the exemption from taxation under section 7873(a)(1) and (2).

(h) *Effective/applicability date.* Section 1.415(c)-2(g)(9) shall apply for plan years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013-27331 Filed 11-14-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1904 and 1952**

[Docket No. OSHA-2013-0023]

RIN 1218-AC49

Public Meeting on the Improve Tracking of Workplace Injuries and Illnesses Proposed Rule

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: OSHA invites interested parties to attend an informal public meeting on the Improve Tracking of Workplace Injuries and Illnesses proposed rule. The purpose of the public meeting is to allow interested persons to provide oral remarks regarding the proposed rule. The proposed rule is a limited rulemaking to amend OSHA's recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep.

DATES: The public meeting will be held on Thursday, January 9, 2014 from 9 a.m. to 4:30 p.m. at the U.S. Department of Labor in Washington, DC. The deadline to request to attend the meeting as a speaker or an observer is Friday, December 13, 2013.

ADDRESSES: *Requests to attend the public meeting:* Requests to attend the public meeting, identified by docket number OSHA-2013-0023, or regulatory information number (RIN) 1218-AC49, as a speaker or observer, may be made by any of the methods below.

a. *Electronically:* You may submit requests to attend the meeting electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting a comment.

b. *Fax:* If your request, including attachments, does not exceed more than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648; or

c. *Mail, hand delivery, express mail, messenger or courier service:* You may submit your request to attend the meeting, and any attachments, to the OSHA Docket Office, Docket Number OSHA-2013-0023, U.S. Department of Labor, Room N-2655, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries

(hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Public Meeting: The public meeting will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Requests for special accommodations: Submit requests for special accommodations to attend the public meeting to Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

Instructions for submitting requests to attend the public meeting: All requests to attend the public meeting must include the docket number (Docket No. OSHA-2013-0023) or the RIN (1218-AC49) for this rulemaking. Because of security-related procedures, submissions by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All requests to attend the meeting, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting requests to attend, plus additional information on the rulemaking process, see Public Participation in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

a. *Press inquiries:* Contact Francis (Frank) Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

b. *General and technical information:* Contact Dave Schmidt, Director, Office of Statistical Analysis, OSHA Directorate of Evaluation and Analysis, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-3507, Washington, DC 20210; telephone: (202) 693-1886; email: schmidt.dave@dol.gov.

c. *Copies of this Federal Register notice:* Electronic copies are available at

<http://www.regulations.gov>. The **Federal Register** notice, as well as news releases and other relevant information, also are available on the OSHA Web page: <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 2013, OSHA published the Improve Tracking of Workplace Injuries and Illnesses proposed rule [See Vol. 78 FR 67254–67283] OSHA proposes to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under Part 1904. The proposed rule amends 29 CFR 1904.41 to add three new electronic reporting requirements. The purpose of the rulemaking is to improve workplace safety and health through the collection of useful, accessible, establishment-specific injury and illness data to which OSHA currently does not have direct, timely, and systematic access. With the information acquired through the proposed rule, employers, employees, employee representatives, the government, and researchers will be better able to identify and abate workplace hazards. For additional information on the proposed rule and other ways to submit comments, see Vol. 78 FR 67254–67283.

II. Public Participation

Recordkeeping requirements promulgated under the Occupational Safety and Health Act of 1970 (OSH Act) are regulations, not standards. Therefore, this rulemaking is governed by the notice and comments requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911. Section 6(b)(3) of the OSH Act (29 U.S.C. 655(b)(3)) and 29 CFR 1911.11, both of which state the requirement for OSHA to hold an informal public hearing on proposed rules, only apply to promulgating, modifying or revoking occupational safety and health standards.

Section 553 of the APA, which governs this proposal, does not require a public hearing; instead, it states that the agency must “give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments *with or without opportunity for oral presentation*” (5 U.S.C. 553(c)) (emphasis added). To promulgate a proposed regulation, the APA requires the agency to provide the terms of the proposed rule or a description of these

terms, specify the time during which the agency will receive comments on the proposal, and give instructions regarding how to participate in the rulemaking (5 U.S.C. 553(b)). The APA does not specify a minimum period for submitting comments. In accordance with the goals of Executive Order 12866, OSHA is providing 90 days for public comment (E.O. 12866 section 6(a)(1)).

Public Meeting: OSHA will hold a public meeting on the proposed rule from 9 a.m. to 4:30 p.m. on Thursday, January 9, 2014 at the U.S. Department of Labor in Washington, DC (see **ADDRESSES** section). If necessary, the meeting may be extended to subsequent days. The purpose of the public meeting is to allow interested persons to provide oral remarks on the proposed rule, which is a limited rulemaking to amend its recordkeeping regulations to add requirements for the electronic submission of injury and illness information employers are already required to keep under Part 1904. Although OSHA is not required to hold a public meeting on proposed regulations, the Agency believes that the public meeting will help facilitate the development of a clear and complete rulemaking record. Consistent with this purpose, OSHA has the discretion to limit the time of speakers whose presentation goes beyond the scope of the proposed regulation.

Requests for individuals to attend the meeting must be received by Friday, December 13, 2013. The request must provide the following information:

- Name, email address, and telephone number of each individual who will attend the meeting;
- Name of the organization or establishment each attendee represents, if any;
- Occupational title and position of each attendee, if any;
- If each attendee is planning to participate in-person or via teleconference;
- Whether each attendee is planning to speak at the meeting; and
- If planning to speak, the approximate time each attendee wishes to speak, and the topics each attendee wishes to cover at the meeting.

OSHA will review each request to speak and determine whether the information it contains warrants the amount of time the individual requested. To ensure that each individual wishing to speak is allotted time, speakers will be limited to a maximum of 10 minutes each. OSHA may also limit the time allocated to any individual who fails to comply substantially with the procedures for submitting a request to speak.

At OSHA’s discretion and as time permits, individuals who did not submit a request to speak may be allowed time, not exceeding five minutes, to make a brief oral statement at the end of the scheduled presentations.

OSHA will provide access to the public meeting via teleconference. Attendees participating via teleconference can listen in, but will be unable to speak during the meeting. The number of lines provided is limited and will be available on a first come, first served basis to those who indicate that they will be participating via teleconference in their requests to attend the meeting. Additional teleconference information, including dial-in number, will be provided in advance of the meeting.

OSHA will post the schedule of appearances for the public meeting, as well as additional information about the meeting, on OSHA’s Web page: <http://www.osha.gov>. The meeting will be transcribed. The transcription and all materials submitted during the public meeting will be put in the public docket of the rulemaking (Docket No. OSHA–2013–0023) at <http://www.regulations.gov>.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), Section 553 of the Administrative Procedure Act (5 U.S.C. 553), and Secretary of Labor’s Order No. 41–2012 (77 FR 3912 (Jan. 25, 2012)).

Signed at Washington, DC, November 8, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–27366 Filed 11–14–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB84

Refuge Alternatives for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Reopen the record and extend the comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record for MSHA's existing rule on Refuge Alternatives for the limited purpose of obtaining comments on the frequency for motor task (also known as "hands-on" training), decision-making, and expectations training for miners to deploy and use refuge alternatives in underground coal mines. The U.S. Court of Appeals for the District of Columbia Circuit remanded a training provision in the Refuge Alternatives rule, directing MSHA to explain the basis for requiring motor task (hands-on), decision-making, and expectations training annually rather than quarterly or to reopen the record and allow public comment. MSHA published a notice reopening the record on August 8, 2013, with comments due by October 7, 2013. Due to the government shutdown, the public requested additional time to comment. This notice reopens the rulemaking record to provide an additional opportunity for public comment.

DATES: Comments must be received by midnight Eastern Standard Time on December 16, 2013.

ADDRESSES: Submit comments, identified by "RIN 1219-AB84", by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* zzMSHA-comments@dol.gov. Include "RIN 1219-AB84" in the subject line of the message.

- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

- *Hand Delivery/Courier:* MSHA, 1100 Wilson Boulevard, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

Instructions: All submissions must include the Agency name "MSHA" and "RIN 1219-AB84" and will be posted without change on <http://www.regulations.gov> and on <http://www.msha.gov/currentcomments.asp>, including any personal information provided.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> or <http://www.msha.gov/currentcomments.asp>. Review the docket in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m.

Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 21st floor.

Availability of Information: To subscribe to receive an email notification when MSHA publishes rulemaking documents in the **Federal Register**, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at triebsch.george@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: MSHA published a final rule on refuge alternatives on December 31, 2008 (73 FR 80656), establishing requirements for refuge alternatives in underground coal mines. On January 13, 2009, the United Mine Workers of America (UMWA) petitioned the U.S. Court of Appeals for the District of Columbia Circuit (Court) to review MSHA's refuge alternatives final rule. The Court issued its decision on October 26, 2010, holding that the Secretary had not adequately explained the basis for requiring motor task (hands-on), decision-making, and expectations training only annually, rather than quarterly. The Court remanded the training provision and ordered MSHA to either "provide an explanation . . . or . . . reopen the record, and afford interested parties an opportunity to comment." [*United Mine Workers v. MSHA*, 626 F.3d 84, 86, and 90-94 (D.C. Cir. 2010)]

In response to the Court's decision, MSHA reopened the record on August 8, 2013 (78 FR 48592) and the comment period closed on October 7, 2013. MSHA received a request from the public that, because of the confusion that occurred during the government shutdown from October 1 to October 17, 2013, the Agency allow additional time to address the issues described in the reopening notice. In support of the request, the requester stated that the public had 7 fewer days to comment. The requester believed that MSHA staff would not be available to receive or verify receipt of the comments.

This notice reopens the record to provide the public an additional opportunity to comment. Please limit your comments to the questions in the notice published on August 8, 2013 (78 FR 48592). MSHA will review the comments to determine an appropriate course of action for the Agency in response to comments. MSHA will publish its response in the **Federal Register** addressing the public comments and either explaining the

reason that it is leaving the existing rule unchanged or modifying the rule as the result of the public comment process.

List of Subjects in 30 CFR Part 75

Coal mines, Mine safety and health, Reporting and recordkeeping requirements, Safety, Training programs, Underground mining.

Authority: 30 U.S.C. 811.

Dated: November 12, 2013.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2013-27397 Filed 11-14-13; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 97 and 160, and 46 CFR Part 97

[Docket No. USCG-2000-7080]

RIN 1625-AA25 [Formerly RIN 2115-AF97]

Cargo Securing Manuals

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes requiring cargo securing manuals (CSMs) on vessels of 500 gross tons or more traveling on international voyages and carrying cargo that is other than solid or liquid bulk cargo. The proposed regulations would authorize recognized classification societies or other approval authorities to review and approve CSMs on behalf of the Coast Guard. They would also prescribe when and how the loss or jettisoning of cargo at sea must be reported. The proposed regulations would help fulfill U.S. treaty obligations and could help prevent or mitigate the consequences of vessel cargo loss. This rulemaking promotes the Coast Guard's maritime safety and stewardship missions.

DATES: Comments and related material must either be submitted to the Coast Guard's online docket via <http://www.regulations.gov> on or before February 13, 2014 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 13, 2014.

ADDRESSES: You may submit comments identified by docket number USCG-2000-7080 using any one of the following methods:

(1) *Federal eRulemaking Portal*:
<http://www.regulations.gov>.

(2) *Fax*: 202-493-2251.

(3) *Mail*: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VIII.D. of this preamble, you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to oir_submission@omb.eop.gov (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the email) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Stop 7126, Washington, DC 20593-7126 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-372-1411. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Ken Smith, Project Manager, U.S. Coast Guard, Headquarters, Vessel and Facility Operating Standards Division, Commandant (CG-OES-2); telephone 202-372-1411, email Ken.A.Smith@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Public Participation and Request for Comments
 - A. Submitting Comments
 - B. Viewing Comments and Documents
 - C. Privacy Act
 - D. Public Meeting
- II. Abbreviations
- III. Basis and Purpose
- IV. Background and Regulatory History
- V. Discussion of Comments and Changes
- VI. Discussion of the Proposed Rule
- VII. Incorporation by Reference
- VIII. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property
 - H. Civil Justice Reform
 - I. Protection of Children
 - J. Indian Tribal Governments
 - K. Energy Effects
 - L. Technical Standards
 - M. Environment

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2000-7080), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, and follow the instructions on that Web site. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment

period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, and follow the instructions on that Web site. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we decide to hold a public meeting, we will announce its time and place in a later notice in the **Federal Register**.

II. Abbreviations

- BLS U.S. Bureau of Labor Statistics
- CFR Code of Federal Regulations
- CSAP Cargo safe access plan
- CSM Cargo Securing Manual
- CSS Code Code of Safe Practice for Cargo Stowage and Securing
- E.O. Executive Order
- FR Federal Register
- IMO International Maritime Organization
- MARAD U.S. Department of Transportation's Maritime Administration
- MSC Maritime Safety Committee
- MISLE Marine Information for Safety and Law Enforcement
- NPRM Notice of proposed rulemaking
- NVIC Navigation and Vessel Inspection Circular
- OMB Office of Management and Budget
- OSHA Occupational Safety and Health Administration
- § Section symbol
- SANS Ship Arrival Notification System
- SNPRM Supplemental notice of proposed rulemaking

SOLAS International Convention for the Safety of Life at Sea, 1974 as amended U.S.C. United States Code

III. Basis and Purpose

Sections 2103 and 3306 of Title 46, U.S. Code, provide the statutory basis for this rulemaking. Section 2103 gives the Secretary of the department in which the Coast Guard is operating general regulatory authority to implement Subtitle II (Chapters 21 through 147) of Title 46, which includes statutory requirements in 46 U.S.C. Chapter 33 for inspecting the vessels to which this rulemaking applies. Section 3306 gives the Secretary authority to regulate an inspected vessel's operation, fittings, equipment, appliances, and other items in the interest of safety. The Secretary's authority under both statutes has been delegated to the Coast Guard in Department of Homeland Security Delegation No. 0170.1(92)(a) and (b). In addition, the Secretary has regulatory authority to implement the International Convention for the Safety of Life at Sea, 1974 (SOLAS), under Executive Order (E.O.) 12234.

The purpose of this rulemaking is to align Coast Guard regulations with SOLAS requirements for cargo securing manuals and apply those requirements to U.S. vessels and foreign vessels in U.S. waters, and to specify when and how the loss or jettisoning of cargo at sea must be reported.

IV. Background and Regulatory History

Improperly secured maritime cargo threatens the safety of life, property, and the environment. Several maritime incidents dating from the early 1990s to the recent past underscore the risk of serious injury or death, vessel loss, property damage, and environmental damage caused by improperly secured cargo aboard vessels. A Coast Guard board of inquiry established to review an incident off the coast of New Jersey in 1992, which involved the loss of 21 containers, 4 of which contained the hazardous material arsenic oxide, revealed that the incident was caused by cargo securing failures and poor operational planning. The Commandant of the Coast Guard approved the board's recommendation that the Coast Guard adopt the International Maritime Organization's (IMO) guidelines on cargo securing manuals. With the support of other IMO member governments, the U.S. led a proposal to include new requirements for CSMs in SOLAS. In 1994, the IMO amended SOLAS in response to the growing international concern over maritime incidents involving improperly secured cargo. The amendments provided that,

after 1997, vessels of 500 gross tons or more engaged in international trade and carrying cargo other than solid or liquid bulk material must carry a flag state-approved CSM and load, stow, and secure cargo in compliance with the CSM. Shortly before the SOLAS amendments took effect, the Coast Guard issued Navigation and Vessel Inspection Circular (NVIC) No. 10-97 to provide guidance concerning the SOLAS CSM standards until Coast Guard regulations could be developed. Compliance with NVIC 10-97 is voluntary. In 2009, in response to questions raised about lost containers during a Congressional hearing, the Coast Guard estimated that between 500 and 2,000 containers are lost at sea annually. In a recent paper submitted by the International Organization for Standardization (ISO) to the IMO, "Development of Measures to Prevent Loss of Containers," the ISO notes that 10,000 containers are damaged during sea transport each year, of which 3,000 to 4,000 are lost overboard. The number of damaged and lost containers has risen and continues to rise partly because of the growth in container transports, and partly because of the larger impacts from ever-larger containerships. In addition to the dangers that improperly secured cargo and containers pose to vessels and crewmembers that handle and transport them, they also pose dangers to the environment and vessels at sea when lost overboard.

The SOLAS CSM requirements outline what a CSM must contain and establish strength requirements for securing devices and arrangements. They also describe how to stow and secure containers and other cargo. These SOLAS requirements are not yet mandatory for U.S. vessels or for foreign vessels operating in U.S. waters.

In a notice (64 FR 1648; Jan. 11, 1999) announcing a February 3, 1999, public meeting to discuss the SOLAS CSM requirements and cargo securing issues, we suggested that the SOLAS CSM requirements for vessels in international trade might be beneficial for U.S. vessels in coastwise (domestic) trade as well. Two written comments were submitted at the meeting. You may view them at <http://regulations.gov> under docket number USCG-1998-4951. One commenter offered to review and approve CSMs and the other urged Coast Guard to align any Coast Guard regulations with those of the Occupational Safety and Health Administration (OSHA). Under 29 U.S.C. 653(b)(1), OSHA's authority does not extend to shipboard personnel who are subject to Coast Guard regulations. Nevertheless, the Coast Guard has

coordinated with OSHA to ensure alignment of our regulations.

The first publication in this rulemaking was a notice of proposed rulemaking (NPRM) published December 1, 2000 (65 FR 75201) entitled "Cargo Securing on Vessels Operating in U.S. Waters." The NPRM proposed incorporating SOLAS requirements for CSMs into Coast Guard regulations and requested comment on five options for regulating cargo securing on U.S. vessels in coastwise trade. The Coast Guard received 17 letters from industry and labor groups in response to the NPRM. We address these comments in section V of this preamble.

V. Discussion of Comments and Changes

The 2000 NPRM drew comments from 15 sources, with two sources submitting two letters. Twelve commenters were companies or trade associations involved with maritime transportation. Two unions commented, as did a Maritime Administration official. In addition, a Coast Guard memorandum commemorating a meeting between Coast Guard personnel and industry representatives, and the final report of the Towing Safety Advisory Committee's (TSAC's) working group on cargo securing, are treated in the docket as "public submissions."

TSAC is a committee that advises the Coast Guard under the Federal Advisory Committee Act. The TSAC working group found that there are few cargo losses from barges, and that the variety of cargo configurations and cargo securing practices in the barge industry make it difficult to apply a single cargo securing standard for those vessels. The working group identified cargo securing best practices used by the barge industry, and recommended that barge operators should voluntarily develop, document, and periodically update cargo securing plans, train personnel in procedures covered by those plans, and audit the results. A barge operator agreed with the working group. An organization representing barge operators, and one other commenter, agreed that cargo loss from barges is extremely rare, and agreed that barge operators should voluntarily develop cargo securing plans. Two other commenters said they agree with the organization representing barge operators. Another commenter said that seagoing barges are generally safe from cargo loss. The relatively low rate of cargo loss in U.S. coastwise trade is a major reason why we have decided not to extend SOLAS-style cargo securing requirements to that trade.

Two transportation companies (and a third company that said it agreed with one of the two) said that the NPRM's proposed regulatory text for 46 CFR 97.210(e) (cargo securing manual contents) and 46 CFR 97.230 (inspection and maintenance of cargo securing devices) would make useful additions to the SOLAS cargo securing requirements. Those provisions have been omitted from this supplemental notice of proposed rulemaking (SNPRM); the SNPRM addresses their topics by requiring CSMs to comply with applicable standards contained in the IMO's 2010 Maritime Safety Committee Circulars (MSC.1/Circ.) 1352 ("Cargo Stowage and Securing (CSS Code) Annex 14 Guidance on Providing Safe Working Conditions for Securing of Containers on Deck") and 1353 ("Revised Guidelines for the Preparation of the Cargo Securing Manual"). These two commenters also said that following a continuous examination program would ensure good equipment maintenance and be less burdensome than CSM regulatory requirements. Our SNPRM would allow, but not require, operators to follow a continuous examination program. It would describe, in proposed 33 CFR 97.205, when an approved CSM must be amended and re-approved. The two commenters recommended that fixed and portable cargo handling equipment be treated identically for regulatory purposes. Our proposed regulations would not require the use of either fixed or portable equipment. However, if portable equipment is used, it is subject to special provisions set out in the IMO Circulars, and incorporated by reference in proposed 33 CFR 97.110.

Two transportation companies said we needed to ensure that our rulemaking does not create confusion between Coast Guard and OSHA regulations. This topic was also discussed in the Coast Guard's meeting with industry representatives. As discussed in section IV of this preamble, we have aligned our regulations with OSHA's, to minimize confusion.

One transportation company said the NPRM should have approached safety issues relating to lashing cargo to decks. The same company said the NPRM should have addressed vertical tandem loading and cargo lifting devices. It said the Coast Guard should provide guidance to shoreside personnel on segregating damaged or unserviceable cargo equipment, and on dealing with cargo containers on which one of the doors has been removed.

These safety issues were also discussed in the Coast Guard's meeting with industry representatives, at which

time the Coast Guard said the issue was beyond the scope of this rulemaking but could become an issue for IMO consideration in the future. Our proposed rule addresses many of the safety issues by incorporating by reference IMO Circulars MSC.1/Circ. 1352 and 1353, which take into account the IMO's 2010 Code of Safe Practice for Cargo Stowage and Securing (CSS Code). The CSS Code contains new provisions for the safety of personnel engaged in lashing operations which includes crew members and dock workers alike.

The same company that raised the safety issues also expressed concern that Coast Guard personnel might be inconsistent, in different locations, in how they apply cargo securing policy guidance. We encourage members of the regulated public who think they are being treated unfairly or arbitrarily by Coast Guard personnel to bring the matter to our attention. The Coast Guard will not retaliate against persons or businesses that question or complain about any policy or action of the Coast Guard.

Another transportation company expressed support for developing cargo securing standards that would apply specifically to seagoing barges. The commenter said the NPRM did not adequately assess the economic impact of applying cargo securing regulations to seagoing barges. The NPRM did not propose specific regulations for those vessels and thus did not calculate any regulatory economic impact on them. Seagoing barges in coastwise trade would not be affected by this SNPRM.

A third transportation company said that most cargo losses result from container structural problems that the vessel operator cannot know about or prevent. To guard against such risks, this commenter said that hazardous material containers should be stowed as low as possible on the deck. We agree that once containers are loaded onto a vessel it is very difficult for a vessel operator to know about or prevent structural problems which have gone undetected. In this regard, much responsibility is placed on personnel associated with activities related to the transportation of the container through the supply chain before delivery of the container at a terminal, including personnel involved in packing the contents and personnel involved in storing and loading containers from shore. These personnel routinely conduct internal and external inspections to ensure that the container is suitable for transporting cargo and being lifted by container handling equipment. These routine periodic

inspections help reduce the likelihood that structurally deficient containers will be loaded aboard a vessel. Vessel operators are then responsible for ensuring that the containers are stowed and secured in accordance with the CSM. Vessel operators who identify a structural deficiency in a container after it has been loaded should take whatever action is considered necessary to ensure the container is safely secured, handled, or removed as the specific situation may dictate. Stowage and transportation of hazardous materials on vessels is guided by 49 CFR Part 176 and the IMO Dangerous Goods Code which address hazardous materials according to each specific type of cargo, recognizing that various types of hazardous materials require special levels of handling. Our proposed rule addresses container integrity and stowage as it relates to the securing of cargo for safe transport by sea and incorporates by reference IMO Circulars MSC.1/Circ. 1352 and 1353 concerning that issue.

A fourth transportation company said that no insured company would transport \$20 million worth of cargo without first having a qualified surveyor approve how it is lashed to the deck. This commenter also said that many small entities would be affected by domestic CSM regulations. We recognize that the lashing and securing of some types of cargo may receive increased scrutiny because of their overall value, and we recognize that such cargo poses minimal risk for transport by sea. However, since such surveys currently are not required by law, securing arrangements are currently evaluated for only a few types of cargo. We propose requiring CSMs on vessels of 500 gross tons or more traveling on international voyages that are carrying any cargo that is other than solid or liquid bulk cargo. Neither the NPRM nor this SNPRM proposes specific domestic regulations and thus we have not calculated the small entity impact that domestic CSM regulations could have. We request additional public input on the topic and may conduct further analysis based on that input.

A fifth transportation company said that regulatory language suitable for larger ships would be unsuitable for smaller vessels in coastwise trade. This commenter also expressed concern over how much time would be needed for CSM approvals. As noted above, we have decided not to apply SOLAS-style cargo securing requirements to coastwise trade. By facilitating the use of third party organizations to approve CSMs, we hope to avoid lengthy delays. If you are preparing a CSM for approval,

we encourage you to consult with your approval authority upfront to help eliminate unnecessary delays.

A cargo gear company cautioned us against incorporating outdated industry standards in our regulations. This SNPRM proposes incorporating only IMO Circulars MSC.1/Circ. 1352 and 1353, which take into account the IMO’s 2010 CSS Code. We invite public comment on that proposal.

The Maritime Administration commenter said our regulations should not apply to Administration-owned ships in the Ready Reserve Force. We provide an exception for those vessels in proposed 33 CFR 97.100(b).

A seagoing barge operator said it was unclear whether the NPRM covers seagoing barges, and whether it relates only to hazardous materials or would cover non-hazardous materials as well. The NPRM discussed the possible extension of SOLAS-style cargo securing requirements to seagoing barges or other vessels in coastwise trade, but we have decided against that extension. The NPRM did not specifically limit its discussion to coastwise vessels carrying hazardous material. This SNPRM proposes regulations that would apply to seagoing barges in international trade. The regulations would also apply to vessels carrying any cargo that is not solely in liquid or solid bulk form.

The NPRM invited comments on five options for extending SOLAS requirements for cargo securing on international voyages to voyages in U.S. coastwise trade. We have decided against such an extension because the cargo loss record of coastwise trade does not justify the regulatory costs that coastwise industry would have to bear. Nevertheless, the following discussion summarizes the public comment on the five options.

Nine commenters commented on Option 1. Option 1 proposed extending SOLAS requirements to coastwise voyages. Two companies and the two unions chose Option 1 as their preferred option. One company said it would prefer a “compromise” between Options 1 and 2, with vessel-specific standards that would comply with or exceed SOLAS standards. The cargo gear company criticized Option 1 for not requiring regular CSM review. One company said Option 1 is too restrictive, and another company said it would

require too much standardization. A seagoing barge operator said Option 1 would not work for seagoing barges, because no two barge cargoes are the same.

Five commenters commented on Option 2. Option 2 proposed allowing each coastwise voyage vessel to set and document its own standards, subject to Coast Guard approval. The cargo gear company said this option should be evaluated in light of the Coast Guard’s experience with continuous examination programs, and noted similarities between Options 2 and 5. One company said Option 2 requires an overly burdensome consideration of too many variables. A seagoing barge operator said Option 2 would not work for seagoing barges, but did not explain the reasons for this statement. Another company said, without explanation, that Option 2 would be its second choice of the options presented. Another company said it would prefer a “compromise” between Options 1 and 2, with vessel-specific standards that would comply with or exceed SOLAS standards.

Four commenters commented on Option 3. Option 3 proposed requiring a coastwise voyage vessel to obtain a surveyor’s certificate of loading and securing, prior to departure, if the voyage would also be subject to Pipeline and Hazardous Materials Safety Administration regulations in 49 CFR part 176. The cargo gear company said its reaction to Option 3 would depend on the specific standards the Coast Guard would propose for incorporation. A transportation company said the use of surveyors for multiple voyages would not be feasible due to cost and surveyor availability. A seagoing barge operator agreed that it would be difficult or impossible to ensure a surveyor’s availability. Another company opposed Option 3 due to the high cost of hiring surveyors.

Four commenters commented on Option 4. Option 4 proposed developing regulations that would allow each coastwise vessel owner to choose from among Options 1, 2, and 3. One commenter opposed Option 4, but did not make its reasons clear. The cargo gear company said Option 4 should be attractive to those who favor cargo securing regulations for domestic voyages, but did not express its own

preference or opposition. A seagoing barge operator said the “menu of options” provided by Option 4 could cause confusion. A company said it opposes Option 4 because it combines the strengths, but also the weaknesses, of Options 1 through 3.

Four commenters commented on Option 5. Option 5 proposed incorporating yet-to-be-developed coastwise voyage standards that industry might draft in cooperation with TSAC. One company expressed support but did not explain its preference for Option 5. Two companies expressed preference for Option 5 because it would allow for the development of standards that would be appropriate for different types of vessel and operational needs; one of the two said the exact language of Option 5 should be modified. A seagoing barge operator opposed Option 5 because it would not ensure the development of appropriate standards for different vessel types and operational needs.

VI. Discussion of Proposed Rule

We are issuing this SNPRM, rather than proceeding directly to a final rule, for two reasons. First, much of the NPRM focused on the possible extension of SOLAS requirements to coastwise voyages. We wish to make it clear that we are no longer considering that extension, and that our proposed regulations would apply only to international voyages. Second, this SNPRM proposes some regulatory changes that were not discussed in the NPRM. For example, we propose additional language to help clarify what information needs to be reported when a cargo loss or jettisoning event occurs, and what constitutes such an event; and we propose new provisions for the use of classification societies or other third parties in approving CSMs.

This SNPRM proposes incorporating by reference IMO Circulars MSC.1/Circ. 1352 and 1353. These Circulars provide much of the guidance that we attempted to provide in our 2000 NPRM, which was based on the more limited guidance then available from the IMO’s 1996 Circular MSC.1/Circ. 745 (“Guidelines for the preparation of the Cargo Securing Manual”). Table 1 shows where the NPRM’s proposed regulatory text is paralleled in the SNPRM.

TABLE 1—REGULATORY TEXT COMPARISON, NPRM AND SNPRM
[All references are to proposed sections in 33 CFR, part 97]

NPRM	SNPRM
General, 97.100–97.130	97.100–97.115
Cargo Securing Manual, 97.200–97.280	97.120

TABLE 1—REGULATORY TEXT COMPARISON, NPRM AND SNPRM—Continued

[All references are to proposed sections in 33 CFR, part 97]

NPRM	SNPRM
How will Cargo Securing Manual Requirements be Approved and Enforced?, 97.300–97.350	97.200–97.215
Authorization of an Organization to Act on Behalf of the U.S., 97.400–97.480	97.300–97.320

Reporting loss or jettisoning of cargo. We propose prescribing in 33 CFR parts 97 and 160 when and how the accidental loss or deliberate jettisoning of cargo at sea must be reported. Currently, 33 CFR 160.215 requires a vessel owner or operator to immediately notify the Coast Guard whenever there is a hazardous condition caused by a vessel or its operation. “Hazardous condition” is defined in 33 CFR 160.204 as “any condition that may adversely affect the safety of any vessel or the environmental quality of any port, harbor, or navigable waterway of the United States.” In our view, any loss or jettisoning of cargo at sea must be considered a hazardous condition because, at a minimum, it poses a navigational hazard by threatening vessel safety. We propose making that explicit in part 97. We would also amend 33 CFR 160.215 by prescribing specific information to be included in the notification if the hazardous condition involves the loss or jettisoning of cargo. This should enhance our ability to identify potential problems with securing equipment, locate and warn mariners about drifting debris before it endangers safe navigation, and assess and respond to any environmental hazard created by the cargo loss.

An additional concern is containers that sink. Sunken containers may no longer be a hazard to navigation, but they may pose long-term threats to the environment. Our proposed reporting and recordkeeping requirements would facilitate the long-term monitoring of sunken containers and any needed salvage or remediation.

Incorporating SOLAS. We propose adding 33 CFR part 97 to incorporate the existing SOLAS requirements for CSMs on vessels of 500 gross tons or more traveling on international voyages and carrying any cargo other than solid or liquid bulk cargo. Smaller vessels would only have to follow those requirements if they so choose—but if they choose to have a CSM they would be bound by these proposed regulations just as if they were vessels of 500 gross tons or more, including the requirement that the CSM would need to be approved by an organization that we have authorized to do so under

proposed 33 CFR part 97. As a practical matter, all existing vessels to which proposed 33 CFR part 97 would apply are already in compliance with SOLAS CSM requirements. Most foreign countries are parties to SOLAS and already enforce the SOLAS CSM requirements on their vessels. All U.S. vessels are already in compliance because they need SOLAS certificates to enter foreign ports and, to obtain those certificates, they have voluntarily complied with Coast Guard NVIC 10–97.

NVIC 10–97 was based in part on IMO guidance contained in IMO Circular MSC.1/Circ. 745. That MSC Circular was updated on June 30, 2010, by IMO Circular MSC.1/Circ. 1353, and since that time Coast Guard-approved CSMs have had to meet Circular 1353 guidelines at a minimum. Our proposed regulations would require vessels to meet the Circular 1353 standards. CSMs approved before June 30, 2010 would not need to be updated.

We propose provisions for approving and amending CSMs, and for handling disputes over CSM approval. We would cross-reference those provisions in the bulk solid cargo operations regulations in 46 CFR subpart 97.12.

We propose that, as required by MSC Circular 1352, “Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code),” any container vessel, subject to SOLAS, whose keel is laid on or after January 1, 2015, will need to include a cargo safe access plan that is consistent with chapter 5 of the Annex to IMO Circular MSC.1/Circ. 1353, which in turn references Annex 14 (“Guidance on Providing Safe Working Conditions for the Securing of Containers”) of the IMO 2010 CSS Code. A cargo safe access plan provides detailed information on safe access for persons stowing and securing cargo on container ships that are specifically designed and fitted for the purpose of carrying containers.

Classification societies. Finally, proposed 33 CFR part 97 would provide for our authorization of recognized classification societies and other third party organizations to review and approve CSMs on our behalf.

VII. Incorporation by Reference

Material proposed for incorporation by reference appears in proposed 33 CFR 97.110. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 97.110. Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VIII. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and E.O.s related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

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

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 (as supplemented by E.O. 13563) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. We consider all estimates and analysis in this Regulatory Analysis to be preliminary and subject to change in consideration of public comments. A preliminary regulatory assessment follows.

1. Summary

This proposed rule would amend the CFR by adding the following provisions:

- Requirements for the reporting of lost or jettisoned cargo;

- The CSM requirements of SOLAS and the guidance in NVIC 10–97; and
- Procedures for authorization of third party organizations to review and

approve CSMs on the Coast Guard’s behalf.

Please reference Table 2 below for a summary of our analysis.

TABLE 2—SUMMARY OF REGULATORY ECONOMIC IMPACTS

Proposed changes	Description	Affected population	Costs (7% discount rate)		Benefits
			Annualized	Total	
1. Reporting of lost or jettisoned cargo.	Codify lost or jettisoned cargo as a hazardous condition and specify data to be reported.	U.S. and foreign-flag vessels engaged in transport to or from a U.S. port.	\$1,420	\$9,970	Better tracking and response of lost or jettisoned cargo.
2. CSM requirements	Codify SOLAS rules and guidance from NVIC 10–97.	Owners/operators of 7,163 vessels: 26 U.S.-flagged, 7,137 foreign-flagged.	\$45,903	\$322,403	Increased enforcement authority.
3. Approval of authorized organizations.	Codify guidance from NVIC 10–97.	6 currently approved organizations, others applying for approval status.	\$0	\$0	Increased enforcement.

Table 3 presents a summary of the 10-year cost schedule, showing total costs on an undiscounted basis and

discounted at 7 percent and 3 percent rates.

TABLE 3—SUMMARY OF THE 10-YEAR TOTAL COST TO THE INTERNATIONAL CARGO INDUSTRY AND U.S. GOVERNMENT

Year	Undiscounted			Total, discounted	
	Industry	Government	Total	7%	3%
1	\$38,788	\$500	\$39,288	\$36,718	\$38,144
2	38,814	520	39,334	34,356	37,076
3	38,854	550	39,404	32,165	36,060
4	46,519	580	47,099	35,932	41,847
5	46,558	610	47,168	33,630	40,688
6	46,598	640	47,238	31,477	39,561
7	54,263	670	54,933	34,210	44,666
8	54,303	700	55,003	32,012	43,420
9	54,342	730	55,072	29,956	42,208
10	62,020	770	62,790	31,919	46,722
Total	481,059	6,270	487,329	332,375	410,392
Annualized				47,323	48,110

2. Affected Population

The applicable population (those vessels subject to the proposed regulation) consists of U.S. and foreign-flagged vessels that:

- Measure 500 gross tons or more,
- Are engaged in international trade as indicated by currently having a SOLAS Cargo Ship Safety Certificate, and
- Carry any cargo other than solid or liquid bulk commodities.

The United States is a signatory state to SOLAS, and U.S.-flagged vessels in international trade must meet SOLAS requirements, including the CSM rules, to receive a SOLAS certificate. An extract from the Coast Guard’s Marine Information for Safety and Law Enforcement (MISLE) database

identified 26 U.S.-flagged vessels as meeting the above tonnage and cargo criteria.

The applicable foreign-flagged vessels are those that transit U.S. waters. The source for data on these vessels was the Coast Guard’s Ship Arrival Notification System (SANS) database. This database contains data on notifications of arrival and departure of vessels to and from U.S. ports and is supplemented by data from MISLE. We extracted from SANS the most recent three full years of data available, 2009 through 2011. This produced a list of 7,137 foreign-flagged vessels that had one or more visits to a U.S. port and met the tonnage and cargo type criteria. Table 4 summarizes the total applicable population data.

TABLE 4—TOTAL APPLICABLE POPULATION, NON-BULK CARGO VESSELS, 500+ GROSS TONS

Flag	Vessels
U.S.	26
Foreign	7,137
Total	7,163

Sources: MISLE & SANS.

3. Economic Analyses

We include an analysis of the costs, benefits, and alternatives for each of the proposed rule’s three provisions:

- Requirements for the reporting of lost or jettisoned cargo;
- CSM requirements; and
- Approval of authorized organizations.

a. Requirements for the Reporting of Lost or Jettisoned Cargo
i. Current practices, applicable population, and description of changes and edits. As noted in section VI of this preamble, the current regulations require the Coast Guard to be immediately notified when a hazardous condition is caused by a vessel or its operation. Our interpretation is that incidents of lost or jettisoned cargo¹ should be considered hazardous conditions and must be reported. However, current industry practice does not correspond with that interpretation. Captain James J. McNamara, President

of the National Cargo Bureau, wrote: “When a container or containers are lost overboard, usually there is no news release and seldom is the fact publicized. The loss is only revealed to those in a need-to-know situation, i.e., the ship owner, shipper, receiver and insurer.”² As we will discuss in detail, our research indicates a significant underreporting of lost or jettisoned cargo to the Coast Guard. Coast Guard and other vessels cannot respond to these unreported incidents, so they represent a residual risk to navigation and the marine environment. The underreporting also prevents the Coast

Guard and other interested parties from accurately tracking the extent and trends of lost cargo incidents.

In this proposed rule we include requirements for the immediate reporting of lost or jettisoned cargo. We anticipate that adoption of these requirements will correct this underreporting and lead to some increased costs to industry. Table 5 presents the change matrix for modifying the reporting of hazardous conditions and summarizes the specific edit or change, the affected population, and the economic impact.

TABLE 5—CHANGE MATRIX FOR REPORTING OF HAZARDOUS CONDITIONS IN 33 CFR

Reference & description	Affected population	Economic impact
97.100 Applicability		
. . . (a)(1), U.S. vessels	U.S. cargo vessels 500+ GT, non-U.S. cargo vessels in U.S. waters 500+ GT.	None, administrative only.
97.105 Definitions	All vessels and approval organizations	None, administrative only.
97.110 Incorporation by reference, lists IBR references.	All affected vessels and approval organizations.	None, administrative only.
97.115 Situation requiring report, criteria for reporting lost cargo.	Vessels subject to the rule that lose cargo overboard.	Costs for correction of noncompliance with existing requirements.
160.215(a), requirement to report hazardous condition.	Operators of vessels involved in incident resulting in hazardous condition.	No change, new label of existing text.
160.215(b), data to be reported	Operators of vessels involved in incident resulting in hazardous condition.	This requirement references 97.115 and all costs are included there.

Source: Coast Guard analysis.

ii. Affected population and costs. The proposed rule applies to both U.S. and foreign-flagged vessels engaged in transport to or from U.S. ports. Therefore, the costs for reporting the lost or jettisoned cargo must be accounted for throughout the entire applicable population of 7,163 vessels, as reported in Table 4.

For 2009 through 2011 there were only five incidents of containers lost or damaged at sea and reported to the Coast Guard. As previously noted, industry experts assert that many incidents of lost or jettisoned cargo are not reported to the appropriate authorities. In order to test this, we developed an estimate of lost or jettisoned cargo incidents that are subject to Coast Guard rules.

As the base of our estimate we used the annual estimate of 4,000 containers lost at sea worldwide, as reported in the

October 2010 issue of the Register Expert, the journal of the Netherlands Institute of Registered Insurance Experts, and cited by the IMO.³ The report cited by IMO only contained a global estimate; there were no break-outs by route or flag of the vessel. We derived the U.S. share of global container traffic using data reported by the U.S. Department of Transportation’s Maritime Administration (MARAD), which reported in 2010 that there were 369,155 container ship visits world-wide⁴ and that 22,222 were at U.S. ports.⁵ Thus, the U.S. share of global container traffic is 6.0 percent (22,222/369,155).

We used that 6.0 percent share to estimate that about 240 containers in U.S. traffic are lost annually (4,000 containers lost world-wide * U.S. 6.0 percent share of traffic, rounded). The five incidents lost a total of 25

containers, so we estimate on average there were five lost containers per incident. Using those data, we estimate that there will be 50 reports of lost containers to the Coast Guard (240 containers lost/5 containers per incident, rounded to the nearest 10) in the first year the rule would become effective.

The Tioga Group, a freight transportation services consulting firm,⁶ in its report⁷ on the container market to the port authorities of Los Angeles and Long Beach, presents estimates of 4.9 percent annual compounded growth rate for the U.S. in container traffic from 2010 to 2020. We assume that the number of lost container incidents will grow proportionally with the growth in container trade. We applied the Tioga Group’s estimate of 4.9 percent growth rate to the base estimate of 50 lost containers to years 2 through 10 in this

¹ All data and industry reports refer only to containers when describing incidents involving lost or jettisoned cargo. We will assume that containers will continue as the only lost cargo in the future and refer to containers as the generic description of the involved cargo for this analysis.

² McNamara, James J., “Containers and Cargoes Lost Overboard”, National Cargo Bureau; conference of the International Union of Marine Insurers; September 13, 2000, <http://www.iumi.com/images/stories/IUMI/Pictures/>

Conferences/London2000/Wednesday/02%20mcnamara%20cargo.pdf.

³ IMO Maritime Safety Committee report 89/22/11, p. 1. A copy of this report is in the rulemaking docket.

⁴ See http://www.marad.dot.gov/documents/Vessel_Calls_at_US_Ports_Snapshot.pdf, p. 7, “Global Vessel Calls by Country, 2011.”

⁵ See http://www.marad.dot.gov/documents/Vessel_Calls_at_US_Ports_Snapshot.pdf, p. 3.

“Containership Calls at U.S. Ports by Size, 2006–2011.”

⁶ For information on The Tioga Group see www.tiogagroup.com.

⁷ The Tioga Group, Inc. and IHS Global Insight, “San Pedro Bay Container Forecast Update”, Exhibit 33: Total U.S. Loaded Total TEU and CAGRs, p. 33, www.portoflosangeles.org/pdf/spb-container_forecast_update_073109.pdf.

cost analysis. This yields an estimate of 77 incidents by year 10 (the complete series is shown in the “Estimated Incidents” column of Table 7).

When cargo is lost or jettisoned, the vessel staff already collects data for company purposes.⁸ Thus, the only additional cost for compliance with the proposed rule is the time to report the data to the Coast Guard and for the Coast Guard to record the data. Coast Guard staff who are familiar with vessel operations and incident reporting estimated that it would take 0.25 hours

for a Master or other senior ship’s officer to compile a report and transmit it to the Coast Guard.

The wage rate for the Master was obtained from the U.S. Bureau of Labor Statistics (BLS), using Occupational Series 53–5021, Captains, Masters, and Pilots of Water Vessels. BLS reports that the hourly rate for a Master is \$34.50 per hour.⁹ To account for benefits, the load factor, or ratio between total compensation and wages is calculated at 1.52,¹⁰ using BLS data. The fully loaded wage rate for a Master is estimated at

\$53 per hour (\$34.50 base wages * 1.52 load factor, rounded up to capture the entire cost).

Similarly, it would take 0.25 hour for Coast Guard personnel at the E–4 level to record the data. The wage rate for an E–4 rating is \$40, per Commandant Instruction 7310.1M.¹¹ The unit cost for the Coast Guard is \$10.00 (\$40 per hour * 0.25 hours).

As shown in Table 6, the unit cost for reporting a lost or jettisoned cargo is \$23.25.

TABLE 6—UNIT COST FOR REPORTING A LOST CONTAINER OR JETTISONED CARGO

Task	Time (hours)	Wage rate	Cost
Master to report incident	0.25	\$53	\$13.25
Coast Guard data entry (E4)	0.25	40	10.00
Total .....	.....	.....	23.25

Sources: BLS, Coast Guard estimates.

The baseline estimate of lost or jettisoned cargo incidents, the growth rate, and the unit cost data provide the

inputs into the 10-year cost schedule. Table 7 displays the input data and the resulting cost estimates on an

undiscounted basis and discounted at 7 percent and 3 percent interest rates.

TABLE 7—COST SCHEDULE FOR REPORTING LOST OR JETTISONED CARGO

Year	Estimated incidents	Rounded incidents	Industry cost	CG Cost	Total cost	Discounted	
						7%	3%
1	50	50	\$663	\$500	\$1,163	\$1,087	\$1,129
2	52.45	52	689	520	1,209	1,056	1,140
3	55.02	55	729	550	1,279	1,044	1,170
4	57.72	58	769	580	1,349	1,029	1,199
5	60.55	61	808	610	1,418	1,011	1,223
6	63.52	64	848	640	1,488	992	1,246
7	66.63	67	888	670	1,558	970	1,267
8	69.89	70	928	700	1,628	948	1,285
9	73.31	73	967	730	1,697	923	1,301
10	76.90	77	1,020	770	1,790	910	1,332
Total .....	.....	.....	8,309	6,270	14,579	9,970	12,292
Annualized .....	.....	.....	.....	.....	.....	1,420	1,441

To provide a breakout of costs by flag status, we extracted from the Coast Guard’s SANS database the vessels calling on U.S. ports in 2011. We divided the vessels into U.S. and foreign-flag status. Table 8 presents the data and shows that in 2011, U.S. flag-vessels accounted for 2.5% of the visits by vessels subject to this rule.

TABLE 8—2011 VISITS TO U.S. PORTS BY FLAG-STATUS OF VESSELS 500 GROSS TONS OR MORE, NON-BULK TRADE

Flag	Visits	Percent
U.S.	514	2.5
Foreign	20,242	97.5
Total	20,756	100.0

Source: USCG, SANS database.

We produced a breakout for U.S. costs of lost or jettisoned cargo by applying the 2.5 percent of visits by U.S. flag vessels from Table 8 to the cost estimates from Table 7. Please note that U.S. costs include both costs to U.S.-flagged vessels and the Coast Guard. Table 9 displays the data for the U.S. costs.

⁸ Captain James J. McNamara, “Containers and Cargo Lost Overboard”, p. 2. National Cargo Bureau; conference of the International Union of Marine Insurers; September 13, 2000, <http://www.iumi.com/images/stories/IUMI/Pictures/Conferences/London2000/Wednesday/02%20mcmamara%20cargo.pdf>.

⁹ Mean wage, <http://www.bls.gov/oes/2011/may/oes535021.htm>.

¹⁰ Load Factor calculation, source: <ftp://ftp.bls.gov/pub/special.requests/ocwc/ect/ececqrtn.pdf>.

¹¹ http://www.uscg.mil/directives/ci/7000-7999/CI_7310_1M.pdf.

TABLE 9—SCHEDULE FOR U.S. COSTS FOR REPORTING LOST OR JETTISONED CARGO

Year	Estimated incidents	Rounded incidents	Industry cost	CG cost	Total cost	Discounted	
						7%	3%
1	50	1	\$13	\$10	\$23	\$21	\$22
2	52.45	1	13	10	23	20	22
3	55.02	1	13	10	23	19	21
4	57.72	1	13	10	23	18	20
5	60.55	1	13	10	23	16	20
6	63.52	2	27	20	47	31	39
7	66.63	2	27	20	47	29	38
8	69.89	2	27	20	47	27	37
9	73.31	2	27	20	47	26	36
10	76.90	2	27	20	47	24	35
Total .....	.....	.....	200	150	350	231	290
Annualized .....	.....	.....	.....	.....	.....	33	34

The costs of reporting lost or jettisoned cargo for non-U.S.-flag vessels are obtained by subtracting the U.S.

costs, as reported in Table 9, from the costs as displayed in Table 7. Table 10

presents the results of these calculations.

TABLE 10—SCHEDULE FOR NON-U.S. COSTS FOR REPORTING LOST OR JETTISONED CARGO

Year	Estimated incidents	Rounded incidents	Industry cost	CG cost	Total cost	Discounted	
						7%	3%
1	50	49	\$649	\$490	\$1,139	\$1,064	\$1,106
2	52.45	51	676	510	1,186	1,036	1,118
3	55.02	54	716	540	1,256	1,025	1,149
4	57.72	57	755	570	1,325	1,011	1,177
5	60.55	60	795	600	1,395	995	1,203
6	63.52	62	822	620	1,442	961	1,208
7	66.63	65	861	650	1,511	941	1,229
8	69.89	68	901	680	1,581	920	1,248
9	73.31	71	941	710	1,651	898	1,265
10	76.90	75	994	750	1,744	887	1,298
Total .....	.....	.....	8,110	6,120	14,230	9,738	12,001
Annualized .....	.....	.....	.....	.....	.....	1,386	1,407

iii. Benefits. A 2011 news release from the Monterey Bay Aquarium Research Institute (MBARI)¹² stated that containers that fall from ships can “float at the surface for months, most eventually sink to the seafloor.” While they float they can present a hazard to navigation. However, sunken containers may pose immediate and long-term threats to the marine environment. The MBARI news release also stated that “[N]o one knows what happens to these containers once they reach the deep seafloor” and that “[p]erhaps 10 percent of shipping containers carry household and industrial chemicals that could be toxic to marine life.” The small number of MISLE incidents provides additional information. Of the 25 containers, one container contained 22,500 pounds of used batteries and another contained an unspecified hazardous material.

The immediate benefit of the reporting provisions is that they would enhance the Coast Guard’s ability to identify potential problems with securing equipment, locate and warn mariners about drifting containers that endanger safe navigation, and assess and respond to any potential environmental hazard created by the cargo loss. In the longer term, having complete and accurate data on lost cargo incidents would enable the Coast Guard and other parties to identify industry trends and track potential long-term threats to the marine environment from sunken containers.

iv. Alternatives. We considered possible alternatives to the proposed rule. One possibility, as suggested in the NPRM, would be to limit the reporting of lost containers to only those containing hazardous materials. However, we consider any overboard container to be a potential hazard to navigation and, as noted above, the contents may pose a long-term threat to

the marine environment. To ensure safety of navigation and the marine environment, we believe all lost or jettisoned cargo should be reported.

Another option would be to reduce the amount of information to be sent to the Coast Guard in order to minimize recordkeeping burden. We examined the data specified in the proposed rule and determined that all would be needed by the Coast Guard in order to completely evaluate the situation and determine the appropriate response. Therefore, we believe that the reporting requirements in the proposed rule would provide the Coast Guard with sufficient information to fulfill its missions of maritime safety and protection of the marine environment while minimizing the vessel’s recordkeeping and reporting burdens.

b. CSM Requirements

i. Current practices, applicable population, and description of changes and edits. As stated in section IV of this

¹² http://www.mbari.org/news/news_releases/2011/containers/containers-release.html.

preamble, current requirements for CSMs are located in SOLAS, with further implementing guidance included in NVIC 10–97. The Coast Guard’s current reference for the minimum standards of a CSM is IMO’s Circular 1353.

Enforcement in U.S. ports is carried out by the Coast Guard’s safety and security vessel examinations program. As part of these examinations, the Coast Guard checks that the subject vessels have a CSM and that the crew follows it. MISLE data show that from 2009 through 2011, the 26 U.S.-flag vessels

that are part of the affected population were subject to 176 inspections. In all of these inspections there were no citations for a deficient CSM. MISLE also recorded that in 2009 through 2011, the Coast Guard conducted 11,989 vessel inspections of foreign-flag vessels and found problems relating to CSMs in only 8 instances. These data indicate an ongoing compliance process for both U.S.- and foreign-flagged vessels subject to CSM rules. As a result, the Coast Guard anticipates that the only costs regarding the CSM requirement is that

moving the requirements from SOLAS and the implementing guidelines from NVIC 10–97 into the CFR could prompt owners and operators of the few deficient vessels to ensure their CSMs were fully compliant with SOLAS prior to entering U.S. waters.

Tables 11 and 12 present the change matrix for the edits to Title 33 and Title 46 of the CFR, respectively, that relate to the CSM requirements. Each matrix summarizes the specific edit or change, the affected population, and the economic impact.

TABLE 11—CHANGE MATRIX FOR ADDING CSM REQUIREMENTS TO 33 CFR

Reference & description	Affected population	Economic impact
97.100 Applicability		
. . . (a)(1), U.S. vessels	U.S. cargo vessels 500+ GT, non-U.S. cargo vessels in U.S. waters 500+ GT.	None, administrative only.
. . . (a)(2), voluntary compliance	U.S. vessels less than 500 GT requesting coverage.	No change, codifies guidance currently located in NVIC.
. . . (b), exemption for Ready Reserve and public vessels.	Ready Reserve and public vessels	None, these vessels currently exempted.
97.105 Definitions	All vessels and approval organizations	None, administrative only.
97.110 Incorporation by reference, lists IBR references.	All affected vessels and approval organizations.	None, administrative only.
97.120 Cargo Securing Manuals		
. . . (a)(1), CSMs required	SOLAS vessels and non-U.S., non-SOLAS vessels noted with deficient CSMs by Coast Guard.	Cost of developing CSM for noncompliant vessels.
. . . (a)(2), CSAP required after 2015	Non-SOLAS vessels	Edit to close regulatory gap. No costs, no current vessels affected and none expected in future.
. . . (b), authorizes CG enforcement	All U.S. and foreign-flagged vessels subject to the rule.	No cost, provides authority for current CG compliance activities.

Source: Coast Guard analysis.

TABLE 12—CHANGE MATRIX FOR EDITS TO 46 CFR 97 THAT APPLY TO U.S. SOLAS VESSELS

Reference & description	Affected population	Economic impact
97.12–10, Cargo securing manuals, new section to reference new 33 CFR 97.120.	Owners and operators of U.S. SOLAS vessels	Administrative edit, all costs accounted for in 33 CFR 97.120.

Source: Coast Guard analysis.

ii. *Affected population and costs.* As stated in the preceding section VIII.A.3.i, the Coast Guard’s current safety and security examinations include checking to see if a subject vessel has a current CSM and that the crew follows it. The inspection results indicate that U.S.-flagged vessels in international trade currently comply with the SOLAS CSM rules and will continue with those practices. For foreign-flagged vessels that visit U.S. ports, we estimated the costs of

compliance based on the following assumptions:

(1) In the absence of the proposed rule, the current deficiency rate for subject foreign-flagged vessels would continue.

(2) Under the proposed rule, the increased enforceability posture from codifying the CSM rules will lead all vessels to comply with the SOLAS standards and NVIC guidance prior to entering U.S. waters. That is, the deficiency rate will be reduced to zero for foreign-flagged vessels.

In the preceding section VIII.A.3.i, we reported that there were 8 deficiencies related to CMS from 2009–2011. These deficiencies are comprised of 4 that were missing sections or certain technical data, 3 that were missing approval from an authorized organization, and 1 that did not have its CSM on the vessel. Table 13 presents the data from 2009 through 2011 for the calculation of a deficiency rates by year and an annual average for the three years.

TABLE 13—ANNUAL CSM DEFICIENCY RATE

Year	Vessel examinations	CSM deficiencies	Deficiency rate (percent)
2009	3,901	3	0.08
2010	4,148	3	0.07
2011	3,930	2	0.05
Total (Sum for examinations and deficiencies, average for rate)	11,979	8	0.07

The population in year 1 of the estimate period is the foreign-flagged component of the affected population—7,137 vessels, as reported in Table 4. In the analysis of the reporting requirements, we cited the Tioga Group's report on the container market that growth in container shipments to the U.S. is expected to increase,¹³ so a flat extrapolation of the baseline over years 2 through 10 of the analysis period would result in an underestimate.

We used the Tioga Group's estimate of a 4.9 percent rate for our estimate for growth in our ten-year analysis period. The SANS data used for an estimate of the affected population showed that each vessel averaged 3.5 visits per year to U.S. ports in the three years of data collection, 2009 through 2011.

At this time we do not have detailed information on the current and projected capacity utilization of container ships visiting U.S. ports, so we posited that the trips per year of the affected vessels would remain constant through the analysis period. With that assumption, we applied the 4.9 percent

annual growth rate to the fleet of foreign-flagged vessels serving U.S. ports, starting with the baseline population of 7,137 vessels. The resulting estimates are shown in the "Affected Vessels" column of Table 14.

The estimate of the number of deficient CSMs in any year equals the estimate of the vessel population that year times the deficiency rate. For example, the estimate for Year 1 is CSMs for 5 new foreign-flagged vessels (7,137 vessels * 0.07 percent).

To obtain a current estimate for the cost of developing a cargo securing manual we contacted industry cargo securing subject matter experts in 2013¹⁴. These experts are familiar with the entire development of cargo securing manuals, including vessel survey, evaluation of the cargo securing equipment and procedures, preparing the manuals, and training the crews. From the information they provided, we estimate that the cost to develop a CSM will range between \$7,500 and \$10,000, depending on factors such as the size and type of vessel. We do not have

detailed descriptions of each deficiency, so for the unit cost, we will assume that in order to ensure compliance the company will revise the CSM using an existing survey of the vessel. A recently completed study conducted by ABS Consulting, Inc. for the Coast Guard provided estimates on the costs of a suite of marine engineering and naval architecture services¹⁵. That study estimates that the average cost of a survey for a freight ship is \$1,125. We estimated the unit cost to remedy a deficiency as the average cost of developing a CSM (\$8,750 = (\$7,500 + \$10,000)/2) less the average cost of a survey. This yields an estimated unit cost of \$7,625 (\$8,750—\$1,125). The total cost for any year is the number of new CSMs to remedy deficiencies, times the unit cost of \$7,625. Table 14 presents the cost estimate over the ten-year period at both an undiscounted value and discounted at 7 percent and 3 percent interest rates. As noted, these costs are for noncompliant foreign vessels; all U.S. vessels in international trade are assessed as already complying.

TABLE 14—COST OF UPGRADING DEFICIENT CSMs

[undiscounted and discounted at 7% and 3%]

(A) Year	(B) Affected vessels	(C) Annual deficiency rate (percent)	(D) New CSMs (B*C)	(E) CSM Cost (D*\$7,625)	Discounted	
					7%	3%
1	7,137	0.07	5	\$38,125	\$35,631	\$37,015
2	7,487	0.07	5	38,125	33,300	35,936
3	7,854	0.07	5	38,125	31,121	34,890
4	8,239	0.07	6	45,750	34,902	40,648
5	8,643	0.07	6	45,750	32,619	39,464
6	9,067	0.07	6	45,750	30,485	38,315
7	9,511	0.07	7	53,375	33,239	43,399
8	9,977	0.07	7	53,375	31,065	42,135
9	10,466	0.07	7	53,375	29,032	40,907
10	10,979	0.07	8	61,000	31,009	45,390
Total .....	.....	.....	.....	472,750	322,403	398,099
Annualized .....	.....	.....	.....	.....	\$45,903	\$46,669

As shown in Table 14, the total 10-year cost for upgrading CSMs at a 7%

discount rate is \$45,903. We anticipate that the Coast Guard will continue its

current inspection regime, so there are no additional government costs or

¹³ See, "U.S. Port and Inland Waterways Preparing for Post Panamax Vessels", p. 10— "Forecast and Containerized Cargo": <http://www.iwr.usace.army.mil/docs/portswaterways/rpt/>

June 20 U.S. Port and Inland Waterways Preparing for Post Panamax Vessels.pdf.

¹⁴ These sources preferred not to be identified in order to protect proprietary information.

¹⁵ ABS Consulting, Inc. "Study of Marine Engineering and Naval Architecture Costs for Use in Regulatory Analyses." Table 5, p. 26. A copy is included in the docket.

resource impacts to the Coast Guard for new, upgraded or revised CSMs.
iii. Benefits. The benefit of adding the SOLAS requirements and the NVIC guidance on CSMs to the CFR is increased Coast Guard enforcement authority. We previously cited the statistics from the Coast Guard’s CSM inspection activities from 2009 through 2011 for both U.S. and foreign-flagged vessels. However, as noted in section IV of this preamble, the only current U.S. implementation of the CSM is via NVIC

10–97, which is unenforceable. Incorporating these rules into the CFR elevates the requirements to regulation status. As described in section III of this preamble, the Coast Guard has existing authorities to inspect vessels; regulate an inspected vessel’s operation, fittings, equipment, and appliances; and implement SOLAS. The Coast Guard believes that it can enforce the provisions of the proposed rule under these authorities.

iv. Alternatives. Alternatives were considered in this proposed rule. Alternatives include various ways to apply the requirements to prepare and implement CSMs to U.S.-flagged vessels in coastwise trade. As described in section V of this preamble, the 2000 NPRM presented five options for applying CSM regulations to U.S. domestic voyages. Table 15 presents descriptions of these options and a summary of the comments.

TABLE 15—OPTIONS TO EXTEND CMS REQUIREMENTS TO U.S. DOMESTIC VOYAGES

Option No.	Description	Summary of comments
1	Extend SOLAS requirements to domestic voyages	4 supported, 5 opposed for these reasons: • Preferred compromise of Options 1 & 2 • Not requiring regular reviews • Too restrictive • Require too much standardization • Would not work for seagoing barges as no two barge cargoes are identical
2	Vessel specific standards, Coast Guard approval	1 supported, 5 opposed for these reasons: • Evaluate against experience with continuous examination program and noted similarity with Option 5 • Too many variables causing unneeded burden • Would not work, but did not give specific reasons • Second choice • Preferred compromise of Options 1 and 2
3	Certificate for carrying hazardous materials	One commenter stated its decision would depend on specific requirements and 3 opposed for these reasons: • Surveyors for multiple voyages not feasible for cost and availability • Could not ensure surveyor availability • High costs of surveyors
4	Allow each vessel to choose from among Options 1, 2, and 3	One commenter noted that companies supporting domestic rules would find this attractive, but did not state its own opinion. Another stated that it combined the strengths and weaknesses of the other Options. One opposed for unstated reasons and another was opposed because the “menu of options” would cause confusion.
5	Standards developed with industry	3 supported, 1 for unstated reasons and 2 because of its flexibility; and 1 was opposed because it would not ensure meeting needs of different vessel types and operations

The options presented in the NPRM were only outlined and did not have cost estimates. We developed a cost estimate for Option 1 that would extend SOLAS requirements to domestic vessels. We added these details to Option 1 to make the calculations:
 • The affected population will be U.S.-flagged vessels of 500 gross tons or more in coastwise trade. The geographic identification was vessels with coastwise route certifications. We identified 675 vessels from MISLE that met these requirements, which is comprised of 215 freight barges, 125 freight ships, and 335 offshore supply vessels.
 • In general, the vessels in the U.S. affected population for this alternative are smaller than the foreign-flagged vessels that comprise the affected

population of the proposed regulation. Data comparisons for the U.S. fleet shows average gross tons of 8,165 and average length of 326 feet. The comparable data for the foreign-flagged vessels is average gross tonnage of 31,306 and average length of 619 feet. Therefore, we assigned for the unit cost of the U.S. coastwise vessels the low-end value of \$7,500 from the range supplied by the subject matter experts we contacted. The recent history of new builds will continue through the ten-year analysis period. MISLE reported 22 new vessels per year from 2009–2012 and we used this in our analysis.
 • A phase-in period was not in the NPRM, but we added a three-year phase-in period, to mitigate the burden on both vessel owners and the authorized approval organizations. We

assume that vessel owners would distribute the certification of the manuals for their vessels evenly over the phase-in period. This would enable vessel owners and authorized approval organizations to schedule cargo securing approvals in conjunction with vessel down-time, such as scheduled examinations or times of vessel repairs and upgrades.
 With these parameters, we developed a 10-year cost schedule for Option 1. As the costs to foreign-flagged vessels would be the same for Option 1 as the preferred alternative, the data presented show the marginal costs for Option 1. The annualized cost, using a 7 percent discount rate would be \$759,524. The cost estimates are displayed in Table 16.

TABLE 16—COST ESTIMATE FOR OPTION 1, EXTEND CSM REQUIREMENTS TO DOMESTIC VESSELS

Year	Existing vessels	New vessels	Total vessels	Unit cost	Total cost	Discounted	
						7%	3%
1	225	22	247	\$7,500	\$1,852,500	\$1,731,308	\$1,798,544
2	225	22	247	7,500	1,852,500	1,618,045	1,746,159
3	225	22	247	7,500	1,852,500	1,512,192	1,695,300
4	0	22	22	7,500	165,000	125,878	146,600
5	0	22	22	7,500	165,000	117,643	142,330
6	0	22	22	7,500	165,000	109,946	138,185
7	0	22	22	7,500	165,000	102,754	134,160
8	0	22	22	7,500	165,000	96,032	130,253
9	0	22	22	7,500	165,000	89,749	126,459
10	0	22	22	7,500	165,000	83,878	122,775
Total	675	220	895		6,712,500	5,587,425	6,180,765
Annualized						795,524	724,574

The goal of this alternative would be to reduce the occurrence and impacts of lost containers in U.S. coastwise trade. However, the comments to the NPRM indicate that this is not a significant problem. One commenter stated that cargo losses from barges are rare, another stated that seagoing barges “are generally safe from cargo loss”, and another commenter stated that “most cargo losses result from container structural problems that the vessel owner operator cannot know about or prevent.” Recent data from MISLE supports the commenters. Specifically, MISLE has only five incidents from 2009–2011 of lost or damaged containers involving U.S. vessels in coastwise voyages. Additionally, our initial cost estimates, as presented in Table 16, indicate that industry would incur annualized costs, discounted at 7 percent, of nearly \$800,000. Therefore, the focus of this rulemaking is

exclusively vessels in international trade. However, the Coast Guard can reevaluate this position and initiate another rulemaking for the U.S. coastwise trade if new information indicates either underreporting or upward trend of lost containers.

c. Approval of Authorized Organizations

The Coast Guard authorizes classification societies and other organizations to review and approve CSMs on its behalf. The procedures for these organizations are currently found in NVIC 10–97 and cover selection criteria, information required by organizations applying for authorization status, the Coast Guard’s application review procedures, authorization termination, and appeals processes.

Following the procedures in NVIC 10–39, the Coast Guard has authorized these six classification societies to

review and approve CSMs: American Bureau of Shipping, Det Norske Veritas, Lloyd’s Register of Shipping, Germanischer Lloyd, RINA S.p.A, and ClassNK.¹⁶ We anticipate that no other classification societies will be applying for CSM approval authority in the near future.

However, the NVIC is a guidance document only, and not legally enforceable. The proposed rule would incorporate these procedures from the NVIC into the CFR with only some minor editorial changes. Therefore, we believe there would be no additional regulatory costs associated with the codification of these application procedures. Table 17 presents the change matrix for the codification of the class society approval guidance into the CFR and summarizes the specific edit or change, the affected population, and the economic impact.

TABLE 17—CHANGE MATRIX FOR INCORPORATING CLASS SOCIETY APPROVAL PROCEDURES INTO 46 CFR

Reference & description	Affected population	Economic impact
97.100 Applicability		
. . .(a)(3), organizations applying for CSM approval authority.	New applicants	No impact, codifies application guidance currently prescribed by NVIC.
97.115 Situation requiring report, criteria for reporting lost cargo.	Vessels subject to the rule that lose cargo overboard.	Costs for correction of noncompliance with existing requirements.
97.200 CSM Approval for U.S. Vessels on International Voyages		
. . .(a)(1), authorized applicants include owner, operator, or agent.	Owners, operators, and agents, of new U.S. vessels in international trade.	Administrative change, NVIC only referenced owner.
. . .(a)(2), CG oversight of approval authority applications.	Organizations applying for CSM approval authority.	No change, codifies application guidance currently located in NVIC.
. . .(a)(3), application procedures	U.S. vessels in international trade	No change, codifies application guidance currently located in NVIC.
. . .(a)(4), approval authority retains a copy	Authorized approval organizations	No change, codifies NVIC.
. . .(b), approval letter contents	Authorized approval organizations	No change, codifies NVIC.
. . .(c), disapproval procedures	Authorized approval organizations	No change, codifies application guidance currently located in NVIC.

¹⁶List of classification societies authorizations: <http://www.uscg.mil/hq/cg5/acp/docs/ClassSocietyAuths29May2013.pdf>.

TABLE 17—CHANGE MATRIX FOR INCORPORATING CLASS SOCIETY APPROVAL PROCEDURES INTO 46 CFR—Continued

Reference & description	Affected population	Economic impact
. . (d), resubmit procedures	Owners and operators resubmitting a CSM	No change, codifies application guidance currently located in NVIC.
. . (e), documents kept on vessel	Owners and operators of U.S. vessels subject to the rule.	No change, codifies application guidance currently located in NVIC.
97.205 Requirements for amending an approved CSM, amending procedures.	Owners and operators of U.S. vessels subject to the rule.	No change, codifies application guidance currently located in NVIC.
97.210 Appeals, appeals procedures	Owners and operators of U.S. vessels subject to the rule and authorized approval organizations.	No change, codifies application guidance currently located in NVIC.
97.300 Authorized CSM approval authorities, lists approved organizations.	ABS, Lloyds, Nat'l Cargo Bureau	No change, codifies application guidance currently located in NVIC.
97.305 Requests for authorization, application process.	Organizations seeking to become approved organizations.	No change, codifies application guidance currently located in NVIC.
97.310 Criteria for authorization, evaluation criteria.	CG and organizations seeking to become approved organizations.	No change, codifies application guidance currently located in NVIC.
97.315 Requirements for authorized approval organizations, responsibilities of CG and authorized approval organizations.	CG and authorized approval organizations	No change, rewords and codifies application guidance currently located in NVIC.
97.320 Revocation of authorization, procedures for CG revoking an authorization.	CG and referenced organizations	No change, revises and codifies application guidance currently located in NVIC.

Source: Coast Guard analysis.

We considered alternatives to the proposed changes and edits, however, we concluded that there are no viable alternatives. The procedures in the NVIC provide a complete description of all processes needed for approval and oversight of the subject organizations. Reducing or eliminating any of them, such as the one covering appeals, would leave a gap in the approval or oversight processes. We did not identify any current weaknesses or gaps in the NVIC, other than the proposed editorial changes. We also concluded that the

recordkeeping guidance in the NVIC provides complete documentation for all the involved parties—vessel owners, approved organizations. Reducing or eliminating any of the proposed recordkeeping rules would run the risk of producing a gap in the documentation. Conversely, adding additional recordkeeping rules would only increase associated burdens, but not provide any additional useful information.

In summary, the proposed rules governing organizations approved to

issue CSMs would codify current procedures with no associated costs to industry or the government. The benefit of these proposed rules is that it would provide a regulatory basis for the Coast Guard's oversight of organizations authorized to approve CSMs.

d. Review of Costs and Benefits. The total cost of the proposed rule is for the two cost elements: (1) Lost or Jettisoned Cargo and (2) CSM Requirements. Table 18 presents the ten-year cost schedule for undiscounted costs and discounted costs at 7 percent and 3 percent rates.

TABLE 18—SUMMARY OF THE 10-YEAR TOTAL COST TO THE INTERNATIONAL CARGO INDUSTRY AND U.S. GOVERNMENT

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Year	CSM requirements (1) Industry	Lost or jettisoned cargo (2) Industry	CG	Total industry (B+C)	Total cost (D+E)	Discounted	
						7%	3%
1	\$38,125	\$663	\$500	\$38,788	\$39,288	\$36,718	\$38,144
2	38,125	689	520	38,814	39,334	34,356	37,076
3	38,125	729	550	38,854	39,404	32,165	36,060
4	45,750	769	580	46,519	47,099	35,932	41,847
5	45,750	808	610	46,558	47,168	33,630	40,688
6	45,750	848	640	46,598	47,238	31,477	39,561
7	53,375	888	670	54,263	54,933	34,210	44,666
8	53,375	928	700	54,303	55,003	32,012	43,420
9	53,375	967	730	54,342	55,072	29,956	42,208
10	61,000	1,020	770	62,020	62,790	31,919	46,722
Total	472,750	8,309	6,270	481,059	487,329	332,375	410,392
Annualized						47,323	48,110

Table 19 presents the U.S.-based breakout of the 10-year cost data. The CSM plans would affect only foreign-flagged vessels and there are no

associated U.S. government costs, so the only inputs to U.S. costs are those associated with the proposed reporting requirements for lost or jettisoned cargo.

As described earlier, these requirements would accrue costs to both industry and government. The estimates for both sectors are in Table 18.

TABLE 19—COSTS TO U.S.-FLAGGED VESSELS IN INTERNATIONAL CARGO INDUSTRY AND U.S. GOVERNMENT FOR REPORTING OF LOST OR JETTISONED CARGO

Year	Undiscounted		Total	Discounted	Total 7%
	Industry	Government			
1	\$13	\$500	\$513	\$479	\$498
2	13	520	533	466	502
3	13	550	563	460	515
4	13	580	593	452	527
5	13	610	623	444	537
6	27	640	667	444	559
7	27	670	697	434	567
8	27	700	727	423	574
9	27	730	757	412	580
10	27	770	797	405	593
Total	200	6,270	6,470	4,419	5,452
Annualized ...	.....	.....	.....	629	639

Table 20 displays the breakout of the 10-year cost schedule for foreign-flagged vessels. These foreign-flagged vessels would incur costs involving both proposed requirements: CSM plans and reporting of lost and jettisoned cargo. Estimates for both requirements and the total cost are included in Table 20.

TABLE 20—COSTS FOR FOREIGN-FLAGGED VESSELS IN INTERNATIONAL CARGO INDUSTRY FOR CSM REQUIREMENTS

Year	Undiscounted			Discounted	
	CSM plans	Reporting of lost or jettisoned cargo	Total	7%	3%
1	\$38,125	\$649	\$38,774	\$36,237	\$37,645
2	38,125	676	38,801	33,890	36,574
3	38,125	716	38,841	31,706	35,545
4	45,750	755	46,505	35,478	41,319
5	45,750	795	46,545	33,186	40,150
6	45,750	822	46,572	31,033	39,003
7	53,375	861	54,236	33,775	44,099
8	53,375	901	54,276	31,589	42,846
9	53,375	941	54,316	29,544	41,629
10	61,000	994	61,994	31,515	46,129
Total	472,750	8,110	480,860	327,953	404,939
Annualized ...	.....	.....	.....	46,693	47,471

The primary benefit of this proposed rule is that it would place into the CFR rules and procedures for the cargo securing plans, the approval and oversight of organizations authorized to approve CSMs, and the reporting of lost or jettisoned cargo. Additionally, the reporting requirements for the lost or jettisoned cargo would provide the Coast Guard with additional information to monitor the effects on both navigation and the environment. Overall, the proposed rule would support the Coast Guard's missions of maritime safety and stewardship.

B. Small Entities

1. Summary of Findings

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.

The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We determined that this proposed rule affects a variety of large and small businesses, not-for-profit organizations, and governments (see the “Description of the Potential Number of Small Entities” section below). We have prepared the following initial regulatory flexibility analysis assessing the impact on small entities from the rule. Based on the information from this analysis, we found:

- There are an estimated 1,217 entities that control the 7,163 vessels that could be economically impacted by the proposed rule. Using size standards from the Small Business Administration, the 26 U.S.-flagged

vessels are controlled by 18 companies and none of them are small. The 7,137 foreign-flagged vessels are controlled by 1,199 companies. A review of the entities that control these vessels found that one foreign-flagged vessel is controlled by a non-U.S. not-for-profit entity which is not small, 32 foreign-flagged vessels are controlled by government agencies, and the remaining 7,104 foreign-flagged vessels are controlled by businesses. An analysis of a sample of the businesses controlling these vessels indicates that 69 percent are considered small.

- Compliance actions would consist of upgrading deficient CSMs and reporting lost or jettisoned cargo.
- Of the small entities in our sample with revenue information, 60 percent of them had an impact of less than 1 percent and 20 percent had an impact within the 1 percent to 3 percent range.

2. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.”

Under the RFA, we are required to consider if this rule will have a significant economic impact on a substantial number of small entities. Agencies must perform a review to determine whether a rule will have such an impact. If the agency determines that it will, the agency must prepare an initial regulatory flexibility analysis as described in the RFA.

Under Section 603(b) and (c) of the RFA, the initial regulatory flexibility analysis must provide and/or address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and
- Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

a. A description of the reasons why action by the agency is being considered. Agencies take regulatory action for various reasons. One reason is to harmonize the CFR with requirements and guidance located in other sources. The primary purpose of this proposed rule is to incorporate into the CFR the cargo securing manual rules from SOLAS, as the U.S. is a signatory state to that treaty.

Another of the reasons is the failure of the market to compensate for negative externalities caused by commercial activity. A negative externality can be the by-product of a transaction between two parties that is not accounted for in the transaction. As discussed in the regulatory analysis, this proposed rule is addressing a negative externality, which is that unreported lost or jettisoned cargo could collide with other vessels with hazardous consequences to other vessels, human health, or the environment. The proposed rule mandates that all occurrences of lost or jettisoned cargo must be reported to the Coast Guard.

b. A statement of the objectives of, and legal basis for, the proposed rule. The Coast Guard proposes this rulemaking to align U.S. regulations with the CSM requirements of SOLAS. The provisions of this rulemaking also authorize recognized classification societies to review and approve CSMs on behalf of the Coast Guard, prescribe how other organizations can become CSM approval authorities, and prescribe when and how the loss or jettisoning of cargo must be reported. Enforcing those requirements should help prevent or mitigate the consequences of vessel cargo loss, and promote the Coast Guard strategic goals of maritime safety and environmental protection.

Sections 2103 and 3306 of Title 46, U.S. Code, provide the statutory basis for this rulemaking. Section 2103 gives the Secretary of the department in which the Coast Guard is operating general regulatory authority to implement Subtitle II (Chapters 21 through 147) of Title 46, which includes statutory requirements in 46 U.S.C. Chapter 33 for inspecting the vessels to which this rulemaking applies. Section 3306 gives the Secretary authority to regulate an inspected vessel’s operation, fittings, equipment, appliances, and other items in the interest of safety. The Secretary’s authority under both statutes has been delegated to the Coast Guard in Department of Homeland Security Delegation No. 0170.1(92)(a) and (b). Additionally, the United States is a party to SOLAS. Where SOLAS must be enforced through U.S. regulations, those regulations are authorized by E.O. 12234.

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

TABLE 21—NON-U.S. VESSELS BY TYPE OF ENTITY

Entity type	Count	Percent
Business ¹⁷	7,104	99.54
Government	32	0.45
Not-for-Profit	1	0.01
Total	7,137	100.00

All the government entities exceed the threshold for being classified as a small entity as they are either agencies of a foreign government or exceed the 50,000 population threshold. We excluded these government entities from the revenue impact analysis. The single not-for-profit entity is also deemed not small as it is part of an international organization.

To analyze the potential impact on the businesses, we produced a random sample with a 95 percent confidence level and a confidence interval of 5 percent.¹⁸ The resulting sample consisted of 299 businesses. We researched public and proprietary databases for the location of the company, entity type (subsidiary or parent company), primary line of business, employee size, revenue, and other information.¹⁹ During the initial research we found 6 duplicated businesses and an additional one whose business was out of the scope of this rulemaking. Deleting these 7 businesses from our initial sample of 299 resulted in a working sample consisting of 292 businesses. We found that 217 of the companies in our sample are based in countries other than the U.S. We therefore excluded these non-U.S. companies from this revenue impact analysis.

The population for the revenue impact analysis consists of the remaining 75 businesses from the working sample. Of those 75, we found address information that locates 70 of them in the U.S. The remaining five are businesses for whom we could find no information; we assumed that they are located in the U.S. and are small businesses.

¹⁷ A vessel may have a separate owner, operator, and charterer. Operational control may be with any one of these companies, depending on type of owner (i.e., a passive ownership by a financial institution) or the type of operating or chartering contract. Also, the country that the vessel is registered in can be different than the country of the owner.

¹⁸ We selected a statistical sample so we would not need to research and collect employee size and revenue information for the entire affected operator population. We selected the operators in the sample through a random number generator process available in most statistical or spreadsheet software.

¹⁹ We used information and data from Manta (<http://Manta.com>) and ReferenceUSA (<http://www.referenceusa.com>).

We researched and compiled the employee size and revenue data for the 70 U.S. businesses and we compared this information to the Small Business Administration’s (SBA) “Table of Small Business Size Standards” to determine if an entity is small in its primary line of business as classified in the North

American Industry Classification System (NAICS).²⁰ We determined that 23 businesses exceeded the SBA small business size standards, and 20 businesses are small by the SBA standards. We could not find employee size or revenue data for 27 businesses that are located in the United States and

assumed they are small businesses. Thus, 52 businesses, accounting for 69.4% of the sample, are considered to be small. The information on location and size determination is summarized in Table 22.

TABLE 22—U.S. BUSINESS BY SIZE DETERMINATION

Entity type	Location		Count	Percent
	U.S.	Unknown		
Exceed the threshold	23	0	23	30.7
Below the threshold	20	0	20	26.7
Unknown	27	5	32	42.7
Total	70	5	75	100.0

The percentage of entities affected by this rule is distributed among 14 NAICS classified industries. Table 23 lists the

frequency, percentage, and size standard, and size threshold of NAICS

codes for the 20 small businesses found in the sample.

TABLE 23—NAICS CODES OF IDENTIFIED SMALL BUSINESSES

NAICS code	Industry	Count	Percent	Size standard	Threshold (revenue in \$ millions)
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.	3	15.0	Employees	100
483211	Inland Water Freight Transportation	3	15.0	Employees	500
488510	Freight Transportation Arrangement	2	10.0	Revenue	14
336611	Ship Building and Repairing	1	5.0	Employees	1,000
423310	Lumber & Wood Merchant Whls	1	5.0	Employees	100
423930	Recycling	1	5.0	Employees	100
424910	Farm Supplies Merchant Whls	1	5.0	Employees	100
441222	Boat Dealers	1	5.0	Revenue	30
483111	Deep Sea transportation	1	5.0	Employees	500
484230	Other Specialized Trucking Long-Distance	1	5.0	Revenue	25.5
488210	Support Activities for Rail Transportation	1	5.0	Revenue	14.0
488320	Marine Cargo Handling	1	5.0	Revenue	35.5
541990	All Other Professional & Technical Svcs	1	5.0	Revenue	14
561110	Office Administrative Svcs	1	5.0	Revenue	7
561990	All Other Support Svcs	1	5.0	Revenue	7
Total		20			

Source: [http://www.sba.gov/sites/default/files/files/Size_Standards_Table\(1\).pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf).

We selected the three industries that appeared most frequently in the random sample of entities. Businesses from these three industries accounted for approximately 40 percent of the entities in the random sample. Therefore, we can assume that approximately 40 percent of all entities affected by this regulation will be in one of these industries. A brief description of industries affected most by this rule is presented below:

- Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers (423860): This industry comprises establishments

primarily engaged in the merchant wholesale distribution of transportation equipment and supplies (except marine pleasure craft and motor vehicles).

- Inland Water Freight Transportation (483211): This U.S. industry comprises establishments primarily engaged in providing inland water transportation of cargo on lakes, rivers, or intracoastal waterways (except on the Great Lakes System).

- Freight Transportation Arrangement (488510): This industry comprises establishments primarily engaged in arranging transportation of freight between shippers and carriers.

These establishments are usually known as freight forwarders, marine shipping agents, or customs brokers and offer a combination of services spanning transportation modes.

d. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. The compliance requirements of the proposed rule consist of upgrading deficient CSMs and reporting lost or

²⁰ The SBA lists small business size standards for industries described in the North American

Industry Classification System. See [http://](http://www.sba.gov/content/table-small-business-size-standards)

www.sba.gov/content/table-small-business-size-standards.

jettisoned cargo. Therefore, this proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Details on the burden estimate associated with this collection is available in section VIII.D of this preamble.

As discussed in section VIII.A, in 2009 through 2011 the Coast Guard conducted 11,989 vessel inspections and found problems relating to CSMs in only 7 instances, or about 0.1 percent of the foreign-flagged vessels were found to have deficient CSMs. We anticipate that the owners and operators of these vessels will upgrade their manuals to meet standards and comply with this rule. We do not have detailed descriptions on each of the deficiency cases. To impute a cost for this compliance action, we apply the

estimate of \$7,625 develop a new CSM, as used in the Regulatory Analysis.

For reporting lost or jettisoned cargo, we noted in section VIII.A cost discussions that when one of these incidents occurs, the vessel staff already collects the needed information for company purposes. Thus, the only additional cost to the vessel is to report this information to the Coast Guard. We estimate the additional reporting will take 0.25 hours for the vessel’s Master or other senior officer to compile and transmit the report to the Coast Guard. We estimate that the loaded wage rate for the senior officer is \$53.00 per hour. The cost of reporting is \$13.25 (0.25 hours * \$53 per hour).

As discussed in section VIII.A, we adjusted the affected population to account for anticipated growth in container traffic. In our ten-year analysis, we estimate that the number of

vessels that would need to upgrade their CSM would be 5 in year one each of and increase to 8 in year ten. We also accounted for this growth in container traffic in our estimate of lost or jettisoned cargoes. In the section VIII.A cost discussions we estimate that in the first year the rule would become effective, 50 incidents of lost or jettisoned cargo would occur. We estimate that the affected population in that year consists of 7,163 vessels, yielding an incident rate of 0.7 percent (50 incidents/7,163 vessels). To execute a revenue impact analysis we posited that in any given year each business would have one vessel that would need to upgrade its CSM and that one of their vessels would have an incident of lost or jettisoned cargo. Given these assumptions, the total annual compliance cost for any company is \$7,638.25, as shown in Table 24.

TABLE 24—ANNUAL COMPLIANCE COST FOR REVENUE IMPACT ANALYSIS

	Loaded wage	Hours	Total cost
Cost to upgrade 1 CSM	N/A	N/A	\$7,625
Cost to report 1 hazardous condition	53	0.25	13.25
Total			7,638.25

For each business in our sample with revenue data, we calculated the impact as the assumed cost of \$7,638.25 as a percentage of that business’s annual revenue. This produced a range of potential revenue impacts across the sample. Table 25 presents the impact data in ranges of less than 1 percent, 1 to 3 percent, and greater than 3 percent. As shown in Table 25, for 60 percent of the companies, the revenue impact is less than 1 percent of annual revenue and between 1 percent and 3 percent of annual revenue for another 20 percent.

TABLE 25—ESTIMATED REVENUE IMPACT ON SMALL BUSINESSES

Impact class	Count	Percent
<1%	12	60.0
1%–3%	4	20.0
>3%	4	20.0
Total	20	100.0

As shown in Table 18, the highest cost to industry in any one year on an undiscounted basis is \$62,790 in year 10. The revenue impact analysis indicates that 60 percent of the affected population would have an impact of less than 1 percent and the other 20 percent would have an impact between 1 percent and 3 percent. If you think that your business, organization, or

governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

e. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. This proposed rule does not duplicate or conflict with other Federal rules. This rulemaking concerns vessel operations and the Coast Guard has sole jurisdiction over this area at the Federal level. States may not regulate in categories reserved for regulation by the Coast Guard, so this proposed rule will not duplicate or conflict with any State regulations.

f. Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Alternatives were considered in this proposed rule and are discussed in section VIII.A of this preamble. Alternatives include various ways to apply the requirements to prepare and implement CSMs to U.S.-flagged vessels in coastwise trade. However, we

concluded that standards developed for international trade cannot be economically justified for vessels operating only domestically at this time. Therefore, the focus of this rulemaking is exclusively on vessels in international trade.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Ken Smith using the contact information in **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This rule would call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for preparing and reporting for the development of a CSM, revising a CSM, notification of other hazardous conditions, and notification of lost or jettisoned cargo.

This collection of information applies to rulemaking procedures regarding cargo securing manuals. Specific areas covered in this information collection include 33 CFR Part 97, "Cargo Securing Manuals;" 33 CFR Part 160, "Ports and Waterways Safety-General;" and 46 CFR Part 97, "Operations." This rule would align the CFR with SOLAS.

Title: Cargo Securing Manuals.

OMB Control Number: 1625-NEW

Summary of Collection of Information: The rule would add a new part 97, "Cargo Securing Manuals" to chapter 33 of the CFR. The collection of information burden for CSMs derives from one of these three events:

- A SOLAS container vessel built after the rule becomes effective would need to develop and implement a CSM. The new vessel will need an approved CSM.
- If a vessel changes its type, the CSM must be revised. An example of a type change is when a general break-bulk carrier is modified to become a containership.
- If an existing vessel either changes 15 percent of its cargo securing systems or more than 15 percent of its portable securing devices, then the CSM must be revised.

Additionally, the rule would impose burdens for the notification of hazardous conditions. Currently, these notifications are made via VHS radio, satellite radio, cell phones, and other forms of electronic communication. The proposed rule specifically allows for electronic communications and we anticipate this will continue to be how the notifications are transmitted.

Need for Information: Vessel owners and operators need to develop and implement CSMs to fulfill international safety standards established by SOLAS. The Coast Guard needs timely information on hazardous conditions to carry out its missions relating to

protecting vessels, their crews and passengers, and the environment.

Proposed Use of Information: For new and modified CSMs, Coast Guard-authorized third party organizations would review these manuals and if found acceptable, approve them. The Coast Guard would use the information from the notification of hazardous conditions to inform other vessel operators/waterway users of the situation and initiate any needed measures to reduce or eliminate the hazard. These actions would lead to a reduction of vessel casualties and pollution.

Description of Respondents: There are two groups of respondents impacted by this rule. The first group consists of owners and operators of U.S.-flagged vessels that need to submit new or revised CSMs to the recognized classification societies. The second group consists of the operators of vessels that would be required to report hazardous conditions.

Number of Respondents: We estimate that there would be 149 respondents affected annually by the proposed CSM requirements. The total is divided into these two classes: (1) 6 related to CSM plans, and (2) 143 for notifications of hazardous conditions, which include lost or jettisoned cargo and other incidents. Table 26 describes the calculations for developing the estimates of each requirement relating to the CSM plans.

TABLE 26—ESTIMATES OF NUMBER OF RESPONDENTS

Class	Requirement	Description	Count	Total
CSM Plans	Develop CSM—new vessel	From U.S. vessel population data of 26 vessels (Table 4), average new builds 2009–2011.	3	.....
	Revise CSM—change in vessel type	MISLE data shows none of the affected vessels have changed vessel type from 2001–2012.	0	.....
	Revise CSM—replace CSM systems or equipment.	Annual rate of 11.3% from information supplied by an approved organization. Applied to U.S. population (see Table 4), (26 * 11.3%).	3	.....
	CSM Total .....	.....	.....	6
Notifications	Notifications of hazardous condition	From MISLE, average of 2009–2011 notifications.	141	.....
	Notifications of lost or jettisoned cargo	U.S. notifications, Table 9, year 10	2	.....
	Notifications Total .....	.....	.....	143
Grand Total .....	.....	.....	.....	149

Frequency of Response: A CSM is valid indefinitely, as long as it does not meet any of the conditions for a revision. The reporting of hazardous

conditions occurs as needed. In the subsequent "Number of Respondents" section, we present annual estimates of the reports.

Burden of Response: The burden hours per requirement is estimated and shown below in Table 27.

TABLE 27—ANNUAL BURDEN HOURS PER REQUEST

Requirement	Hours	Notes
Develop new CSM	48	8 hours to survey the vessel and 40 hours to draft the CSM.
Revise CSM—change in vessel type	48	8 hours to survey the vessel and 40 hours to draft the CSM.
Revise CSM—change in cargo securing systems or equipment	20	20 hours to revise the existing CSM.
Notification of hazardous condition	0.25	0.25 hours for vessel crew to prepare and transmit the notice.
Notification of lost of jettisoned cargo	0.25	0.25 hours for vessel crew to prepare and transmit the notice.

Estimated Total Annual Burden: We estimate that the total annual burden to industry will be 240 hours (rounded). Table 28 displays the total burden hours for each request:

TABLE 28—TOTAL ANNUAL BURDEN HOURS

Requirement	Hours
Develop new CSM	144
Revise CSM—change in vessel type	0
Revise CSM—change in cargo securing systems or equipment	60
Notification of hazardous condition ..	35.25
Notification of lost of jettisoned cargo	0.5

Reason For Proposed Change: The rule would require collections of information regarding these two activities: (1) development or revision of a CSM, and 2) notification of hazardous conditions, including lost or jettisoned cargo.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this SNPRM to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the collection requirements in this final rule can be enforced, OMB must approve Coast Guard's request to collect this information.

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has 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. We have analyzed this proposed rule under E.O. 13132 and have determined that it does not have implications for federalism. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

This proposed rule on cargo securing falls into the category of vessel operation. Because the States may not regulate within this category, preemption under E.O. 13132 is not an issue.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

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

This proposed rule uses technical standards other than voluntary consensus standards. It incorporates guidance developed by the IMO, an international organization under United Nations auspices. We are not aware of any voluntary consensus standards that are pertinent to this rule. If you are aware of voluntary consensus standards that might apply, please identify them by sending a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you think the standards might apply.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This action falls under section 2.B.2, figure 2-1, paragraph (34)(a) and involves regulations which are editorial or procedural. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 97

Cargo stowage and securing, Cargo vessels, Hazardous materials, Reporting and recordkeeping requirements, Incorporation by reference.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

46 CFR Part 97

Cargo vessels, Marine safety, Navigation (water), Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to add 33 CFR part 97 and amend 33 CFR Part 160 and 46 CFR Part 97 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

- 1. Add part 97 to read as follows:

PART 97—RULES FOR THE SAFE OPERATION OF VESSELS, STOWAGE AND SECURING OF CARGOES

Subpart A—CARGO SECURING MANUALS

- 97.100 Applicability—Electronic documentation.
- 97.105 Definitions.
- 97.110 Incorporation by reference.
- 97.115 Reporting lost or jettisoned cargo.
- 97.120 Cargo securing manuals.
- 97.121–97.199 [Reserved]
- 97.200 Cargo securing manual (CSM) approval for U.S.-flagged vessels on international voyages.
- 97.205 Requirements for amending an approved cargo securing manual (CSM).
- 97.210 Appeals.
- 97.211–97.299 [Reserved]
- 97.300 *Authorized cargo securing manual (CSM) approval authorities.*
- 97.305 Requests for authorization *to act as cargo securing manual (CSM) approval authority.*
- 97.310 Criteria for authorization.
- 97.320 Requirements for authorized approval organizations.
- 97.320 *Revocation of authorization.*

Subpart B—[Reserved]

Authority: 46 U.S.C. 2103, 3306; E.O. 12234; Department of Homeland Security Delegation No. 0170.1(92)(a) and (b).

PART 97—RULES FOR THE SAFE OPERATION OF VESSELS, STOWAGE AND SECURING OF CARGOES

Subpart A—Cargo Securing Manuals

§ 97.100 Applicability—Electronic documentation.

- (a) This part applies to—
 - (1) A vessel of 500 gross tons or more on an international voyage that must comply with Chapter VI/5.6 or Chapter VII/5 of the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS) and that does not solely carry liquid or solid cargoes in bulk, and that is either a U.S.-flagged

cargo vessel, or a foreign-flagged cargo vessel that is operating in waters subject to the jurisdiction of the United States;

(2) A U.S.-flagged cargo vessel that is less than 500 gross tons but that chooses to have this part applied to it by submitting a cargo securing manual for approval in accordance with § 97.200(a)(3);

(3) A foreign-flagged cargo vessel of 500 gross tons or more on an international voyage from a country not signatory to SOLAS that would otherwise be required to comply with Chapter VI/5.6 or Chapter VII/5 of SOLAS and that does not solely carry liquid or solid cargoes in bulk and is operating in waters subject to the jurisdiction of the United States; and

(4) Any organization applying to be selected as a cargo securing manual approval authority.

(b) This part does not apply to a vessel owned by the Maritime Administration that is part of the Ready Reserve Force or the title of which is vested in the United States and which is used for public purposes only.

(c) Any manual, letter, request, appeal, or ruling required by this part may be provided or submitted in electronic form as well as in printed form.

§ 97.105 Definitions.

As used in this part—

Approval authority means a CSM approval authority, as that term is defined in this section.

Cargo means the goods or merchandise conveyed in a vessel, and includes but is not limited to cargo that can be measured as a "cargo unit" as that term is used in the International Maritime Organization's Code of Safe Practice for Cargo Stowage and Securing, 2003 edition: "a vehicle, container, flat, pallet, portable tank, packaged unit, or any other entity, etc., and loading equipment, or any part thereof, which belongs to the ship but is not fixed to the ship . . ."; but it does not include other vessel equipment or the incidental personal possessions of persons on board the vessel.

Cargo safe access plan (CSAP) means a plan included in the cargo securing manual that provides detailed information on safe access for persons engaged in work connected with cargo stowage and securing on ships that are specifically designed and fitted for the purpose of carrying containers.

Cargo securing manual (CSM) means an electronic or printed manual developed to meet the requirements of SOLAS and this part that is used by the master of a vessel to properly stow and

secure cargoes on the vessel for which it is developed.

Cargo securing manual approval authority or *CSM approval authority* means an organization that meets the requirements of this part, and that the Commandant has authorized to conduct certain actions and issue electronic or printed approval letters on behalf of the United States.

Captain of the Port (COTP) means the U.S. Coast Guard officer as described in 33 CFR 6.01–3.

Commandant, except as otherwise specified, means the Chief, Office of Operating and Environmental Standards, whose address is COMDT (CG–OES) 2100 2nd Street SW., Stop 7126, Washington, DC 20593–7126 and whose telephone number is 202–372–1404.

Container means an article of transport equipment described in 49 CFR 450.3.

Container vessel means a vessel specifically designed and fitted for the purpose of carrying containers.

International voyage means a voyage between a port or place in one country (or its possessions) and a port or place in another country.

§ 97.110 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Headquarters, Office of Operating and Environmental Standards (CG–OES), 2100 Second Street SW., Stop 7126, Washington, DC 20593–7126, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) *International Maritime Organization (IMO), Publications Section*, 4 Albert Embankment, London, SE1 7SR, United Kingdom, +44(0)20 7735 7611, <http://www.imo.org>.

(1) Maritime Safety Committee Circular 1353 (MSC.1/Circ. 1353), Guidelines for the Preparation of the Cargo Securing Manual, June 30, 2010–97, IBR approved for § 97.120.

(2) Maritime Safety Committee Circular 1352 (MSC.1/Circ.1352), Cargo

Stowage and Securing (CSS Code) Annex 14 Guidance on Providing Safe Working Conditions for Securing of Containers on Deck, June 30, 2010–97, IBR approved for § 97.120.

(3) Assembly Resolution 739(18) (Res.A.739(18)), Guidelines for the Authorization of Organizations Acting on Behalf of the Administration, November 4, 1993–97, IBR approved for § 97.310.

§ 97.115 Reporting lost or jettisoned cargo.

(a) In the event a vessel loses or jettisons at sea any cargo described in paragraph (b)(1) of this section, it must comply with the immediate notification requirements of 33 CFR 160.215, and if the cargo contains hazardous material as defined in paragraph (b)(2) of this section the vessel must also report as soon as possible in accordance with 49 CFR 176.48.

(b)(1) The cargo to which this section applies includes any container, and any other cargo the loss or jettisoning of which could adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States.

(2) As used in this section, “hazardous material” means a substance or material designated by the Secretary of Transportation as capable of posing an unreasonable risk to health, safety, and property when transported in commerce. The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials as defined in 49 CFR 171.8, materials designated as hazardous under the provisions of 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 CFR part 173.

§ 97.120 Cargo securing manuals.

(a)(1) Any vessel to which this part applies must have a cargo securing manual (CSM) on board that has been approved by the government of the country whose flag the vessel is entitled to fly; and a CSM approved after June 30, 2010 must at a minimum meet the guidelines in Maritime Safety Committee Circular 1353 (MSC.1/Circ. 1353), Guidelines for the Preparation of the Cargo Securing Manual (incorporated by reference, see 33 CFR 97.110).

(2) A container vessel with a keel laid on or after January 1, 2015 must include a cargo safe access plan that at a minimum meets the guidelines in Maritime Safety Committee Circular 1352 (MSC.1/Circ.1352), Cargo Stowage and Securing (CSS Code) Annex 14

Guidance on Providing Safe Working Conditions for Securing of Containers on Deck (incorporated by reference, see 33 CFR 97.110).

(b) While operating in waters under the jurisdiction of the United States, the Coast Guard may board any vessel to which this part applies to determine that the vessel has the document(s) required by paragraph (a) of this section onboard. Any foreign-flagged vessel found not to be in compliance with paragraph (a) may be detained by order of the COTP at the port or terminal where the noncompliance is found until the COTP determines that the vessel can go to sea without presenting an unreasonable threat of harm to the port, the marine environment, the vessel, or its crew.

§§ 97.121–97.199 [Reserved]

§ 97.200 Cargo securing manual (CSM) approval for U.S.-flagged vessels on international voyages.

(a)(1) An applicant for CSM approval may be the owner or operator of the vessel, or a person acting on the owner or operator’s behalf.

(2) The Commandant is responsible for overseeing and managing the review and approval of approval authority applications and provides an up-to-date list of organizations authorized to act under this subpart, which is available at <http://www.uscg.mil/hq/cg5/cg522/cg5222> or by requesting it in writing from the Commandant and enclosing a self-addressed, stamped envelope.

(3) The applicant must submit two dated copies of a CSM that meets the requirements of this part to a CSM approval authority for review and approval. If any amendments are submitted they must be dated. The CSM must include a “change page” document to ensure continuous documentation of amendments made and the dates they were completed.

(4) The approval authority will retain one copy of the CSM for its records.

(b) If the approval authority completes the review process and approves the CSM, the approval authority will provide a CSM approval letter on its letterhead, containing—

(1) Date of CSM approval;

(2) A subject line reading: “APPROVAL OF CARGO SECURING MANUAL (AMENDMENT—if applicable) FOR THE M/V _____, OFFICIAL NUMBER _____”;

(3) The following statement: “This is to certify that the Cargo Securing Manual (Amendment—if applicable) dated _____ for the M/V _____, Official Number _____, has been approved on behalf of the United States. The Cargo

Securing Manual (Amendment—if applicable) was reviewed for compliance with Maritime Safety Committee Circular 1353 (MSC.1/Circ. 1353) for content, and correctness of the calculations on which the approval is based. This approval letter is to be kept with the Cargo Securing Manual, as proof of compliance with regulations VI/5.6 and VII.5 of the 2004 amendments to the International Convention for the Safety of Life at Sea (SOLAS) 1974.”;

(4) Signature of the approval authority official responsible for review and approval of the CSM; and

(5) The approval authority's seal or stamp.

(c) If the approval authority completes the review process and disapproves the CSM, the approval authority will provide a letter on its letterhead, containing—

(1) Date of CSM disapproval; and

(2) Explanation of why the CSM was disapproved and what the submitter must do to correct deficiencies.

(d) The submitter of a disapproved CSM may resubmit the CSM with amendments for further review, either to correct deficiencies noted by the approval authority, or to expand the CSM to fully meet the requirements of this part.

(e) The original copy of the CSM approval letter must be kept with the approved CSM and its amendments, together with supporting documents and calculations used in granting the approval, onboard the vessel for review by Coast Guard personnel upon request.

§ 97.205 Requirements for amending an approved cargo securing manual (CSM).

Resubmission and re-approval by a CSM approval authority are required after any event listed in this section.

(a) Reconfiguration of a vessel from one type of cargo carriage to another (e.g., a general break-bulk cargo vessel reconfigured to a container or a roll-on/roll-off vessel).

(b) Reconfiguration or replacement of 15 percent or more of the vessel's fixed cargo securing or tie down systems with different types of devices or systems.

(c) Replacement of 15 percent or more of the vessel's portable cargo securing devices, with different types of devices for securing the cargo not already used aboard the vessel (e.g., wire lashings replaced with turnbuckles or chains).

§ 97.210 Appeals.

(a) A vessel owner or operator, or person acting on their behalf, who disagrees with a decision of a cargo securing manual approval authority may submit a written appeal to the approval authority requesting reconsideration of

information in dispute. Within 30 days of receiving the appeal, the approval authority must provide the vessel owner with a final written ruling on the request, with a copy to the Commandant.

(b) A vessel owner who is dissatisfied with the approval authority's final written ruling may appeal directly to the Commandant. The appeal must be made in writing and include the documentation and supporting evidence the owner wants to be considered, and may ask the Commandant to stay the effect of the appealed decision while it is under review by the Commandant.

(c) The Commandant will make a decision on the appeal and send a formal response to the vessel owner and a copy to the approval authority. The Commandant's decision will constitute final agency action on the appeal request.

§§ 97.211–97.299 [Reserved]

§ 97.300 Authorized cargo securing manual (CSM) approval authorities.

(a) The following organizations are authorized to act on behalf of the U.S. for the review and approval of CSMs:

(1) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, 281-977-5800, <http://www.eagle.org>.

(2) Lloyd's Register of Shipping, 71 Fenchurch Street, London EC3M 4BS, United Kingdom, +44(0)20 7709 9166, <http://www.lr.org>.

(3) Any recognized classification society to which the Coast Guard has delegated issuance of a Cargo Ship Safety Equipment Certificate in accordance with 46 CFR 8.320(b)(4). A list of these organizations can be found at www.uscg.mil/hq/cg5/cg522/cg5222 in the Alternate Compliance Program site under “Programs & Services”.

(4) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, NY 10004-1110, 212-785-8300, <http://www.natcargo.org>.

(b) Reserved.

§ 97.305 Requests for authorization to act as cargo securing manual (CSM) approval authority.

An organization seeking authorization as a CSM approval authority must make a request to the Commandant for authorization. The request must include, in writing, the items listed in this section or as otherwise specified by the Commandant.

(a) A certified copy of the organization's certificate of incorporation or partnership on file with a U.S. State, including the name and address of the organization, with

written statements or documents which show that—

(1) The organization's owners, managers, and employees are free from influence or control by vessel shipbuilders, owners, operators, lessors, or other related commercial interests as evidenced by past and present business practices;

(2) The organization has demonstrated, through other related work, the capability to competently evaluate CSMs for completeness and sufficiency according to the requirements of SOLAS and this part;

(3) The organization has an acceptable degree of financial security, based on recent audits by certified public accountants over the last 5 years; and

(4) The organization maintains a corporate office in the United States that has adequate resources and staff to support all aspects of CSM review, approval, and recordkeeping.

(b) A listing of the names of the organization's principal executives, with titles, telephone and telefax numbers.

(c) A written general description of the organization, covering the ownership, managerial structure, and organization components, including any directly affiliated organizations, and their functions utilized for supporting technical services.

(d) A written list of technical services the organization offers.

(e) A written general description of the geographical area the organization serves.

(f) A written general description of the clients the organization is serving, or intends to serve.

(g) A written general description of similar work performed by the organization in the past, noting the amount and extent of such work performed within the previous 3 years.

(h) A written listing of the names of full-time professional staff employed by the organization and available for technical review and approval of CSMs including:

(1) Naval architects and naval engineers, with copies of their professional credentials, college degrees, and specialized training certificates.

(2) Merchant mariners with Coast Guard-issued credentials, with a summary of their working experience on board cargo vessels (including vessel tonnage and types of cargo).

(3) Written proof of staff competence to perform CSM review and approval, evidenced by detailed summaries of each individual's experience (measured in months) during the past 5 years of evaluating maritime cargo securing

systems. Experience summaries must be documented on company letterhead and endorsed by a company executive who has had direct observation of the individual and quality of his or her work product.

(j) A complete description of the organization's internal quality control processes including written standards used by the organization to ensure consistency in CSM review and approval procedures by qualified professionals.

(k) A description of the organization's training program for assuring continued competency of professional employees performing CSM review and approval who are identified in the application.

(l) Evidence of financial stability over the past 5-year period, such as financial reports completed independently by certified public accountants.

(m) A list of five or more business references, including names, addresses, and telephone numbers of principal executives, who can attest to the organization's competence within the past 2 years.

(n) A statement to the Coast Guard that gives its officials permission to inspect the organization's facilities and records of CSM review and approval on behalf of the U.S. at any time with reasonable advance notice.

(o) Any additional information the organization deems to be pertinent.

§ 97.310 Criteria for authorization.

(a) The Commandant will evaluate the organization's request for authorization and supporting written materials, looking for evidence of—

(1) The organization's clear assignment of management duties;

(2) Ethical standards for managers and cargo securing manual (CSM) reviewers;

(3) Procedures for personnel training, qualification, certification, and re-qualification that are consistent with recognized industry standards;

(4) Acceptable standards available for the organization's internal auditing and management review;

(5) Recordkeeping standards for CSM review and approval;

(6) Methods used to review and certify CSMs;

(7) Experience and knowledge demonstrating competency to evaluate CSMs for completeness and sufficiency according to the requirements of SOLAS;

(8) Methods for handling appeals; and

(9) Overall procedures consistent with IMO Resolution A.739(18), "Guidelines for the Authorization of Organizations Acting on Behalf of the Administration" (incorporated by reference, see § 97.110).

(b) After a favorable evaluation of the organization's request, the Commandant may arrange to visit the organization's corporate and port offices for an on-site evaluation of operations.

(c) When a request is approved, the organization and the Coast Guard will enter into the written agreement provided for by 33 CFR 97.315. If the request is not approved, the Commandant will give the organization a written explanation, and the organization may resubmit its request if it corrects any noted deficiencies.

§ 97.315 Requirements for authorized approval organizations.

Approved organizations will enter into a written agreement with the Coast Guard that specifies:

(a) The period the authorization is valid;

(b) Which duties and responsibilities the organization may perform and what approval letters it may issue on behalf of the U.S.;

(c) Reports and information the organization must send to the Commandant;

(d) Actions the organization must take to renew the agreement when it expires; and

(e) Actions the organization must take if the Commandant revokes authorization pursuant to 33 CFR 97.320.

§ 97.320 Revocation of authorization.

The Commandant may revoke a cargo securing manual (CSM) approval authority's authorization and remove it from the list of CSM approval authorities if it fails to maintain acceptable standards. For the purposes of 46 CFR subpart 1.03, such a revocation would be treated as involving the recognition of a classification society and could be appealed pursuant to 46 CFR 1.03–15(h)(4). Upon revocation, the former approval authority must send written notice to each vessel owner whose CSM it approved. The notice must include the current list of CSM approval authorities and state:

(a) That its authorization as a CSM approval authority has been revoked;

(b) The Coast Guard's explanation for the revocation; and

(c) That the vessel's CSM remains valid as long as amendments have not been completed which require it to be re-approved pursuant to 33 CFR 97.200 or 97.205.

Subpart B—[Reserved]

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 2. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 11225 and 46 U.S.C. 3715.

■ 3. Revise § 160.215 to read as follows:

§ 160.215 Notice of hazardous conditions.

(a) Whenever there is a hazardous condition either onboard a vessel or caused by a vessel or its operation, the owner, agent, master, operator, or person in charge must immediately notify the nearest Coast Guard Sector Office or Group Office, and in addition submit any report required by 46 CFR 4.05–10.

(b) When the hazardous condition involves cargo loss or jettisoning as described in 33 CFR 97.115, the notification required by paragraph (a) of this section must include—

(1) What was lost, including a description of cargo, substances involved, and types of packages;

(2) How many were lost, including the number of packages and quantity of substances they represent;

(3) When the incident occurred, including the time of the incident or period of time over which the incident occurred;

(4) Where the incident occurred, including the exact or estimated location of the incident, the route the ship was taking, and the weather (wind and sea) conditions at the time or approximate time of the incident; and

(5) How the incident occurred, including the circumstances of the incident, the type of securing equipment that was used, and any other material failures that may have contributed to the incident.

TITLE 46—SHIPPING

PART 97—OPERATIONS

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

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

■ 5. Add § 97.12–10 to read as follows:

§ 97.12–10 Cargo securing manuals.

Each U.S.-flagged vessel that must comply with Chapter VI/5.6 or Chapter VII/5 of the International Convention for

the Safety of Life at Sea, 1974 as
amended must have on board a cargo

securing manual that meets the
requirements of 33 CFR part 97.

Dated: November 1, 2013,

J.G. Lantz,

*Director of Commercial Regulations and
Standards, U.S. Coast Guard.*

[FR Doc. 2013-26886 Filed 11-14-13; 8:45 am]

BILLING CODE 9110-04-P

Notices

Federal Register

Vol. 78, No. 221

Friday, November 15, 2013

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

November 7, 2013.

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), New Executive Office Building, 725-17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: 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 by December 16, 2013. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control

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

Rural Housing Service

Title: Real Estate Title Clearance and Loan Closing—7 CFR 1927-B.

OMB Control Number: 0575-0147.

Summary of Collection: Rural Housing Service is a credit agency for the Department of Agriculture. The Agency offers a supervised credit program to build family farms, modest housing, sanitary water and sewer systems, essential community facilities, businesses and industries in rural areas. Section 306 of the Consolidated Farm and Rural Development Act (CONTACT), 7 U.S.C. 1926.a (as amended), authorizes RUS to make loans to public agencies, American Indian tribes, and non-profit corporations. The loans fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Section 501 of Title V of the Housing Act of 1949, as amended, provides authorization to extend financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings and to provide decent, safe and sanitary living conditions in rural areas. The Secretary of Agriculture is authorized to prescribe regulations to ensure that these loans, made with federal funds, are legally secured.

Need and Use of the Information: The approved attorney/title company (closing agent) and the field office staff collect the required information. Forms and/or guidelines are provided to assist in the collection, certification and submission of this information. Most of these forms collect information that is standard in the industry. If the information is collected less frequently, the agency would not obtain the proper security position on the properties being taken as security and would have no evidence that the closing agents and agency meet the requirements of this regulations.

Description of Respondents: Individuals or households; Business or other for-profit, Not-for-profit institutions; Farms.

Number of Respondents: 13,980.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,018.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013-27336 Filed 11-14-13; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—2014 Evaluation of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity

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. This collection is a revision of the Evaluation of the Summer Electronic Benefits for Children (SEBTC) Household-Based Demonstrations on Food Insecurity, OMB Control No. 0584-0559.

DATES: Written comments must be received on or before January 14, 2014.

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: Richard Lucas, Director, Office of Policy Support, Food and Nutrition Service, U.S. Department of Agriculture, 3101

Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Richard Lucas at 703-305-2576 or via email to Richard.Lucas@fns.usda.gov. 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 1014, 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 Richard Lucas at 703-305-2017.

SUPPLEMENTARY INFORMATION:

Title: 2014 Evaluation of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity

Form Number: None.

OMB Number: 0584-0559.

Expiration Date: 03/31/2014.

Type of Request: Revision of a currently approved information collection.

Abstract: The Agriculture, Rural Development, Food and Drug

Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111-80), Section 749(g), directed that the Secretary of Agriculture shall carry out demonstration projects to develop and test methods of providing access to food for children in urban and rural areas during the summer months when schools are not in regular session to reduce or eliminate the food insecurity and hunger of children; and to improve the nutritional status of children. The Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity carries out the demonstration projects Congress directed USDA to perform in this section. In addition, the Act directed the Secretary of Agriculture to provide for an independent evaluation of the demonstration projects using rigorous methodologies. The Evaluation of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity carries out the provisions of the Act.

The evaluation of these projects is intended to provide policymakers with clear, rigorous and timely findings to make decisions about potential changes to Federal summer feeding programs during the next Child Nutrition reauthorization cycle. In 2011 through 2013, the SEBTC evaluations primarily examined how the provision of summer food benefits to the households of children certified for free or reduced-price school meals impacted the prevalence of very low food security among children as well as their nutritional status.

The revised evaluation will gather data from up to 50 demonstration areas in the summer of 2014. Each demonstration site will consist of school districts that have high proportions of children who qualify for free and reduced-price school lunches and be located in rural areas. Households selected for participation will receive either a \$60 or \$30 benefit per child per month.

Affected Public: School Food Authority Directors in participating Districts.

Estimated Number of Respondents: The total estimated number of respondents in 2014 is 50.

Estimated Number of Responses per Respondent: Each respondent will provide data on the number of children offered a benefit and the number of children who consented to receive the benefit; they may also be asked to transfer an electronic benefit redemption data file to the research team; and they will participate in a one-hour qualitative interview about their experiences with the demonstration.

Estimated Total Annual Responses: 50.

Estimated Time per Response: The estimated average response time is 3 hours. We expect no non-respondents because providing the data is a requirement of participation.

Estimated Total Annual Burden on Respondents and Non-Respondents: The total estimated response time is 150 hours. See the table below.

Respondent	Estimated number of respondent	Responses annually per respondent	Total annual responses (Col. b × c)	Estimated average number of hours per response	Estimated total hours (Col. d × e)
Reporting Burden .....	.....	.....	.....	.....	.....
School Food Authority Directors	50	1	50	3	150
Total Reporting Burden	50	.....	50	.....	150

Dated: November 8, 2013.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2013-27456 Filed 11-14-13; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee for Implementation of the National Forest System Land Management Planning Rule will meet in

Arlington, VA, on November 21, 2013. Attendees may also participate via webinar and conference call. The Committee operates in compliance with the Federal Advisory Committee Act (FACA) (Pub. L. 92-463). The purpose of the Committee is to provide advice and recommendations on the implementation of the National Forest System Land Management Planning Rule. The purpose of this meeting is to present finalized recommendations on the Proposed Land Management Planning Directives and to initiate dialogue around the development of a

committee work plan to fulfill the Committee's charter. This meeting is open to the public.

DATES: The meeting will be held on Thursday, November 21, 2013, beginning at 9:30 a.m. and ending at 5:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA. Attendees may also participate via webinar and conference call. For anyone who would like to attend via webinar and conference call, please contact Chalonda Jasper at cjasper@fs.fed.us or visit the following Web site: <http://www.fs.usda.gov/main/planningrule/committee>.

Written comments must be sent to USDA Forest Service, Ecosystem Management Coordination, 201 14th Street SW., Mail Stop 1104, Washington, DC 20250-1104. Comments may also be sent via email to Chalonda Jasper at cjasper@fs.fed.us, or via facsimile to 703-235-0138.

All comments are placed in the record and are available for public inspection and copying, including names and addresses when provided. The public may inspect comments received at 1601 N. Kent Street, Arlington, VA 22209, 6th Floor. Please contact, Chalonda Jasper at 202-260-9400, cjasper@fs.fed.us, to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Chalonda Jasper, Ecosystem Management Coordination, 202-260-9400, cjasper@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted:

1. Present finalized recommendations;
2. Look back on what has been accomplished by the committee thus far;
3. A forward looking dialogue focused on work plan development; and
4. Administrative tasks.

Further information will be posted on the Planning Rule Advisory Committee Web site at <http://www.fs.usda.gov/main/planningrule/committee>, including the meeting agenda and webinar and conference call information. A summary of the meeting will be posted at <http://www.fs.usda.gov/main/planningrule/committee> within 21 days of the meeting.

If you require sign language interpreting, assistive listening devices,

or other reasonable accommodation, please submit request prior to the meeting by contacting Chalonda Jasper at 202-260-9400, cjasper@fs.fed.us. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: November 6, 2013.

Tony Tooke,

Associate Deputy Chief, National Forest System.

[FR Doc. 2013-27317 Filed 11-14-13; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by January 14, 2014.

FOR FURTHER INFORMATION CONTACT:

Michele L. Brooks, Director, Program Development & Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5168, South Building, Washington, DC 20250-1522. Telephone: (202) 690-1078. FAX: (202) 720-8435. Email: Michele.Brooks@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to: MaryPat Daskal, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., Room 5166—South Building, STOP 1522, Washington, DC 20250-1522. FAX: (202) 720-7853.

Title: 7 CFR part 1777, Section 306C Water and Waste Disposal (WWD) Loans and Grants.

OMB Control Number: 0572-0109.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary.

The Section 306C WWD Loans and Grants program is administered through 7 CFR part 1777.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Not for profits; State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720-7853. FAX: (202) 720-4120. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 6, 2013.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013-27420 Filed 11-14-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE**Submission for OMB Review;
Comment Request**

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: NTIA/FCC Web-Based Frequency Coordination System.

OMB Control Number: 0660-0018.

Form Number(s): N/A.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 5,000.

Average Hours per Response: 15 minutes.

Burden Hours: 1,250.

Needs and Uses: The National Telecommunications and Information Administration (NTIA) hosts a Web-based system that collects specific identification information (e.g., company name, location and projected range of the operation) from applicants seeking to operate in existing and planned radio frequency (RF) bands that are shared on a co-primary basis by Federal and non-Federal users. The Web-based system provides a means for non-Federal applicants to rapidly determine the availability of RF spectrum in a specific location, or a need for detailed frequency coordination of a specific newly proposed assignment within the shared portions of the radio spectrum; and replaced the manual RF assignment process used by the Federal Communications Commission and NTIA. The system helps expedite the coordination process for non-federal applicants while assuring protection of government data relating to national security. The Web-based system replaced a manual process where coordination and approval could take up to a year to complete.

Affected Public: Business or other for-profit organizations; state or local government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at JJessup@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395-5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov.

Dated: November 8, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-27328 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE**Foreign-Trade Zones Board**

[B-96-2013]

**Foreign-Trade Zone 235—Lakewood,
New Jersey Application for
Reorganization/Expansion Under
Alternative Site Framework**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Township of Lakewood, New Jersey, grantee of FTZ 235, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or “usage-driven” FTZ sites for operators/users located within a grantee’s “service area” in the context of the FTZ Board’s standard 2,000-acre activation limit for a zone. The application was submitted pursuant to 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 docketed on November 7, 2013.

FTZ 235 was approved by the FTZ Board on November 25, 1998 (Board Order 1008, 63 FR 67854, 12/09/98) and expanded on November 20, 2008 (Board Order 1589, 73 FR 74140-74141, 12/05/08). The current zone includes the following sites: *Site 1* (1996 acres total, 3 parcels)—Parcel A (1,540 acres)—Lakewood Airport, State Highway Route 70, Lakewood; Parcel B (47 acres)—Pine Street South Industrial District located on Pine Street, Lakewood; and Parcel C (409 acres)—Lakewood Industrial Campus West, Cedar Bridge Avenue, Lakewood; *Site 2* (252 acres)—Prospect Street Industrial Park, Prospect and James Streets, Lakewood; *Site 3* (351 acres, 2 parcels, sunset 11/30/13)—Parcel 1 (209 acres)—Cranbury Business Park, located at 61 & 66 Station Road;

and, Parcel 2 (142 acres)—Half Acre Road and Santa Fe Way, Cranbury; *Site 4* (50 acres, sunset 11/30/13)—ProLogis Park—South Brunswick, 380 Deans Rhode Hall Road, Jamesburg; *Site 5* (159 acres, sunset 11/30/13)—Middlesex Center, 200 Middlesex Drive, Cranbury; *Site 6* (35 acres, sunset 11/30/13)—EastPointe Property, South River Road at the New Jersey Turnpike, Cranbury; *Site 7* (26 acres, expires 12/31/13)—Barnes & Noble, Inc., 1 Barnes & Noble Way, Monroe; and, *Site 8* (11 acres, expires 3/31/14)—Cosmetics Essence Innovations, LLC, 2182 Highway 35, Holmdel.

The grantee’s proposed service area under the ASF would be the Counties of Ocean, Middlesex, Monmouth, Union and Burlington, New Jersey, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies’ needs for FTZ designation. The proposed service area is within and adjacent to the Philadelphia Customs and Border Protection port of entry.

The applicant is also requesting authority to reorganize and expand its existing zone to remove Sites 3, 4, 5, and 6 and to include Sites 1 and 2 as magnet sites. The ASF allows for the possible exemption of one magnet site from the “sunset” time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of current temporary Sites 7 and 8 as “usage-driven” sites.

In accordance with the FTZ Board’s regulations, Kathleen Boyce 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 FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board’s Executive Secretary at the address below. The closing period for their receipt is January 14, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 29, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230-0002, and in the “Reading Room” section of the FTZ Board’s Web site, which is accessible via www.trade.gov/ftz. For further information, contact Kathleen Boyce at

Kathleen.Boyce@trade.gov or (202) 482-1346.

Dated: November 8, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-27419 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-73-2013]

Subzone 41L; Authorization of Production Activity; Broan-NuTone, LLC (Home Ventilation Products and Heaters); Hartford, Wisconsin

On June 26, 2013, Broan-NuTone LLC submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 41L, in Hartford, Wisconsin.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 42929-42930, 7-18-2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 12, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-27429 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-68-2013]

Foreign-Trade Zone 32—Miami, Florida, Authorization of Production Activity, Brightstar Corporation (Cell Phone Kitting), Miami, Florida

On June 26, 2013, The Greater Miami Chamber of Commerce, grantee of FTZ 32, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Brightstar Corporation, within Site 6, in Miami, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 39707-39708, 07/02/2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The

production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 8, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-27440 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-70-2013]

Subzone 183B; Authorization of Production Activity; Samsung Austin Semiconductor, LLC (Semiconductors); Austin, Texas

On June 26, 2013, Samsung Austin Semiconductor, LLC submitted a notification of proposed export production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 183B, in Austin, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 40427, 7-5-2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: November 12, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-27437 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-74-2013]

Subzone 114F, Authorization of Production Activity, Easton-Bell Sports, Inc., (Sports Equipment), Rantoul, Illinois

On June 27, 2013, Easton-Bell Sports, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within Subzone 114F, in Rantoul, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 42930, 7-18-2013). The FTZ Board has determined

that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14. As noted in the request, textile bags (classified under HTSUS Subheading 4202.92) will be admitted to the subzone in privileged foreign status (19 CFR 146.41).

Dated: November 12, 2013.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2013-27422 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 131030913-3913-01]

Call for Applications for the International Buyer Program Calendar Year 2015

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications.

SUMMARY: In this notice, the U.S. Department of Commerce (DOC) announces that it will begin accepting applications for the International Buyer Program (IBP) for calendar year 2015 (January 1, 2015 through December 31, 2015). The announcement also sets out the objectives, procedures and application review criteria for the IBP. The purpose of the IBP is to bring international buyers together with U.S. firms in industries with high export potential at leading U.S. trade shows. Specifically, through the IBP, the DOC selects domestic trade shows which will receive DOC assistance in the form of global promotion in foreign markets, provision of export counseling to exhibitors, and provision of matchmaking services at the trade show. This notice covers selection for IBP participation during calendar year 2015. **DATES:** Applications for the 2015 IBP must be received by Friday, December 20, 2013.

ADDRESSES: Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; (2) Facsimile: (202) 482-7800; or (3) email: *IBP2015@trade.gov*. Facsimile

and email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (e.g., U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Gary Rand, Director, International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482-0691; Facsimile: (202) 482-7800; Email: IBP2015@trade.gov.

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, the DOC selects trade shows that the DOC determines to be leading international trade shows, with participation by U.S. firms interested in exporting, for promotion in overseas markets by U.S. Embassies and Consulates. The DOC is authorized to provide successful applicants with assistance in the form of overseas promotion of the show; outreach to show participants about exporting; recruiting potential buyers to attend the events; and staff assistance in setting up international trade centers at the events. Worldwide promotion is executed through the offices of the DOC in more than 70 countries representing the United States' major trading partners, and also in U.S. Embassies in countries where the DOC does not maintain offices.

The International Trade Administration (ITA) is accepting applications from trade show organizers for the IBP for trade events taking place between January 1, 2015 and December 31, 2015. Selection of a trade show is

valid for one event, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

For the IBP in calendar year 2015, the ITA expects to select approximately 25 events from among the applicants. The ITA will select those events that are determined to most clearly meet the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and the selection criteria articulated below.

There is no fee required to submit an application. If accepted into the program for calendar year 2015, a participation fee of \$9,800 for shows of five days or fewer is required. For trade shows more than five days in duration, or requiring more than one International Trade Center, a participation fee of \$15,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Trade Centers, the participation fee will be determined by DOC and stated in the written notification of acceptance. Successful applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC within 10 days of written notification of acceptance into the program. The participation fee is due within 45 days of written notification of acceptance into the program.

The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include, but are not limited to, providing waived or reduced admission fees for international attendees who are participating in the IBP, the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. One of the most important elements is

that the trade show organizer includes in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); has procedures in place at the trade show to address IPR infringement which, at a minimum, provide information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States. The responsibilities to be undertaken by the DOC will be carried out by the ITA. ITA responsibilities include, but are not limited to, the worldwide promotion of the trade show and, where feasible, recruitment of international buyers to that show, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP partner does not constitute a guarantee by DOC of the show's success. IBP partnership status is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for IBP partnership status should not be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: All 2015 U.S. trade events, through the show organizer, are eligible to apply for IBP participation.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered.

General Evaluation Criteria: The ITA will evaluate shows to be International Buyer Program partners using the following criteria:

(a) **Export Potential:** The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists and U.S. export statistics.

(b) **Level of International Interest:** The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator.

(c) **Scope of the Show:** The event offers a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(d) **U.S. Content of Show Exhibitors:** Trade shows with exhibitors featuring a

high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) *Stature of the Show*: The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) *Level of Exhibitor Interest*: There is expressed interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand their sales into additional export markets.

(g) *Level of Overseas Marketing*: There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance.

(h) *Logistics*: The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition are capable of accommodating large numbers of attendees whose native language will not be English.

(i) *Level of Cooperation*: The applicant demonstrates a willingness to cooperate with the ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(j) *Delegation Incentives*: The IBP Office will be evaluating the level and/or range of incentives offered to delegations and/or delegation leaders recruited by overseas posts. Examples of incentives to international visitors and to organized delegations include: special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders.

Review Process: ITA will vet all applications received based on the criteria set out in this notice. Vetting will include soliciting input from ITA industry analysts, as well as domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider sector and

calendar diversity in terms of the need to allocate resources to support selected events.

Application Requirements: Show organizers submitting applications for the 2015 IBP are requested to submit: (1) A narrative statement addressing each question in the application, Form OMB 0625-0143 (found at www.export.gov/ibp); (2) a signed statement that "The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the 2015 International Buyer Program (January 1, 2015 through December 31, 2015);" and (3) two copies of the application: one copy of the application printed on company letterhead, and one electronic copy of the application submitted on a CD-RW (preferably in Microsoft Word® format), on or before the deadline noted above. There is no fee required to apply. ITA expects to issue the results of this process in April 2014.

Legal Authority: The statutory program authority for the ITA to conduct the International Buyer Program is 15 U.S.C. 4724. The DOC has the legal authority to enter into MOAs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. sections 2455(f) and 2458(c)). MECEA allows the DOC to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form OMB 0625-0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (OMB Control No. 0625-0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Gary Rand, Director, International Buyer Program (IBP2015@trade.gov)

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013-27338 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Space-Based Data Collection System (DCS) Agreements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 14, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Scott Rogerson, 301-817-4543 or Scott.Rogerson@noaa.gov; or Kay Metcalf, 301-817-4558 or kay.metcalf@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of an existing information collection. The National Ocean and Atmospheric Administration (NOAA) operates two space-based data collection systems (DCS), the Geostationary Operational Environmental Satellite (GOES) DCS and the Polar-Orbiting Operational Environmental Satellite (POES) DCS, also known as the Argos system. NOAA allows users access to the DCS if they meet certain criteria. The applicants must submit information to ensure that they meet these criteria. NOAA does not approve agreements where there is a commercial service available to fulfill the user's requirements.

II. Method of Collection

Methods of submittal include Internet, facsimile transmission, postal mailing of paper forms, and email transmission of electronic forms.

III. Data

OMB Control Number: 0648-0157.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Not-for-profit institutions; Federal government; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 415.

Estimated Time per Response: One hour and eight minutes.

Estimated Total Annual Burden Hours: 470.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 8, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-27333 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-HR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Gear Identification

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

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 14, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at Jjessup@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Berthiaume, (978) 281-9177 or Jason.Berthiaume@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for the extension of Paperwork Reduction Act requirements regarding fishing gear marking requirements. Regulations at 50 CFR 648.84(a), (b), and (d), 648.123(b)(3), 648.144(b)(1), 648.264(a)(5), and 697.21(a) and (b) require that Federal fishing permit holders using certain types of fishing gear mark the gear with specified information. The gear marking requirements provide vessel and gear identification information (e.g., hull identification number, Federal fishing permit number, etc.). The regulations also specify how the gear is to be marked for the purposes of visibility (e.g., buoys, radar reflectors, etc.).

The quantity of gear in the case of longline, pots, and traps is not the number of hooks, pots, or traps, but rather the number of attached end lines associated with each string of hooks, pots, or traps. As such, a single Federal permit holder may be responsible for marking several strings of a given gear type, or may use multiple different gear types that require marking. These gear marking requirements aid in fishery law enforcement, make the gear more visible to other vessels to aid in navigation, and provide other fishermen with information regarding the gear type being used to help prevent gear conflicts.

II. Method of Collection

No information is submitted to the NMFS as a result of this collection. The vessel's hull identification number or other means of identification specified in the regulations must be affixed to the buoy or other part of the gear as specified in the regulations.

III. Data

OMB Control Number: 0648-0351.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals and households; business or other for-profit organizations.

Estimated Number of Respondents: 6,116.

Estimated Time per Response: 1 minute per string of gear.

Estimated Total Annual Burden Hours: 20,309.

Estimated Total Annual Cost to Public: \$61,160 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013-27340 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC963

Fisheries of the South Atlantic and the Gulf of Mexico; Southeast Data, Assessment and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 38 Data Workshop for South Atlantic and Gulf of Mexico King Mackerel.

SUMMARY: The SEDAR 38 stock assessment of South Atlantic and Gulf of Mexico King Mackerel: A Data Workshop; an Assessment Workshop and webinars; and a Review Workshop. All workshops are open to the public. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 38 Data Workshop will be held from 1 p.m. on December 9, 2013 until 12 p.m. on December 13, 2013; the Assessment Workshop, Assessment webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Meeting address: The SEDAR 35 Data Workshop will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (843) 744-4422.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; telephone: (843) 571-4366 or toll free: (866) 5AFMC-10; fax: (843) 769-4520; email: Julie.Neer@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 is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and webinars; and (3) 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 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 Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils 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 non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the SEDAR 38 Data Workshop agenda are as follows:

1. An assessment data set and associated documentation will be developed.
2. Participants will evaluate all available data and select appropriate sources for providing information on life history characteristics, catch statistics, discard estimates, length and age composition, and fishery dependent and fishery independent measures of stock abundance, as specified in the Terms of Reference for the workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: November 12, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-27363 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC979

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Advisory Panel (AP) will meet.

DATES: The meeting will be held on December 10, 2013, from 10 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Windward Passage Hotel, St. Thomas, USVI.

FOR FURTHER INFORMATION CONTACT:

Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918, telephone: (787) 766-5926.

SUPPLEMENTARY INFORMATION: The AP will meet to discuss the items contained in the following agenda:

- Call to Order
- Adoption of Agenda
- Update of New Model for Socio-Economic Considerations in Closed Seasons to Comply With ACL
- Discussion
- Recommendations to CFMC
- Other Business

The AP meeting will convene on December 10, 2013, from 10 a.m. until 4:30 p.m.

The meeting is open to the public, and will be conducted in English. However, simultaneous interpretation (English-Spanish) will be provided. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918, telephone (787) 766-5926, at least 5 days prior to the meeting date.

Dated: November 12, 2013.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013-27364 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC726

Final NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Final Handbook.

SUMMARY: In compliance with Executive Order (E.O.) 13175, "Consultation and Coordination with Indian Tribal Governments" (November 6, 2000), the Department of Commerce (Department) adopted a Tribal Consultation and Coordination policy statement. This policy establishes the manner in which NOAA works with Federally recognized Indian Tribes when developing NOAA policies that have Tribal implications. This Handbook is intended to assist NOAA, including its regional and field staff, in conducting effective government-to-government consultations and fulfill NOAA's obligations under E.O. 13175 and Department Administrative Order 218-8 on Consultation and Coordination with Indian Tribal Governments, and the Department of Commerce Tribal Consultation and Coordination Policy.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or an electronic copy of the final Handbook should be directed to Linda Belton, NOAA Tribal Liaison, NOAA Office of Legislative and Intergovernmental Affairs, U.S. Department of Commerce, NOAA, 1401 Constitution Ave. NW., Washington, DC 20233, telephone (202) 482-5447, email at Linda.Belton@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

E.O. 13175 states that it is the policy of the United States to ensure "regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications" In addition, E.O. 13175 affirms the unique legal and political relationship between

the United States and Indian Tribal governments as set forth in the Constitution of the United States, treaties, statutes, executive orders and judicial decisions; and commits the United States to work with Indian Tribes on a government-to-government basis to address issues concerning Tribal trust resources and Indian Tribal treaty rights. E.O. 13175 also recognizes the right of Indian Tribes to self-government and acknowledges that Indian Tribes exercise inherent sovereign powers over their members and territory. On November 5, 2009, President Barack Obama issued a Presidential memorandum charging Federal agencies with strengthening the government-to-government relationship between the United States and Indian Tribes and engaging in regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications. To achieve these objectives, the Presidential memorandum recommits the Federal agencies to the full implementation of E.O. 13175.

On May 21, 2013, Acting Secretary Rebecca Blank issued a new Tribal Consultation and Coordination Policy for the Department of Commerce (DOC Policy) <http://www.gpo.gov/fdsys/pkg/FR-2013-06-04/pdf/2013-13052.pdf>. The DOC Policy describes the manner in which the Department works with Tribes on a government-to-government basis when formulating or implementing policies that have Tribal implications. The DOC Policy outlines consultation procedures for all operating units within the Department of Commerce.

This final Handbook of NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations (Handbook) <http://www.legislative.noaa.gov/tribalrelations.html> responds to President Obama's November 5, 2009, memorandum and the principles expressed in E.O. 13175 and the DOC policy. The Handbook is intended only for NOAA internal management purposes and does not create any right or benefit, substantive or procedural, enforceable against the United States, its agencies, entities, or instrumentalities, its officers or employees, or any other person.

Summary of Comments Received in Response to the Draft Handbook

On June 24, 2013, NOAA published a notice and request for comments on a draft "NOAA Procedures for Government-to-Government

Consultation with Federally Recognized Indian Tribes" in the **Federal Register** (78 FR 37795). In response, NOAA received letters from 10 different entities, with approximately 25 unique comments. A summary of comments received and NOAA's responses to those comments are presented below. The notice also includes comments received from two national webinars held on July 17, 2013, and August 13, 2013.

General Comments and Recommendations

Comment 1: The Handbook should strengthen consultation by requiring a Tribal Liaison in each Line Office and Regional Office.

Response: NOAA will have Tribal Liaisons in all Line Offices. NOAA recognizes that requiring a Tribal Liaison in each region is ideal. However, funding is a significant constraint on NOAA's ability to commit to this level of staffing. NOAA intends for each region to determine its capacity to provide a Tribal Liaison in accordance with its budget priorities. NOAA does not adopt this recommendation for the reasons identified, but encourages Regional Offices to establish such a position if warranted.

Comment 2: Tribes should be involved in training NOAA Employees.

Response: NOAA encourages the development of joint training opportunities with Tribes to improve communication and efficiency in the conduct of government-to-government consultations. NOAA will seek to send staff to attend to training to which a Tribe extends an invitation to the extent practicable given existing agency workload responsibilities and resource limitations. In addition, NOAA will make every effort to invite Tribal participation in the development and presentation of in-house training opportunities for NOAA employees. Such in-house training may include: the history of American Indians and Alaska Natives or specific Tribes, cultural protocols, Tribal issues, Tribal governmental structures, and the legal context of Tribal rights and resources. Please send any information regarding training opportunities or related inquiries to Linda Belton, NOAA Tribal Liaison, at Linda.Belton@noaa.gov.

Comment 3: Consultations should begin at the regional level and then move to NOAA Headquarters if necessary.

Response: NOAA agrees. The intent of the Handbook is to encourage and support consultations at a Regional or Line Office level. This will allow the NOAA experts on the ground to provide

information and allow regional officials to participate in the consultation. Generally, working relationships between NOAA and the Tribes are developed at the Regional or Line Office level. A consultation may be elevated to Headquarters under unusual circumstances, such as a consultation affecting a nationwide NOAA policy.

Comment 4: The Handbook should emphasize the importance of ongoing communication and information sharing throughout the document.

Response: NOAA agrees and has emphasized the importance of ongoing communications throughout the document.

Comment 5: NOAA should maintain the requirements for communication and information before a consultation.

Response: NOAA agrees to communicate and share information before a consultation to the greatest extent reasonable. The current language in the Handbook is consistent with this approach.

Comment 6: NOAA should create an accountability or elevation mechanism for ensuring the requirements of the Handbook are followed by the Regional and Line Offices.

Response: NOAA anticipates that the Handbook will provide helpful guidance and assist agency personnel in fulfilling their responsibilities under E.O. 13175. Should a Tribe feel that a NOAA Line Office or Regional Office has failed to comply with the requirements of E.O. 13175, it should first contact the responsible Line Office or Regional Office official to make its views clear. The NOAA Tribal Liaisons within each Line Office will periodically assess implementation of the Handbook and share best practices. NOAA does not adopt this recommendation because the Handbook already contains sufficient mechanisms for the elevation of a consultation to Headquarters.

Comment 7: NOAA should identify specific criteria for determining which agency actions are impacting Tribes and require consultation.

Response: NOAA does not adopt this recommendation. E.O. 13175 requires NOAA to maintain an accountable process ensuring meaningful and timely input by Tribal officials in the development of NOAA policies that have Tribal implications. "Policies that have tribal implications" are defined in section 1 of E.O. 13175. This Handbook provides guidance to Regional Offices and Line Offices in the identification of those policies with Tribal implications. Adding specific criteria to the definition provided in E.O. 13175 could unduly limit categories of activities and

undermine the Handbook's utility. NOAA believes it most prudent to allow the Line Offices, Regions, and Tribes to make this determination on a case-by-case basis using the Handbook as a guide. For certain issues (e.g., Endangered Species Act) consultation protocols already exist (e.g., Secretarial Order for American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (SO)) and should already be in use by Line and Regional Offices.

Comment 8: NOAA should work with Tribes and Regional Fishery Management Councils to determine how to build meaningful and effective consultation into the Federal fishery management process.

Response: NOAA strongly encourages Councils to discuss and work with Tribes to address their concerns while developing fishery conservation and management measures under the Magnuson-Stevens Act Fishery Conservation and Management Act (MSA) 16 U.S.C. 1800 *et seq.* Whenever practicable, Councils should initiate dialogue with Tribes early in the development of fishery management measures. This early communication will provide an opportunity to identify potential impacts on Tribes and Tribal trust resources at the earliest practicable time. Pursuant to E.O. 13175, it is NOAA's—and not the Councils'—responsibility to consult with Federally recognized Indian Tribes; the Councils' early engagement with Tribes will facilitate and enhance NOAA's rulemaking processes and development of fishery management measures.

Comment 9: NOAA should use regional Tribal organizations in addition to individual Tribal governments to promote efficient consultations.

Response: A Tribe may invite a Tribal organization to participate in a discussion with a Regional or Line Office or even a government-to-government consultation; however, meetings with Tribal organizations are not a substitute for government-to-government consultation with a Federally recognized Tribe (unless the Tribe has specifically delegated authority to represent the individual Tribal government's interest in a particular consultation). Tribal organizations can be effective conduits of information, provide opportunities for informal meetings, and assist the agency in identifying Tribes that may be affected by agency actions.

Comment 10: In Section V, the phrase "Tribal members" should be changed to "Tribal leaders" or "Tribally designated officials."

Response: NOAA has incorporated this suggested change in Section V part C to read "Tribally designated officials."

Comment 11: In Section VI, NOAA should add "ceded lands" to the examples.

Response: NOAA believes any action with Tribal implications related to "ceded lands" is addressed by the example in VI. A. "policy or action that affects Tribes, tribal governments, or a Tribe's traditional way of life."

Comment 12: Section VII has two part "B"s.

Response: NOAA has made the change so that Section VII has only one part "B."

Comment 13: The Handbook should refer to Section 7 consultations under the Endangered Species Act which can result in new Federal policies.

Response: There are many types of actions and consultative activities that may result in new Federal policies. The examples noted in the Handbook are not intended to be exhaustive of all of the various actions that may require consultation. In addition, with respect to implementation of the Endangered Species Act, NOAA views the Secretarial Order 3206 as controlling internal agency procedures in the first instance, and government-to-government consultation as a component of the Secretarial Order procedures.

Comment 14: Two commenters suggested changes in the title of the Handbook. One suggested "NOAA Procedures for Government-to-Government Consultation with Federally Recognized Tribes." Another suggested "NOAA Procedures for Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations".

Response: NOAA has changed the title to "NOAA Procedures for Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations," which more accurately describes the intent and obligations outlined in this Handbook.

Comment 15: NOAA should consider subsistence schedules in determining the preparation time before government-to-government consultation begins.

Response: NOAA has incorporated this suggested change in Section V part "B."

Comment 16: NOAA should include "on their lands" after "one or more Indian Tribes." in the definition of "Policies with Tribal Implications."

Response: E.O. 13175 governs the implementation of the Handbook and has defined the term "policies with tribal implications." It is not within the

purview of the Handbook to alter the definition in the Executive Order.

Comment 17: The Handbook should include a requirement that all Tribes are contacted by at least two different means prior to assuming the Tribe has no interest in a proposed action.

Response: NOAA does not adopt this recommendation. A Tribe may work with a Region or Line Office to establish a consultation protocol to address its preferred means of contact.

Comment 18: NOAA should have one integrated consultation process, not one for Tribes and one for Alaska Native Corporations.

Response: The unique legal and political relationship between the United States and Indian Tribal governments identified in E.O. 13175 and President Obama's November 5, 2009, Memorandum and established in treaties, statutes, executive orders, and judicial decisions does not apply to Alaska Native Corporations, which lack any kind of sovereign political status and are not governmental entities. Rather, they are corporate form entities created by the Federal statute. The consultations with Alaska Native Corporations should be and, as described in the Handbook, are different from those for Federally recognized Indian Tribes.

In addition, the Handbook allows the Alaska Regional Office and/or Line Offices to develop consultation protocols with Alaska Native Corporations when the need for any specific procedures to identify and address where the interests of an Alaska Native Corporation and Federally recognized Indian tribe may conflict or coincide. The essence of the trust relationship between NOAA and Federally recognized Indian tribes is NOAA's obligation to ensure the interests of tribes in government-to-government consultation are fully considered, whether by providing separate consultations or joint consultations with an Alaska Native Corporation.

Comment 19: NOAA should provide specific guidance on how disagreements between Alaska Native Corporations and Federally recognized Tribal governments will be resolved during a dual consultation process.

Response: NOAA does not adopt this recommendation. As noted in response to comment 18 above, this Handbook allows the Alaska Regional Office and/or Line Offices to develop consultation protocols with Alaska Native Corporations or Indian Tribal governments, including joint protocols, to address the Tribal implications of proposed NOAA policies and actions.

E.O. 13175 requires NOAA to strengthen the government-to-government relationship between the United States and Indian Tribes and engage in regular and meaningful consultation and collaboration with Tribal officials in the development of Federal policies that have Tribal implications. NOAA does not accept the recommendation that added weight should be given to an entity's views based on relative impact of a policy with Tribal implications. NOAA will consult with Alaska Native Corporations on a basis similar to that for Federally recognized tribes and reflecting the essential distinction between the sovereign governments and Alaska Native Corporations.

Comment 20: NOAA should include additional background information regarding the unique history of Alaska Native Corporations and their obligations to Alaska Natives.

Response: Section VII part E includes a history of Alaska Native Corporations and the Federal obligations to Alaska Natives. Therefore, additional information was not added to the Handbook.

Comment 21: Establish a Web page containing links to all DOC agency actions.

Response: NOAA will continue to explore the practicality of developing such a Web page and will work with the DOC Senior Advisor on communications and consultations processes.

Comment 22: The Handbook should clarify that Tribes need not use the Freedom of Information Act (FOIA) to obtain NOAA records relevant to a government-to-government consultation. In addition, NOAA should revise the Handbook to indicate that Tribal knowledge can be protected from FOIA requests.

Response: NOAA has incorporated this suggested change in section VI part F subsection 4. Culturally Sensitive Information is addressed in the Handbook section VIII.C. It should be noted, however, that there are situations where NOAA is legally obligated to provide documents to the public in response to a FOIA request.

Comment 23: NOAA should add a reference to the DOC Policy to the Handbook.

Response: The DOC Policy is discussed in the introduction section of the Handbook.

Comment 24: NOAA should add a statement to the Handbook making clear that NOAA cannot be represented by a private entity nor may government-to-government consultations be managed or facilitated by a private entity.

Response: NOAA does not adopt this recommendation. The Handbook provides NOAA with the necessary flexibility to ensure its consultations are as effective as possible. To provide meaningful consultation and coordination, NOAA may need to engage a consultant or expert facilitator to assist with a consultation or to represent NOAA during a government-to-government consultation. However, at all times, an appropriate-level NOAA representative will be present to represent the agency.

Comment 25: On the top of page 9 the terms "Band, Nation, Pueblo, Village, and Community" should be capitalized.

Response: NOAA has incorporated this suggested change.

Authority: Presidential Memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR No. 85, May 4, 1994); E.O. 13175 of November 6, 2000 "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000); Presidential Memorandum of November 5, 2009, "Tribal Consultation" (74 FR 57881, November 9, 2009); Department of Commerce Administrative Order 218-8 and Tribal Consultation and Coordination Policy for the U.S. Department of Commerce, 78 FR 3331 (June 4, 2012).

Dated: November 8, 2013.

Mark Schaefer,

NOAA Assistant Secretary for Conservation and Management.

[FR Doc. 2013-27415 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for National Marine Sanctuary Advisory Councils

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: ONMS is seeking applications for vacant seats for 7 of its 13 national marine sanctuary advisory councils and for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (advisory councils). Vacant seats, including positions (i.e., primary member and alternate), for each of the advisory councils are listed in this notice under Supplementary

Information. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary.

Applicants who are chosen as primary members or alternates should expect to serve two- or three-year terms, pursuant to the charter of the specific national marine sanctuary advisory council or the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council.

DATES: Applications are due by December 31, 2013.

ADDRESSES: Application kits are specific to each advisory council. As such, application kits must be obtained from and returned to the council-specific addresses noted below.

- Flower Garden Banks National Marine Sanctuary Advisory Council: Jennifer Morgan, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Bldg. 216, Galveston, TX 77551; (409) 621-5151 extension 103; email Jennifer.Morgan@noaa.gov; or download application from <http://flowergarden.noaa.gov/advisorycouncil/councilnews.html>.

- Gray's Reef National Marine Sanctuary Advisory Council: Becky Shortland, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; (912) 598-2381; email Becky.Shortland@noaa.gov; or download application from <http://graysreef.noaa.gov/>.

- Gulf of the Farallones National Marine Sanctuary Advisory Council: Leslie Abramson, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129; 415-561-6622 extension 306; email Leslie.Abramson@noaa.gov; or download application from: <http://farallones.noaa.gov/>.

- Monterey Bay National Marine Sanctuary Advisory Council: Sara Hutto, Monterey Bay National Marine Sanctuary, 99 Pacific Street, Building 455A, Monterey, CA 93940; (831) 647-4206; email Sara.Hutto@noaa.gov; or download application from <http://montereybay.noaa.gov/sac/2014/recruit14v1/131110covlet.html>.

- National Marine Sanctuary of American Samoa Advisory Council: Joseph Paulin, National Marine Sanctuary of American Samoa, Tauese P.F. Sunia Ocean Center, P.O. Box 4318, Pago Pago, American Samoa 96799; (684) 633-6500 extension 226; email Joseph.Paulin@noaa.gov; or download

application from <http://americansamoa.noaa.gov>.

- Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Katie Gentry-Ackerman, Office of National Marine Sanctuaries, Pacific Island Region, 6600 Kalaniana'ole Hwy, #300, Honolulu, HI 96825; (808) 694-3936; email Katie.Gentry-Ackerman@noaa.gov; or download application from <http://www.papahānaumokuākea.gov/council/>.

- Olympic Coast National Marine Sanctuary Advisory Council: Karlyn Langjahr, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 101, Port Angeles, WA 98362; (360) 457-6622 extension 31; email Karlyn.Langjahr@noaa.gov; or download application from http://olympiccoast.noaa.gov/involved/sac/sac_welcome.html.

- Stellwagen Bank National Marine Sanctuary Council: Elizabeth Stokes, Stellwagen Bank National Marine Sanctuary, 175 Edward Foster Road, Scituate, MA 02066; (781) 545-8026 extension 201; email Elizabeth.Stokes@noaa.gov; or download application from <http://stellwagen.noaa.gov/management/sac/documents.html>.

FOR FURTHER INFORMATION CONTACT: For further information on a particular national marine sanctuary advisory council, please contact the individual identified in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION: ONMS serves as the trustee for 14 marine protected areas encompassing more than 170,000 square miles of ocean and Great Lakes waters from the Hawaiian Islands to the Florida Key, and from Lake Huron to American Samoa. National marine sanctuaries protect our Nation's most vital coastal and marine natural and cultural resources, and through active research, management, and public engagement, sustains healthy environments that are the foundation for thriving communities and stable economies. One of the many ways ONMS ensures public participation in the designation and management of national marine sanctuaries is through the formation of advisory councils. National marine sanctuary advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of the national marine sanctuaries and the Papahānaumokuākea Marine National Monument on issues including management, science, service, and stewardship; and to serve as liaisons between their constituents in the community and the sanctuary.

Additional information on ONMS and its 14 advisory councils can be found at <http://sanctuaries.noaa.gov>. Information related to the purpose, policies and operational requirements for advisory councils can be found in the charter for a particular advisory council (http://sanctuaries.noaa.gov/management/ac/council_charters.html) and the National Marine Sanctuary Advisory Council Implementation Handbook (<http://www.sanctuaries.noaa.gov/management/ac/acref.html>).

The following is a list of the vacant seats, including positions (i.e., primary member or alternate), for each of the national marine sanctuary advisory councils currently seeking applications for primary members and alternates:

Flower Garden Banks National Marine Sanctuary: Conservation (primary member); Diving Operations (primary member); Fishing—Commercial (primary member); and Oil & Gas Production (primary member).

Gray's Reef National Marine Sanctuary: Living Resources Research (primary member).

Gulf of the Farallones National Marine Sanctuary Advisory Council: Youth (primary member, non-voting); and Youth (alternate, non-voting).

Monterey Bay National Marine Sanctuary Advisory Council: At-large (primary member); At-large (alternate); Diving (primary member); Diving (alternate); Education (primary member); Education (alternate); Tourism (primary member); Tourism (alternate); and Conservation (alternate).

National Marine Sanctuary of American Samoa Advisory Council: Community-At-Large: Tutuila East Area (primary member); Community-At-Large: Manu'a Area (primary member); Education (primary member); Commercial Fishing (primary member); Research (primary member); and Tourism (primary member).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council: Native Hawaiian, Elder (alternate); and Native Hawaiian (alternate).

Olympic Coast National Marine Sanctuary Advisory Council: Research (primary member); Research (alternate); Citizen at Large (primary member); Citizen at Large (alternate); and Marine Resources Committee (primary member, non-voting).

Stellwagen Bank National Marine Sanctuary Advisory Council: Recreational Fishing (alternate); Business Industry (alternate); Youth (primary, non-voting); and Youth (alternate, non-voting).

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: October 24, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2013-27227 Filed 11-14-13; 8:45 am]

BILLING CODE 3510-NK-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective 12/16/2013.*

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202-4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On 9/6/2013 (78 FR 54871), 9/13/2013 (78 FR 56680) and 9/20/2013 (78 FR 57844), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the

products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 6510-00-913-7906—Bandage, Gauze, Elastic.

NPA: Elwyn, Inc., Aston, PA.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Marker Board, Wall Mounted

NSN: 7195-01-567-9516—Cork Tiles, Self-Stick, 12" x 12", unframed.

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Contracting Activities: Department of Veterans Affairs, NAC, Hines, IL. GSA/ FSS Household and Industrial Furniture, Arlington, VA.

Desk Planners

NSN: 7530-01-600-7584—Weekly Planner Book, Dated, 5" x 8", Digital Camouflage.

NSN: 7530-01-600-7587—Daily Desk Planner, Wire bound, Non-refillable, Black Cover.

NSN: 7530-01-600-7594—Monthly Desk Planner, Wire Bound, Non-refillable, Black cover.

NSN: 7530-01-600-7604—Weekly Desk Planner, Wire Bound, Non-refillable, Black cover.

Desk and Wall Calendars

NSN: 7510-01-600-7565—Wall Calendar, Dated, Wire Bound w/Hanger, 12" x 17".

NSN: 7510-01-600-7620—Monthly Wall Calendar, Dated, Jan-Dec, 8½" x 11".

NSN: 7510-01-600-7635—Wall Calendar, Dated, Wire Bound w/hanger, 15.5" x 22".

NPA: The Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL.

Contracting Activity: General Services Administration, New York, NY.

NSN: 7530-01-554-9537—CD/DVD Label Kit.

NPA: North Central Sight Services, Inc., Williamsport, PA.

Contracting Activity: General Services Administration, New York, NY

Services

Service Type/Location:

Janitorial/Custodial Service, Frank T. Bow Federal Building, 201 Cleveland Avenue SE., Canton, OH.

NPA: The Workshops, Inc., Canton, OH.

Contracting Activity: GSA/Public Buildings Service, Property Management Service Center, Chicago, IL.

Service Type/Location: Janitorial/Custodial Service, Gamelin USARC, 10 Asylum Road, Bristol, RI.

NPA: Road to Responsibility, Inc., Marshfield, MA.

Contracting Activity: Dept of the Army, W6QM MICC-FT DIX (RC-E), FT DIX, NJ.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013-27399 Filed 11-14-13; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services previously furnished by such agencies.

DATES: *Comments must be received on or before: 12/16/2013.*

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Cover, Certificate-Document, Gold Foil Stamped

NSN: 7510-00-NIB-1853—Green.

NSN: 7510-00-NIB-9910—Burgundy.

NSN: 7510-00-NIB-9917—Red.
NPA: Dallas Lighthouse for the Blind, Inc.,
Dallas, TX.

Contracting Activity: General Services
Administration, New York, NY.

Coverage: A-List for the Total Government
Requirement as aggregated by the
General Services Administration.

NSN: 8950-01-E62-2180—Pepper, Crushed
Red, 12 oz. Bottle, 6/CS.

NPA: CDS Monarch, Webster, NY.

Contracting Activity: Defense Logistics
Agency Troop Support, Philadelphia,
PA.

Coverage: C-List for 100% of the requirement
of the Department of Defense, as
aggregated by the Defense Logistics
Agency Troop Support, Philadelphia,
PA.

Deletions

The following products and services
are proposed for deletion from the
Procurement List:

Products

Tongs, Food Serving

NSN: 7330-00-616-0997—12".

NSN: 7330-00-616-0998—9".

NSN: 7330-00-616-1000—6".

NPA: UNKNOWN.

Contracting Activity: General Services
Administration, Fort Worth, TX.

Services

Service Type/Locations:

Janitorial/Custodial Service, U.S. Federal
Building and Courthouse, 205 4th Street,
Coeur d'Alene, ID.

U.S. Federal Building, St. Maries, ID.

NPA: TESH, Inc., Coeur d'Alene, ID.

Contracting Activity: General Services
Administration, FPDS Agency
Coordinator, Washington, DC

Service Types/Location:

Custodial Service, Air National Guard
Base—Reserve Buildings, BLDGS 300,
304, 315, 320, 310, 360, 365, 355, 373,
375, Portland, OR.

Food Service Attendant Service, Portland
Air National Guard Base, Portland, OR.

NPA: The Port City Development Center—
Portland, OR.

Contracting Activity: Dept of the Air Force,
FA7014 AFDW PK, Andrews AFB, MD.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013-27398 Filed 11-14-13; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

[Docket ID DoD-2013-OS-0211]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of
Defense (Personnel and Readiness),
Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section
3506(c)(2)(A) of the *Paperwork
Reduction Act of 1995*, the Office of the
Under Secretary of Defense (Personnel
and Readiness) announces a proposed
public information collection and seeks
public comment on the provisions
thereof. 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
information collection; (c) ways to
enhance the quality, utility, and clarity
of the information to be collected; and
(d) ways to minimize the burden of the
information collection on respondents,
including through the use of automated
collection techniques or other forms of
information technology.

DATES: Consideration will be given to all
comments received by January 14, 2014.

ADDRESSES: You may submit comments,
identified by docket number and title,
by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense (Personnel and Readiness), Military Personnel Policy, Officer and Enlisted Personnel Management, ATTN: Lt Col Debra Lovette, USAF, 4000 Defense Pentagon,

Washington, DC 20301-4000 or call (703) 697-4959.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Automated Repatriation Reporting System; DD Form 2585; OMB Control Number 0704-0334.

Needs and Uses: The information collection requirement is necessary for personnel accountability of all evacuees, regardless of nationality, who are processed through designated Repatriation Centers throughout the United States. The information obtained from the DD Form 2585 is entered into an automated system; a series of reports is accessible to DoD Components, Federal and State agencies and Red Cross, as required.

Affected Public: Individuals or Households; Federal government.

Annual Burden Hours: 1,167.

Number of Respondents: 5,000.

Responses per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: One time.

Executive Order 12656 (Assignment of Emergency Preparedness Responsibilities) assigns Federal departments and agencies responsibilities during emergency situations. In its supporting role to the Departments of State and Health and Human Services (HHS), the Department of Defense will assist in planning for the protection, evacuation and repatriation of U.S. citizens in threatened areas overseas. The DD Form 2585, "Repatriation Processing Center Processing Sheet," has numerous functions, but is primarily used for personnel accountability of all evacuees who process through designated Repatriation Centers. During processing, evacuees are provided emergency human services, including food, clothing, lodging, family reunification, social services and financial assistance through federal entitlements, loans or emergency aid organizations. The information, once collected, is input into the Automated Repatriation Reporting System, and is available to designated offices throughout Departments of Defense, State, Health and Human Services, the American Red Cross and State government emergency planning offices for operational inquiries and reporting and future planning purposes.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013-27298 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing this notice to announce an open meeting of the Strategic Environmental Research and Development Program, Scientific Advisory Board (SAB). The purpose of the meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program

funds in excess of \$1 million over the proposed length of the project.

DATES: Tuesday, December 17, 2013, from 9:00 a.m. to 5:00 p.m. and Wednesday, December 18, 2013, from 8:30 a.m. to 5:05 p.m.

ADDRESSES: Holiday Inn Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 4800 Mark Center Drive, Suite 17D08, Alexandria, VA 22350-3605; or by telephone at (571) 372-6384.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150. This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463).

Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

The purpose of the December 17-18, 2013 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds in excess of \$1 million over the proposed length of the project as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904. The full agenda follows:

Tuesday, December 17, 2013

9:00 a.m.	Convene/Opening Remarks, Approval of September 2013 Minutes	Mr. Joseph Francis, Chair.
9:10 a.m.	Program Update	Dr. Anne Andrews, Acting Executive Director.
9:25 a.m.	Munitions Response Overview	Dr. Herb Nelson, Munitions Response Program Manager.
9:35 a.m.	14 MR01-017 (MR-2410)—FY14 New Start, Large-Scale Laboratory Experiments of Incipient Motion, Transport, and Fate of Underwater Munitions under Waves, Currents, and Combined-Flows.	Dr. Marcelo Garcia, University of Illinois at Urbana-Champaign, Urbana, IL.
10:20 a.m.	Break.	
10:35 a.m.	14 MR01-009 (MR-2439)—FY14 New Start, Multipass and Non-Concentric Target CSAS.	Dr. Jermaine Kennedy, NSWC-PCD, Panama City Beach, FL.
11:20 a.m.	Resource Conservation and Climate Change Overview	Dr. John Hall, Resource Conservation and Climate Change Program Manager.
11:30 a.m.	14 RC01-015 (RC-2434)—FY14 Re-Brief, Seed Dispersal Networks and Novel Ecosystem Functioning in Hawaii.	Dr. Jeffrey Foster, Northern Arizona University, Flagstaff, AZ.
12:00 p.m.	Lunch.	
1:00 p.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration Program Manager.
1:05 p.m.	14 ER02-023 (ER-2423)—FY14 New Start, In Situ Treatment Train for Remediation of Perfluoroalkyl Contaminated Groundwater: In Situ Chemical Oxidation of Sorbed Contaminants (ISCO-SC).	Dr. Michelle Crimi, Clarkson University, Potsdam, NY.
1:55 p.m.	14 ER02-030 (ER-2424)—FY14 New Start, Investigating Electrocatalytic and Catalytic Approaches for In Situ Treatment of Perfluoroalkyl Contaminants in Groundwater.	Dr. Charles Schaefer, CB&I Federal Services, Lawrenceville, NJ.
2:40 p.m.	Break.	
2:55 p.m.	14 ER02-031 (ER-2425)—FY14 New Start, Development of a Novel Approach for In Situ Remediation of PFC Contaminated Groundwater Systems.	Dr. Matt Simcik, University of Minnesota, Minneapolis, MN.
3:40 p.m.	14 ER02-041 (ER-2426)—FY14 New Start, Quantification of In Situ Chemical Reductive Defluorination (ISCRD) of Perfluoroalkyl Acids in Ground Water Impacted by AFFFs.	Dr. Linda Lee, Purdue University, West Lafayette, IN.
4:25 p.m.	Strategy Session	Dr. Anne Andrews, Acting Executive Director.
5:00 p.m.	Public Discussion/Adjourn for the day.	

Wednesday, December 18, 2013

8:30 a.m.	Convene	Mr. Joseph Francis, Chair.
8:40 a.m.	Weapons Systems and Platforms Overview	Dr. Anne Andrews, Acting Executive Director.
8:50 a.m.	14 WP04-002 (WP-2405)—FY14 New Start, Proof of Concept Novel Low-Toxicity Obscurant.	Dr. Joost van Lingen, TNO, Rijswijk, Netherlands.
9:35 a.m.	Weapons Systems and Platforms Overview	Dr. Anne Andrews, Acting Executive Director.
9:45 a.m.	14 WP01-009 (WP-2400)—FY14 New Start, Environmentally Sustainable Liquid Gas Generator Formulations.	Dr. Gary Holland, Aerojet General Corporation, Redmond, WA.
10:30 a.m.	Break.	
10:45 a.m.	14 WP01-011 (WP-2401)—FY14 New Start, Development of Low-Toxicity Liquid Propellant System for Orbital/Sub-Orbital Applications.	Mr. Joseph Clubb, Naval Air Warfare Center, China Lake, CA.
11:30 a.m.	Lunch.	
12:30 p.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration Program Manager.

12:40 p.m.	14 ER03-002 (ER-2427)—FY14 New Start, Understanding the Relationships Among Low Level Metal Influx, Remediated Sediments, and Biological Receptors.	Dr. Anna Knox, Savannah River National Laboratory, Aiken, SC.
1:25 p.m.	14 ER03-025 (ER-2428)—FY14 New Start, Assessment and Management of Stormwater Impacts on Sediment Recontamination.	Dr. Danny Reible, Texas Tech University, Lubbock, TX.
2:10 p.m.	Break.	
2:25 p.m.	14 ER03-028 (ER-2429)—FY14 New Start, Combining Mass Balance Modeling with Passive Sampling at Contaminated Sediment Sites to Evaluate Continuing Inputs and Food Web Responses to Remedial Actions.	Dr. Philip Gschwend, Massachusetts Institute of Technology, Cambridge, MA.
3:10 p.m.	14 ER03-035 (ER-2431)—FY14 New Start, Quantitative Thermodynamic Exposure Assessment (Q-TEA) Supporting Resilient Contaminated Sediment Site Restoration.	Dr. Todd Bridges, USACE-ERDC-EL, Vicksburg, MS.
3:55 p.m.	Break.	
4:10 p.m.	Environmental Restoration Overview	Dr. Andrea Leeson, Environmental Restoration Program Manager.
4:20 p.m.	14 ER04-001 (ER-2135)—FY14 Follow On, Application of Biofilm Covered Activated Carbon Particles as a Microbial Inoculum Delivery System in Weathered PCB Contaminated Sediment.	Dr. Birthe Kjellerup, Goucher College, Baltimore, MD.
5:05 p.m.	Public Discussion/Adjourn.	

Pursuant to 41 CFR 102-3.105(j) and 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda.

All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Contact information for the DFO can be obtained from the GSA's FACA Database at <http://facasms.fido.gov/>.

Time is allotted at the close of each meeting day for the public to make comments. Oral comments are limited to 5 minutes per person.

Dated: November 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013-27378 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal advisory committee closed meeting of the National Commission on the Structure of the Air Force ("The Commission") will take place.

DATES: *Dates of Closed Meeting, including Hearing and Commission Discussion:* Tuesday, November 19, 2013, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: 2521 South Clark Street, Suite 525, Crystal City, VA 22202 and possibly a secure video teleconferencing line.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon Room 3A874, Washington, DC 20301-1950. Email: marcia.l.moore12.civ@mail.mil. Desk (703) 545-9113. Facsimile (703) 692-5625.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150. This meeting is the third in a series of three meetings held for the Commissioners to consider information and data from a variety of sources that will be presented and aggregated by employing several data, analytic and decision support tools that contain classified information.

Agenda: The agenda items are: —The role of airpower in the post-Afghanistan national security situations likely to be encountered by the Air Force capabilities and Airmen and the implications for the structure of the Air Force. This discussion will be organized into three categories.

The "Away Game," will involve emerging demands on Air Force capabilities such as: Intelligence, Surveillance and reconnaissance, Remotely Piloted Aircraft, Space, Cyber, Special Operations, and Building Partnership Capacity. Commissioners will also explore the implications of rising demands and expectations for the "Home Game" in missions such as Homeland Defense, Homeland Security, and Defense Support to Civil Agencies. This will include implications for the structure of the Air Force from the growing threat of the "Away Game" involving simultaneous attacks on the Homeland. The third area of discussion will be on the continuing growth of demand on traditional Air Force core functions including: Air Superiority, Air Mobility, Global Precision Attack, Nuclear Deterrence Operations, Command and Control, Personnel Recovery, Agile Combat Support, Training and Education, and other specific mission sets such as security forces, civil engineering and science and technology. —Projections and assumptions about future resource levels that will be available to organize, train and equip the Air Force. This will include assumptions about how the Budget Control Act and Sequestration legislation will affect Total Obligational Authority and associated planning, programming and budgeting flexibility. Commissioners will also consider the impact of strategic choices on Air Force capabilities and force structure options derived from the selection of national priorities among modernization, technology, recapitalization, readiness, capacity and force structure. In this discussion Commissioners will consider the various approaches to how to

calculate and apply cost methods and data to questions of force structure.

- The root causes of legislative and bureaucratic development of the force structure issues that led to the creation of the Commission in 2013. They will consider how these issues are rooted in the American militia heritage and the history of the Air Force since 1947. This discussion will extend to accounting for the socio-cultural dimensions of force structure issues ranging from the fundamental relationship of the American people to their military and to sub-cultures within the Air Force.
- How to institutionalize the shift in the fundamental role of the reserve components from a strategic reserve to an operational reserve with associated expectations. Commissioners will also consider the force mix options they are prepared to assess in terms of relative weight of force structure in each of the components. Commissioners will consider whether to recommend that the Department of Defense invert the force sizing planning paradigm from sizing to meet the expected wartime surge to an approach that begins with the Steady State Requirement then resource the components to provide the nation with a meaningful surge capacity for the strategy. They will also address considerations for measuring and assessing Active, Reserve and Guard Effectiveness—both cost and mission effectiveness.
- Alternative approaches to how the nation should direct, control and guide the active, reserve and National Guard Air Forces, including:
 - Whether, and if so how, to simplify Title 10, Title 32 and other governing legislative authorities;
 - How to re-balance the current mix of Active, Reserve and Guard components into and across any and all mission functions;
 - Whether, and if so how, to reorganize the Air Force Active, Reserve and National Guard into less than 3 components;
 - Can the Air Force move to a periodic readiness schedule without creating a “hollow force;”
 - Does component “ownership” of aircraft matter anymore and how can the Associate Unit paradigm be adapted to the future;
 - Approaching future force integration of new systems capabilities by means of a Concurrent Proportional resourcing method across the components to replace today’s priority of equipping the Active Component first;
 - Accelerating the adoption of a “Continuum of Service” model to

facilitate the ability of Airmen to move from any component into another at multiple points in their career path without prejudice;

Enhancing the total force through equalized opportunities across the components for professional and technical education and shared experiences.

Recognizing in promotion and selection processes differing but equivalent ends, ways, and means of professional development.

Fundamental shift in policy goals for “Deploy-to-Dwell,” “Mobilization-to-Dwell,” and associated metrics for the post-Afghanistan period, as well as how deployment credit will be accounted.

Reconsider the nation’s needs for Overseas Basing and the capacity of continental United States’ infrastructure afforded by investments in Reserve and Guard basing capacities available to the Total Force.

Meeting Accessibility: In accordance with section 10(d) of the FACA, 5 U.S.C. 552b, and 41 CFR 102–3.155, the DoD has determined that the meeting scheduled for November 19, 2013 will be closed to the public in its entirety. Specifically, the Director of Administration and Management, with the coordination of the DoD FACA Attorney, has determined in writing that this meeting will be closed to the public because it will discuss classified information and matters covered by 5 U.S.C. 552b(c)(1).

Written Comments: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the Commission in response to the stated agenda of the open and/or closed meeting or the Commission’s mission. The Designated Federal Officer (DFO) will review all submitted written statements before forwarding to the Commission. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author’s name, title or affiliation, address, and daytime phone number. All contact information may be found in the **FOR FURTHER INFORMATION CONTACT** section. While written comments are forwarded to the Commissioners upon receipt, note that all written comments on the Commission’s charge, as described in the ‘Background’ section, must be received by November 29, 2013, and postmarked by November 8, 2013 if mailed, to be considered by the Commissioners for the final report.

Due to difficulties finalizing the meeting agenda for the scheduled

meeting of the National Commission on the Structure of the Air Force for November 19, 2013, the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

The evaluation factors under consideration by the Commission are for a U.S. Air Force structure that—(a) meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013-27281 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2013-OS-0210]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to amend two Systems of Records.

SUMMARY: The Defense Intelligence Agency is proposing to amend two systems of records, LDIA 0660, "Security and Counterintelligence Records" and LDIA 0900, "Accounts Receivable, Indebtedness and Claims" in its existing inventory of records systems subject to the Privacy Act of 1974, as amended.

DATES: This proposed action will be effective on December 16, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 16, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at Defense Intelligence Agency, FAC 2A, 600 MacDill Blvd., Washington, DC 20340-0001 or by phone at (202) 231-1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal

Register and are available from the address at FOR FURTHER INFORMATION CONTACT or from the Defense Privacy and Civil Liberties Office Web site at http://dpclo.defense.gov/privacy/SORNs/component/dia/index.html.

The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA 0660

SYSTEM NAME:

Security and Counterintelligence Records (May 3, 2012, 77 FR 26262).

* * * * *

Changes:

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Office (FAC-2A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340-5100.

Request should contain the individual's full name, current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Office (FAC-2A), 200 MacDill Blvd., Washington, DC 20340-5100.

Request should contain the individual's full name, current address, and telephone number."

* * * * *

LDIA 0900

SYSTEM NAME:

Accounts Receivable, Indebtedness and Claims (May 3, 2012, 77 FR 26256).

* * * * *

Changes:

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Office (FAC-2A), Defense Intelligence Agency,

200 MacDill Blvd., Washington, DC 20340-5100.

Request should contain the individual's full name, current address, and telephone number."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Office (FAC-2A), 200 MacDill Blvd., Washington, DC 20340-5100.

Request should contain the individual's full name, current address, and telephone number."

* * * * *

[FR Doc. 2013-27286 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA-2013-0036]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD. ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Army announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 14, 2014.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name, docket

number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov>

for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314-1000, Attn: CECW-CO-R, or call Department of the Army Reports clearance officer at (703) 428-6440.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Customer Service Survey—Regulatory Program, US Army Corps of Engineers, ENG Form 5065, OMB Control Number 0710-0012.

Needs and Uses: The Corps conducts surveys of customers served by our district offices, currently a total of 38 offices. Only voluntary opinions will be solicited and no information requested on the survey instrument will be mandatory. The survey form will be provided to the applicants when they receive a regulatory product, primarily a permit decision or wetland determination. The information collected will be used to assess whether Regulatory business practices or policies warrant revision to better serve the public. Without this survey the Corps would have to rely on less structured, informal methods of obtaining public input.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; or other agencies who receive permits or jurisdictional determinations for the Corps of Engineers Regulatory program.

Annual Burden Hours: 500.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

The Corps of Engineers is required by three federal laws, passed by Congress,

to regulate construction-related activities in waters of the United States. This customer survey provides feedback on the service the public has received from the Regulatory program during their permit or jurisdictional determination evaluations.

Dated: November 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013-27294 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Financing

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through January 31 2014. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by January 14, 2014.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0359, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* dfars@osd.mil. Include OMB Control Number 0704-0359 in the subject line of the message.

○ *Fax:* (571) 372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mark Gomersall, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (571) 372-6099. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfars/index.htm>. Paper copies are available from Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), 3060, Room 3B855, Defense Pentagon, Washington, DC 20301-3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and related clause at DFARS 252.232-7007, Limitation of Government's Obligation; OMB Control Number 0704-0359.

Needs and Uses: This information collection requires contractors that are awarded incrementally funded, fixed-price DoD contracts to notify the Government when the work under the contract will, within 90 days, reach the point at which the amount payable by the Government (including any termination costs) approximates 85 percent of the funds currently allotted to the contract. This information will be used to determine what course of action the Government will take (e.g., allot additional funds for continued performance, terminate the contract, or terminate certain contract line items).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 800.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Summary of Information Collection

This information collection includes requirements related to contract financing and payment in DFARS Part 232, Contract Financing, and the related clause at DFARS 252.232-7007, Limitation of Government's Obligation. DFARS subpart 232.7, Contract

Funding, limits the use of incrementally funded fixed-price contracts to situations where (1) the contract is for severable services, does not exceed one year in length, and is incrementally funded using funds available as of the date the funds are obligated; or (2) the contract uses funds available from two or more fiscal years and is funded with research and development appropriations, or Congress has otherwise authorized incremental funding. The clause at DFARS 252.237-7007 identifies procedures for incrementally funding the contract and requires the contractor to provide the Government with written notice when the work will reach the point at which the amount payable by the Government, including any termination costs, approximates 85 percent of the funds currently allotted to the contract.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013-27309 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Service Contracting

AGENCY: Defense Acquisition Regulation System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget

(OMB) has approved this information collection requirement for use through January 31, 2014. DoD proposes that OMB extend its approval for these collections to expire three years after the approval date.

DATES: DoD will consider all comments received by January 14, 2014.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0231, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* dfars@mail.mil. Include OMB Control Number 0704-0231 in the subject line of the message.

○ *Fax:* (571) 372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Lesa Scott, 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.

FOR FURTHER INFORMATION CONTACT: Ms. Lesa Scott, at (571) 372-6104. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.htm>. Paper copies are available from Ms. Lesa Scott, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 237, Service Contracting, and associated clauses at DFARS 252.237-7000, Notice of Special Standards of Responsibility; 252.237-7011, Preparation History, and DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS); 252.237-7023, Continuation of Essential Contractor Services; and 252.237-7024, Notice of Continuation of Essential Contractor Services; OMB Control Number 0704-0231, which incorporates the annual reporting burden previously approved under OMB Control Number 0704-0465.

Needs and Uses: This information collection is used by contracting officers for three distinct purposes.

Audit Services. The clause at 252-237.7000 is used to provide information that enables verification that the apparently successful offeror for audit services is licensed by the cognizant licensing authority in the state or other political jurisdiction where the offeror operates its professional practice.

Mortuary Services. The clause at DFARS 252-237.7011 and DD Form 2063 are used (a) to ensure the mortuary contractor has properly prepared the body, and (b), by the contract carrier, so that the body can be shipped by that carrier. When additional preparation of the body is required subsequent to shipment, information regarding the initial preparation of the body may be used by the mortuary services contractor to whom the body has been shipped.

Continuation of Essential Services. The provision at DFARS 252.237-7024 requires offerors to submit with its offer a written plan describing how it will continue to perform essential contractor services during periods of crisis. The associated clause at 252.237-7023 requires the contractor to maintain and update its plan as necessary.

Affected Public: Businesses and other for-profit entities and not-for-profit institutions.

Number of Respondents: 7,810.

Average Responses per Respondent: 1.22.

Annual Responses: 9,560.

Average Burden per Response: Approximately 1.87 hours.

Annual Response Burden Hours: 17,905.

Reporting Frequency: On occasion.

Summary of Information Collection

DFARS Part 237, the clauses at DFARS 252.237-7000, 252.237-7011, 252.237-7023, 252.237-7024, and DD Form 2063 are required for DoD contracting officers to—

(a) Verify that the apparently successful offeror for audit services is properly licensed in the state or other political jurisdiction where the offeror operates its professional practice;

(b) Verify the mortuary contractor has properly prepared a body for shipment. The mortuary contractor to whom the body has been shipped may use the information regarding the initial preparation of the body when additional preparation is required subsequent to shipment; or

(c) Ensure the contractor submits a written plan that demonstrates its ability to continue providing contractually required mission critical functions in an emergency.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013-27306 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 211, Describing Agency Needs**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through January 31, 2014. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by January 14, 2014.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704-0398, using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include OMB Control Number 0704-0398 in the subject line of the message.

Fax: 571-372-6094.

Mail: Defense Acquisition Regulations System, Attn: Mr. Dustin Pitsch, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Dustin Pitsch, 571-372-6090. The information collection requirements addressed in this notice are available on the World Wide Web at: <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>. Paper copies are available from Mr. Dustin Pitsch, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS, Part 211, Describing Agency Needs, and the associated clauses at DFARS 252.211-7004, Alternate Preservation, Packaging, and Packing and 252.211-7005, Substitutions for Military or Federal Specifications and Standards; OMB Control Number 0704-0398.

Needs and Uses: This information collection permits offers to—

- Propose alternatives to military preservation, packaging, or packing specifications. DoD uses the information to evaluate and award contracts using commercial or industrial preservation, packaging, or packing if the offeror chooses to propose such alternates.

- Purpose Single Process Initiative (SPI) processes as alternatives to military or Federal specifications and standards cited in DoD solicitations for previously developed items. DoD uses the information to verify Government acceptance of an SPI process as a valid replacement for a military or Federal specification or standard.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Number of Respondents: 385.

Responses per Respondent:

Approximately 1.4.

Annual Responses: 573.

Average Burden per Response:

Approximately 2 hours.

Annual Burden Hours: 1,136.

Frequency: On Occasion.

Summary of Information Collection

DFARS Part 211 and the clause at DFARS 252.211-7004 and 252.11-7005 are required for DoD contractors and subcontractors to propose—

- Alternatives to military preservation, packaging, or packing specifications; and/or

- Single Process Initiative (SPI) processes in lieu of military or Federal specifications.

The provision at DFARS 252.211-7004, Alternate Preservation, Packaging, and Packing, is used in solicitations that include military preservation, packaging, or packing specifications when it may be feasible for DoD to evaluate and award using commercial or

industrial preservation, packaging, or packing. If the offeror chooses to propose alternate preservation, packaging, or packing, the provision requires the offeror to submit information sufficient to allow evaluation of the proposed commercial or industrial preservation, packaging, or packing.

The clause at DFARS 252.211-7005, Substitutions for Military or Federal Specifications and Standards, is used in solicitations and contracts for previously developed items. The clause encourages offerors to propose management or manufacturing processes, if previously accepted by DoD under the Single Process Initiative (SPI) program, as alternatives to military or Federal specification and standards cited in the solicitation.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013-27302 Filed 11-14-13; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2013-ICCD-0106]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the Early Warning and Intervention Monitoring System

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2013-ICCD-0106 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Katrina Ingalls, 703-620-3655 or electronically mail ICDocketMgr@ed.gov. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the Early Warning and Intervention Monitoring System.

OMB Control Number: 1850-NEW.

Type of Review: New collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 839.

Total Estimated Number of Annual Burden Hours: 1,772.

Abstract: The U.S. Department of Education (ED) requests clearance for the recruitment materials and data collection protocols for activities related to the Regional Educational Laboratory Program (REL). ED, in consultation with American Institutes for Research (AIR), is planning a two-part evaluation of the Early Warning and Intervention Monitoring System (EWIMS), consisting of an impact study and an implementation study. OMB approval is being requested for a multimode data collection and analysis of a group of schools, students, and staff members in

public schools in Ohio, Michigan, and Indiana. The impact study consists of data collection from the state education agencies (SEAs) in Ohio, Michigan, and Indiana and participating districts and schools. The implementation component consists of data collection from participating schools.

This impact study (designed as a cluster randomized controlled trial) will focus on student outcomes spanning multiple domains of school success (student risk status, scores on graduation tests, persistence and progress in school, and being on track at the end of ninth grade) and will examine whether the EWIMS model has an impact on intermediate outcomes in schools, including the schools data culture and data-informed allocation of dropout prevention interventions. The implementation study will focus on schools experience with implementation, the extent to which schools faithfully implement the EWIMS model and the interventions provided to students identified as at risk by the EWS tool.

The purpose of the project is to assess the implementation and impact of EWIMS, a data tool and process for implementing a system of data-driven decision making. Developed by the National High School Center, EWIMS provides a means of systematically and reliably identifying students at risk for dropping out of high school. The proposed study is a two-year school-level randomized controlled trial (RCT) to examine the impact of implementing EWIMS on school processes and student outcomes.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013-27299 Filed 11-14-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI)

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, U.S. Department of Education.

ADDRESSES: U.S. Department of Education, Office of Postsecondary Education, 1990 K Street NW., Room 8072, Washington, DC 20006.

ACTION: Announcement of revisions to the agenda for the December 12-13, 2013 meeting of the National Advisory

Committee on Institutional Quality and Integrity (NACIQI).

NACIQI'S Statutory Authority and Function: The NACIQI is established under Section 114 of the HEA of 1965, as amended, 20 U.S.C. 1011c. The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under Subpart 2, Part H, Title IV, of the HEA, as amended.
- The recognition of specific accrediting agencies or associations or a specific State approval agency.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, of the HEA, together with recommendations for improvement in such process.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary may prescribe.

SUMMARY: This meeting notice is an update to the two previous notices (78 FR 50401) published on August 19, 2013, and (78 FR 64929) published on October 30, 2013. This notice sets forth revisions to the agenda, specifically, the removal of the petition for initial recognition submitted by the Association of Institutions for Jewish Studies (AIJS) from the agenda. In addition, the election of a NACIQI Chairperson and a Vice Chairperson will precede the Committee's review of agencies scheduled for review. This notice is required under Section 10(a)(2) of the Federal Advisory Committee Act (FACA) and Section 114(d)(1)(B) of the Higher Education Act (HEA) of 1965, as amended.

Meeting Date and Place: The NACIQI meeting will be held on December 12-13, 2013, from 8 a.m. to 5:30 p.m. at the Liaison Capitol Hill Hotel, 415 New Jersey Ave. NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carol Griffiths, Executive Director, NACIQI, U.S. Department of Education, 1990 K Street NW., Room 8073, Washington, DC 20006-8129, telephone: (202) 219-7035, fax: (202) 219-7005, or email Carol.Griffiths@ed.gov.

Electronic Access to This Document: The official version of this document is

the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Lynn B. Mahaffie,

Acting Deputy Assistant Secretary for Policy, Planning, and Innovation, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013-27394 Filed 11-14-13; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

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

Docket Numbers: EC14-23-000.

Applicants: CPV Shore, LLC.

Description: Section 203 Application for Disposition of Jurisdictional Facilities of CPV Shore, LLC.

Filed Date: 11/6/13.

Accession Number: 20131106-5081.

Comments Due: 5 p.m. ET 11/27/13.

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

Docket Numbers: ER14-335-000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Original Service Agreement No. 3147, Queue W4-103 to be effective 9/30/2013.

Filed Date: 11/6/13.

Accession Number: 20131106-5082.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14-336-000.

Applicants: Sunwave USA Holdings, Inc.

Description: Sunwave USA Holdings, Inc. submits Sunwave USA Holdings,

Inc. MBR Tariff Filing to be effective 12/1/2013.

Filed Date: 11/6/13.

Accession Number: 20131106-5095.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14-337-000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits 11-6-13_RS114 SPS-CVEC Op Proc 1 to be effective 11/4/2013.

Filed Date: 11/6/13.

Accession Number: 20131106-5103.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14-338-000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits 11-6-13_RS115 SPS-FEC Op Proc 1 to be effective 11/4/2013.

Filed Date: 11/6/13.

Accession Number: 20131106-5108.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14-339-000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Company submits 11-6-13_RS116 SPS-LCEC Op Proc 1 to be effective 11/4/2013.

Filed Date: 11/6/13.

Accession Number: 20131106-5111.

Comments Due: 5 p.m. ET 11/27/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: November 6, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013-27388 Filed 11-14-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER10-2179-021; ER10-2181-021; ER10-2182-021.

Applicants: Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.

Description: Notice of Non-Material Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, et al.

Filed Date: 11/5/13.

Accession Number: 20131105-5143.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14-229-000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits 2213R2 Cimarron Windpower II, LLC GIA Supplemental Submission to be effective N/A.

Filed Date: 11/5/13.

Accession Number: 20131105-5129.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14-325-000.

Applicants: Enel Cove Fort, LLC.

Description: Enel Cove Fort, LLC submits Enel Cove Fort, LLC MBR Tariff to be effective 11/15/2013.

Filed Date: 11/5/13.

Accession Number: 20131105-5097.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14-326-000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits Town of Wallingford—CONVEX Services CL&P Electric Rate Schedule FERC No. 583 to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105-5098.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14-327-000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits CMEEC—CONVEX Services First Revised Rate Schedule FERC No. 576 to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105-5115.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14-328-000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. and New England Power Pool

Participants Committee submit Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2017/2018 Capability Year.

Filed Date: 11/5/13.

Accession Number: 20131105–5124.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–329–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits 8th Forward Capacity Auction Informational Filing.

Filed Date: 11/5/13.

Accession Number: 20131105–5125.

Comments Due: 5 p.m. ET 11/20/13.

Docket Numbers: ER14–330–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submits CTMEEC—Convex Services First Revised CL&P Rate Schedule FERC No. 582 to be effective 1/1/2014.

Filed Date: 11/5/13.

Accession Number: 20131105–5130.

Comments Due: 5 p.m. ET 11/26/13.

Docket Numbers: ER14–331–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits SA 692—MDT Florence East to be effective 11/7/2013.

Filed Date: 11/6/13.

Accession Number: 20131106–5001.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14–332–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Amended Distribution Service Agreement with Houweling Nurseries Oxnard, Inc. to be effective 10/28/2013.

Filed Date: 11/6/13.

Accession Number: 20131106–5002.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14–333–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits LGIA with Portal Ridge Solar A, Portal Ridge Solar B, Portal Ridge Solar C to be effective 11/7/2013.

Filed Date: 11/6/13.

Accession Number: 20131106–5003.

Comments Due: 5 p.m. ET 11/27/13.

Docket Numbers: ER14–334–000.

Applicants: Potomac Electric Power Company.

Description: Notice of Cancellation of Rate Schedules No. 20, 35 and 38 of Potomac Electric Power Company.

Filed Date: 11/5/13.

Accession Number: 20131105–5142.

Comments Due: 5 p.m. ET 11/26/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 6, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27387 Filed 11–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–90–000]

Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

On September 24, 2013, the Commission issued an order that initiated a proceeding in Docket No. EL13–90–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2006), to determine the justness and reasonableness of the rate increase proposed by Pacific Gas and Electric Company. *Pacific Gas and Electric Company*, 144 FERC ¶ 61,277 (2013).

The refund effective date in Docket No. EL13–90–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: November 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–27386 Filed 11–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–106]

Exelon Generation Company, LLC; Notice of Staff Attendance at Meeting

On Wednesday, November 13, 2013, Commission staff will attend the Maryland Department of Natural Resources (Maryland DNR) *Open House on the Conowingo Dam Relicensing Process*. The purpose of the Open House is for Maryland DNR to provide local citizens and stakeholders with information on the relicensing process and timeline for Exelon Generation Company's Conowingo Hydroelectric Project No. 405.

The Open House will be held from 7:00 p.m. to 9:30 p.m. at the Harford Community College, Chesapeake Center Theater, 401 Thomas Run Road, Bel Air, Maryland 21015. For further information, visit Maryland DNR's Web site at <http://www.dnr.maryland.gov/waters/Conowingo.asp>. Please take note that Commission staff will only be able to address procedural questions related to the Conowingo relicensing process.

Dated: November 6, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–27292 Filed 11–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL14–10–000; QF11–171–003]

Maryland Solar, LLC; Notice of Petition for Limited Waiver

Take notice that on November 6, 2013, pursuant to section 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 292.207, Maryland Solar, LLC filed a petition for limited waiver of section 292.601(c)(1) of the Commission's regulations, 18 CFR 292.601(c)(1) and for a finding that it qualifies prospectively for exemption from sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d and 824e.

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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on November 27, 2013.

Dated: November 7, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-27291 Filed 11-14-13; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14-15-000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on October 31, 2013, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP14-15-000, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA). Southern Star seeks authorization to increase the Maximum Operating Pressure (MOP) of its Waynoka gas supply lateral, located in Woods County, Oklahoma, from 765 pounds per square inch gauge (psig) to 930 psig. Southern Star proposes to

perform these activities under its blanket certificate issued in Docket No. CP82-479-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or TTY, contact (202) 502-8659.

Any questions concerning this application may be directed to David N. Roberts, Analyst Staff, Regulatory Compliance, Southern Star Central Gas Pipeline, Inc., 4700 Highway 56, Owensboro, Kentucky 42301, or by calling (270) 852-4654, fax (270) 852-5010 or david.n.roberts@sscgp.com.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: November 7, 2013.

Kimberly D. Bose,
Secretary.

[FR Doc. 2013-27290 Filed 11-14-13; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9012-1]

Initiation of Scoping for an Environmental Assessment (EA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Initiation of scoping.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4307h), the Council on Environmental Quality's NEPA regulations (40 CFR Part 1500-1508), and EPA's regulations for implementing NEPA (40 CFR Part 6), EPA will prepare an Environmental Assessment (EA) to analyze the potential environmental impacts related to the reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Industrial Activities, also referred to as the Multi-Sector General Permit. The EA will evaluate the potential environmental impacts from the discharge of pollutants

in stormwater discharges from new sources associated with industrial facilities where EPA is the permitting authority. EPA will use the information in the EA to determine whether to prepare an Environmental Impact Statement (EIS).

This notice initiates the scoping process by inviting comments from Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EA. The scoping process will inform the preparation of the EA, which will be made available for public comment.

DATES: Comments must be received by December 16, 2013.

ADDRESSES: You may submit scoping comments by any of the following methods:

- *Mail:* ATTN: CGP Scoping Comments, U.S. Environmental Protection Agency, William Jefferson Clinton Building—South, 1200 Pennsylvania Avenue NW., Mail Code: 2252A, Washington, DC 20460.
- *Electronically:* email comments to trice.jessica@epa.gov, Subject line: CGP Scoping Comments.
- *Courier:* ATTN: CGP Scoping Comments, U.S. Environmental Protection Agency, William Jefferson Clinton Building—South, 1200 Pennsylvania Avenue NW., Rm # 7235A, Washington, DC 20004, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202-564-0072, ATTN: CGP Scoping Comments.

Comments should be received within 30 days of the date of the publication of this notice in the **Federal Register**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online, 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. 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 FURTHER INFORMATION CONTACT:

Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code: 2252A, Washington, DC 20460. Telephone: (202) 564-6646.

SUPPLEMENTARY INFORMATION: EPA is seeking public comment to determine the scope of environmental issues and reasonable alternatives to be addressed in the EA on the reissuance of the National Pollutant Discharge Elimination System (NPDES) general permit for the discharge of pollutants in stormwater discharges from new sources associated with industrial facilities where EPA is the permitting authority. EPA invites the public to submit comments electronically through email or by mail or fax to the address cited in the **ADDRESSES** section during the 30-day comment period following the publication of this notice in the **Federal Register**.

Since 1995, EPA has issued a series of NPDES Multi-Sector General Permits (MSGP) that cover areas where EPA is the permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all U.S. territories with the exception of the Virgin Islands, federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and a few other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). EPA's current MSGP became effective on September 29, 2008 (see 73 FR 56572) and will expire on September 29, 2013 (Note: Facilities that obtained coverage under the 2008 MSGP prior to its expiration are automatically granted an administrative continuance of permit coverage. EPA has issued a memorandum concerning new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013. This memorandum provides a "no action assurance" for the new facilities that comply with the requirements of the 2008 MSGP, subject to particular terms and conditions as set forth in the memorandum). On September 27, 2013, EPA proposed for public comment the proposed National Pollutant Discharge Elimination System general permit for the discharge of pollutants in stormwater discharges from industrial facilities. 78 Fed. Reg. 59675. The proposed permit, would replace the 2008 MSGP. EPA proposes to issue the multi-sector general permit for five (5) years, and to provide permit coverage for sectors of industrial point

source discharges that occur in areas not covered by an approved state NPDES program.

EPA is currently planning to analyze two alternatives in the EA: No Action, that is not issuing the MSGP; and the proposed action, which is issuing the draft MSGP as proposed for a designated new source of industrial stormwater discharge. The EA will focus its analysis on the potential environmental impacts of both alternatives.

Dated: November 12, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013-27439 Filed 11-14-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2013-0485; FRL-9902-60]

FIFRA Scientific Advisory Panel; Notice of Rescheduled Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to reschedule the 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review, RNAi Technology as a Pesticide: Problem Formulation for Human Health and Ecological Risk Assessment. The meeting was announced in the **Federal Register** on August 15, 2013. The Agency issued a notice of cancellation in the **Federal Register** on October 28, 2013. The new meeting date is January 28, 2014.

DATES: The meeting will be held on January 28, 2014, from 9 a.m. to approximately 6 p.m.

Comments. The Agency encourages that written comments and requests for oral comments be submitted by January 20, 2014. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after January 20, 2014, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Sharlene Matten, DFO, Office of Science

Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (202) 564-0130; fax number: (202) 564-8382; email address: matten.sharlene@epa.gov.

SUPPLEMENTARY INFORMATION: A cancellation notice was published in the **Federal Register** on October 28, 2013 (78 FR 64211) (FRL-9902-08). All other information provided in the **Federal Register** on August 15, 2013 (78 FR 49750) (FRL-9393-3) remains unchanged.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 6, 2013.

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2013-27430 Filed 11-14-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2013-0453; FRL-9902-82]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is giving notice that a public webinar of the Pesticide Program Dialogue Committee (PPDC) is being planned for December 5-6, 2013. A draft agenda is under development and will be posted by November 21, 2013. Notice is also given that EPA has determined that, in accordance with the provisions of the Federal Advisory Committee Act, the PPDC has been renewed for an additional 2-year period, from October 25, 2013, to October 25, 2015. A copy of the current Charter is available on the PPDC Internet site.

DATES: The PPDC webinar will be held on Thursday, December 5, 2013, from 11 a.m. to 5 p.m., and Friday, December 6, 2013, from 11 a.m. to 3 p.m.

ADDRESSES: Information regarding public accessibility and participation in the PPDC Webinar will be posted by November 21 at <http://www.epa.gov/pesticides/ppdc>.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide

Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 308-4775; fax number: (703) 308-4776; email address: fehrenbach.margie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2013-0453, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

II. Background

The Office of Pesticide Programs (OPP) is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to

pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for the Environmental Protection Agency's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92-463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed October 25, 2013, for another 2-year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How can I request to participate in this Webinar?

PPDC meetings are open to the public. Persons interested in participating in the webinar do not need to register in advance of the meeting. Public comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Integrated pest management, Pesticide labels, Pesticides and pests, Public health, Spray drift, 21st Century toxicology.

Dated: November 8, 2013.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2013-27432 Filed 11-14-13; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9902-93-OW]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations.

SUMMARY: The EPA invites nominations of qualified candidates to be considered for a three-year appointment to the National Drinking Water Advisory Council (Council). The 15 member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA. This notice solicits nominations to fill five new vacancies through December 15, 2016. To maintain the representation required by statute, nominees will be selected to represent: State and local agencies concerned with water hygiene and public water supply (two vacancies) and private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply (three vacancies).

DATES: Nominations should be submitted on or before December 20, 2013.

ADDRESSES: Submit nominations to Roy Simon, Designated Federal Officer (DFO), The National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601-M), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also email nominations with the subject line NDWACResume2013 to Simon.Roy@epa.gov.

FOR FURTHER INFORMATION CONTACT: Email your questions to Roy Simon or call him at 202-564-3868.

SUPPLEMENTARY INFORMATION:

National Drinking Water Advisory Council: The Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act of 1974, Public Law 93-523, 42 U.S.C. 300j-5 and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council consists of 15 members, including a Chairperson, appointed by the EPA's Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private

organizations or groups demonstrating an active interest in the field of water hygiene and public water supply, of which two members shall represent small, rural public water systems. The current list of members is available on the EPA Web site at: <http://water.epa.gov/drink/ndwac/>.

The Council will meet in person once each year and may hold a second meeting during the year either in person or by video/teleconferencing. These meetings generally occur in the spring and fall. Additionally, members may be asked to participate in ad hoc workgroups to develop policy recommendations, advice letters and reports to address specific program issues.

Member Nominations: Any interested person and/or organization may nominate qualified individuals for membership. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups.

All nominations will be fully considered, but applicants need to be aware of the specific representation required by the SDWA for the current vacancies: State and local agencies concerned with water hygiene and public water supply (two vacancies), and private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply (three vacancies). Other criteria used to evaluate nominees will include:

- Demonstrated experience with drinking water issues at the national, State or local level;
- Excellent interpersonal, oral and written communication and consensus-building skills;
- Willingness to commit time to the Council and demonstrated ability to work constructively on committees;
- Absence of financial conflicts of interest;
- Absence of appearance of a lack of impartiality; and
- Background and experiences that would help members contribute to the diversity of perspectives on the Council, e.g., geographic, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations.

Nominations must include a resume, which provides the nominee's background, experience and educational qualifications, as well as a brief statement (one page or less) describing the nominee's interest in serving on the Council and addressing the other criteria previously described. Nominees should be identified by name,

occupation, position, current business address, and email and telephone number. Interested candidates may self-nominate.

The DFO will acknowledge receipt of nominations. Nominees are encouraged to provide any additional information that they feel would be useful for consideration, such as: Availability to participate as a member of the Council; how the nominee's background, skills and experience would contribute to the diversity of the Council; and any concerns the nominee has regarding membership.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. Additionally, selected candidates will be required to fill out the "Confidential Financial Disclosure Form for EPA Special Government Employees" [EPA Form 3310-48]. This confidential form allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the "Ethics Requirements for Advisors" link on the EPA NDWAC Web site, <http://water.epa.gov/drink/ndwac/fact.cfm>.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: November 6, 2013.

Peter Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2013-27273 Filed 11-14-13; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

[Public Notice 2013-0051]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of \$100 Million: AP087461XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States ("Ex-Im Bank"), that Ex-Im Bank has received

an application for final commitment for a long-term loan or financial guarantee in excess of \$100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this transaction.

Reference: AP087461XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured equipment for three cogeneration power plants in Saudi Arabia.

Brief non-proprietary description of the anticipated use of the items being exported:

To construct power plants to produce reliable electricity and steam.

To the extent that Ex-Im Bank is reasonably aware, the item(s) are not being exported to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: General Electric Company.

Obligor: Power Generation Plant Company.

Guarantor(s): N/A.

Description of Items Being Exported:

The items being exported are turbine and turbine generator sets.

Information On Decision: Information on the final decision for this transaction will be available in the "Summary Minutes of Meetings of Board of Directors" on <http://exim.gov/newsandevents/boardmeetings/board/>.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before December 10, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at WWW.REGULATIONS.GOV. To submit a comment, enter EIB-2013-0051 under the heading "Enter Keyword or ID" and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name,

company name (if any) and EIB-2013-0051 on any attached document.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013-27371 Filed 11-14-13; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-53; DA 13-2057]

Tribal Mobility Fund Phase I Auction Rescheduled for February 25, 2014; Notice of Changes to Auction 902 Schedule Following Resumption of Normal Commission Operations

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications and Wireline Competition Bureaus (the Bureaus) announce the rescheduling of Auction 902 and revise the dates and deadlines for the filing window for short-form applications and other auction processes.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: Patricia Robbins at (202) 418-0660. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 902 Rescheduling Public Notice* released on October 30, 2013. The complete text of the *Auction 902 Rescheduling Public Notice* and related Commission documents are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The *Auction 902 Rescheduling Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI, please

provide the appropriate FCC document number, for example, DA 13-2057 for the *Auction 902 Rescheduling Public Notice*. The *Auction 902 Rescheduling Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/902/>, or by using the search function for AU Docket No. 13-53 on the Commission's Electronic Comment Filing System (ECFS) Web page at <http://www.fcc.gov/cgb/ecfs/>.

1. The Bureaus announce that Auction 902, the single-round reverse auction that will award up to \$50 million in one-time Tribal Mobility Fund Phase I support, will be conducted on February 25, 2014. The *Auction 902 Rescheduling Public Notice* also revises the previously-announced schedule of pre-auction deadlines for Auction 902.

2. The Auction 902 short-form application filing window opened at 12 noon ET on September 30, 2013, but was suspended on October 1, 2013, along with other Commission operations. Regular Commission operations were suspended from October 1 through October 16, 2013, due to a Government-wide lapse in funding. In the *Auction 902 Rescheduling Public Notice*, the Bureaus adopt schedule changes intended to give potential bidders and Commission staff additional time for planning and preparation for Auction 902 following the now-concluded 16-day suspension of regular Commission operations.

3. The following dates and deadlines will now apply to Auction 902: (1) A revised auction tutorial incorporating the revised dates and deadlines will be available (via Internet) by November 18, 2013; (2) the short-form application (FCC Form 180) filing window will reopen on November 18, 2013, at 12:00 noon ET; (3) the short-form application (FCC Form 180) filing window will close on December 5, 2013, at 6:00 p.m. ET; (4) a mock auction will be held on February 21, 2014; and (5) Auction 902 will be held on February 25, 2014. All other procedures, terms and requirements as set out in the *Auction 902 Procedures Public Notice*, 78 FR 56875, September 16, 2013, remain unchanged.

4. The Bureaus note that any information previously saved in a short-form application, FCC Form 180, during the period that the filing window was open prior to the suspension of the window on October 1, 2013, will be retained in the Commission's Auction system and will be accessible to the applicant when the short-form application filing window reopens.

Federal Communications Commission

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access
Division, WTB.

[FR Doc. 2013-27444 Filed 11-14-13; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 12, 2013.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President), 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *CapGen Capital Group III LLC and CapGen Capital Group III LP*, both in New York, New York; to acquire additional voting shares, for a total of 25 percent of, the voting shares of Seacoast Banking Corporation of Florida, and thereby indirectly acquire additional voting shares of Seacoast National Bank, both in Stuart, Florida.

Board of Governors of the Federal Reserve System, November 12, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013-27373 Filed 11-14-13; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Public Workshop: Follow-On Biologics: Impact of Recent Legislative and Regulatory Naming Proposals on Competition

AGENCY: Federal Trade Commission.

ACTION: Notice of workshop and request for comments.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) announces it will hold a workshop to explore competition issues involving biologic medicines and follow-on biologics. The workshop will focus on the potential impact of state regulations and naming conventions on such competition, including how regulations may be structured to facilitate competition while still protecting patient health and safety. The experience of developing follow-on competition from small-molecule generic drugs will be considered and, as relevant, compared. Topics will include the circumstances under which potential entrants would be willing to invest in the development of follow-on biologics in order to use the abbreviated regulatory approval pathway created by federal legislation. The workshop will also survey the experience of other countries with regulatory systems that enable follow-on biologic competition. This Notice poses a series of questions about which the FTC seeks public comment. The FTC will take these comments into account in its examination of these topics.

DATES: The workshop will be held on December 10, 2013, in the FTC headquarters at 600 Pennsylvania Avenue NW., Washington, DC. The FTC workshop is free and open to the public and will also be webcast. Prior to the workshop, the Commission will publish an agenda and further information on its Web site. Comments in response to this notice must be received on or before March 1, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Workshop on Follow-On Biologics: Project No. P131208” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/>

ftc/biologicsworkshop, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex X), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Jex, Attorney Advisor, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580; (202) 326-3273; biosimilars@ftc.gov.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission vigorously promotes competition in the health care industry through enforcement, study, and advocacy. Competition in health care markets benefits consumers by helping to control costs and prices, improve quality of care, promote innovative products, services, and delivery models, and expand access to health care goods and services. As addressed below, this proposed workshop is consistent with these FTC priorities.

I. Background: Follow-On Competition in Pharmaceutical Markets

In particular, the Commission has sought to protect competition among pharmaceutical products, including generic drugs providing price competition against brand-name drugs. Until relatively recently, the potential for follow-on competition was limited to products involving traditional “small-molecule” generic drugs. Producers of these drugs obtain approval from the Food & Drug Administration (“FDA”) pursuant to an abbreviated regulatory pathway established by the Hatch-Waxman Act.¹

Biologic medicines have now become among the most important pharmaceutical products in the United States. Biologics comprise the fastest growing sector within pharmaceuticals, and target such difficult to treat diseases as cancer, diabetes, and multiple sclerosis.² “Biologics” include, for

¹ See The Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.* (2011), as amended by the Drug Price Competition and Patent Term Restoration Act of 1984, Public Law 98-417, 98 Stat. 1585 (codified as amended in scattered sections of 21 & 35 U.S.C.) (known as Hatch-Waxman), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173, § 1112, 117 Stat. 2066, 2461-63 (codified at 21 U.S.C. 355).

² *Health Policy Brief: Biosimilars*, Health Affairs 1 (Oct. 10, 2013), http://healthaffairs.org/healthpolicybriefs/brief_pdfs/healthpolicybrief_100.pdf (“[Biologics] account for a substantial and increasing share of the pharmaceutical market and a growing share of health care costs”).

example, vaccines, antitoxins, blood products, proteins, and monoclonal antibodies.³ Although their characteristics vary widely, “biologics are typically larger and more structurally complex than traditional drugs (also known as ‘small-molecule’ drugs).”⁴ Thus, “[they] are substantially more expensive to develop, manufacture, and monitor [than small-molecule drugs].”⁵ Biologics generally are very expensive; the cost of one year of treatment can range from \$50,000 to \$250,000, and access to therapeutic biologics is often restricted because of cost.⁶ Currently, biologics account for approximately 25 percent of the \$320 billion spent annually in the United States for pharmaceutical treatments.⁷

The FDA approves biologics under the Public Health Service Act (“PHSA”).⁸ To encourage competition

in the market for biologic, in 2010 Congress passed the Biologics Price Competition and Innovation Act (“BPCIA”),⁹ which amended the PHSA to establish an abbreviated regulatory pathway for FDA approval of follow-on biologics. The provisions of the BPCIA differ in some respects from those of the Hatch-Waxman Act. Still, some brief background information on the development of generic drug competition is helpful to understand how follow-on biologic competition may develop.

A. Competition From Generic Drugs

To facilitate follow-on competition to brand-name small-molecule drugs, in 1984 Congress passed the Hatch-Waxman Act.¹⁰ This Act created an abbreviated regulatory pathway through which safe and effective generic drugs could obtain approval from the FDA to enter a market without replicating all of the costly testing required for a brand-name drug.¹¹ To be approved under Hatch-Waxman, the applicant must show that its generic drug product is “bioequivalent” to (basically, as safe and effective as) the branded drug product.¹² A bioequivalence showing is much less expensive than the clinical testing required to establish the safety

set forth under 42 U.S.C. 262(a); whereas follow-on biologics are approved pursuant to the requirements set forth under 42 U.S.C. 262(k).

⁹ See Biologics Price Competition and Innovation Act of 2009, Title VII, Subtitle A, §§ 7001–7003 of the Patient Protection and Affordable Care Act, Public Law 111–148, 124 Stat. 119, 804–21 (2010).

¹⁰ See note 1 *supra*.

¹¹ “Hatch-Waxman does not require generic applicants to duplicate the clinical testing of drugs already proven safe and effective. Duplication of safety and efficacy information is costly, an inefficient use of scarce resources, and, as the FDA has explained, raises ethical concerns associated with unnecessary human testing.” Fed. Trade Comm’n, *Emerging Healthcare Issues: Follow-On Biologic Drug Competition* exec. summ. at ii (2009), <http://www.ftc.gov/os/2009/06/P083901biologicsreport.pdf> [hereinafter FTC FOB Report].

¹² The applicant also must meet other requirements. “To gain FDA approval, a generic drug must: (1) Contain the same active ingredients as the innovator drug (inactive ingredients may vary); (2) be identical in strength, dosage form, and route of administration; (3) have the same use indications; (4) be bioequivalent; (5) meet the same batch requirements for identity, strength, purity, and quality; and (6) be manufactured under the same strict standards of FDA’s good manufacturing practice regulations required for innovator products.” See *What are Generic Drugs?*, U.S. Food & Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/Drugs/ResourcesForYou/Consumers/BuyingUsingMedicineSafely/UnderstandingGenericDrugs/ucm144456.htm> (last updated May 12, 2009); see also Bureau of Consumer Prot’y, Fed. Trade Comm’n, *Drug Product Selection* (1979) [hereinafter *Drug Product Selection*].

and efficacy of a new branded drug product.

Because the generic drug is “bioequivalent” to the branded drug, it can be safely substituted for the branded drug and is expected to be as safe and effective as the branded drug. To take full advantage of generic competition, many states have laws that allow pharmacists automatically to substitute a generic for a branded drug, unless a doctor has indicated otherwise.¹³ Moreover, because an FDA-approved generic drug has the identical active substance and is “biologically equivalent” to its “brand-name” counterpart, the generic drug is given the same active ingredient name as the branded drug product.¹⁴

Since 1984, the FDA has “approved more than 8,000 generic drugs, which has resulted in hundreds of billions of dollars in cost savings to consumers.”¹⁵ Overall, generic drug competition has substantially reduced many prescription drug prices and total prescription drug expenditures, and increased access to therapeutic drugs for more Americans.¹⁶

B. Competition From Follow-On Biologics

No abbreviated approval process for follow-on biologics (“FOBs”) existed until 2010.¹⁷ The BPCIA created an abbreviated licensure pathway for two types of follow-on biologics: Biosimilars and interchangeable biological

¹³ See FTC FOB Report, *supra* note 11, exec. summ. at i.

¹⁴ Generic drugs are required to have the same active ingredient, strength, dosage form, and route of administration as the brand name product. Generic drugs do not need to contain the same inactive ingredients as the brand name product. 21 U.S.C. 355(j)(2)(A)(ii), (iv); *Facts About Generic Drugs*, U.S. Food & Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/drugs/resourcesforyou/consumers/buyingusingmedicinesafely/understandinggenericdrugs/ucm167991.htm> (last updated Sept. 19, 2012).

¹⁵ See *Fact Sheet: New “Biosimilars” User Fees Will Enhance Americans’ Access to Alternatives to Biologic Drugs*, U.S. Food & Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCA/SignificantAmendmentsToTheFDCA/FDASIA/ucm311121.htm> (last updated on July 16, 2012).

¹⁶ See FTC FOB Report, *supra* note 11, exec. summ. at i; See generally Jennifer S. Haas, et al., *Potential Savings From Substituting Generic Drugs for Brand-Name Drugs: Medical Expenditure Panel Survey, 1997–2000*, 142 ANNALS INTERNAL MED. 891 (2005); Wendy H. Schacht & John R. Thomas, Cong. Research Serv., RL33901, *Follow-On Biologics: Intellectual Property and Innovation Issues* 4, 18 (2008).

¹⁷ The Hatch-Waxman Act applies only to drugs regulated under the Federal Drug & Cosmetics Act; these drugs are generally chemically synthesized, small-molecule products, not biologics. FTC FOB Report, *supra* note 11, at 3–4, app. B–1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See *id.*; see also IMS Institute for Healthcare Informatics, *IMS Health, The Use of Medicines in the United States: Review of 2011* (2012), http://www.imshealth.com/ims/Global/Content/Insights/IMS%20Institute%20for%20Healthcare%20Informatics/IHII_Medicines_in_US_Report_2011.pdf [hereinafter *IMS, Use of Medicines*]; IMS Institute for Healthcare Informatics, *IMS Health, Generic Drug Savings in the U.S.: Savings \$1 Trillion Over 10 Years 2* (4th ed. 2012), <http://www.gphaonline.org/media/cms/IMSStudyAug2012WEB.pdf> (Study commissioned by GPhA) (“Current biologic medicine costs are staggering, putting these lifesaving treatments out of reach for many patients. Even after insurance coverage, co-pays can be thousands of dollars each year. A Congressional Research Service (CRS) study completed in 2010 showed that the cost of biologics is often prohibitively high, both for patients and the government. The report found that average annual costs for the rheumatoid arthritis treatment Enbrel® was \$26,000, Herceptin® for breast cancer averaged \$37,000, Humira® for Crohn’s disease was more than \$51,000 per year, and the annual cost for Cerezyme® to treat Gaucher’s disease was \$200,000.”); Andrew Pollack, *Biotech Firms, Billions at Risk, Lobby States to Limit Generics*, N.Y. Times (Jan. 28, 2013), http://www.nytimes.com/2013/01/29/business/battle-in-states-on-generic-copies-of-biotech-drugs.html?_r=0.

⁷ See *IMS, Use of Medicines*, *supra* note 6, at 27; Staff of Comm. on Health Policy, Fla. S., 2013 Session, *Bill Analysis and Fiscal Impact Statement, CS/SB 732*, at 3, (2013), <http://www.flsenate.gov/Session/Bill/2013/0732/Analyses/FckEw94up4AYkLzGQBz3ErRA=PL=pg=%7C14/Public/Bills/0700-0799/0732/Analysis/2013s0732.hp.PDF>; see also Cong. Budget Office, *Congressional Budget Office Cost Estimate: S. 1695 Biologics Price Competition and Innovation Act of 2007*, at 5 (2008), <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/94xx/doc9496/s1695.pdf> [hereinafter *CBO Report*] (“In recent years, total spending on biologics has grown rapidly, with nominal spending growth averaging roughly between 15 percent and 20 percent annually; spending amounted to about \$40 billion in 2006. . . . We estimate that by 2018 about \$70 billion in national spending on biologics could face competition by FOBs. . . .”).

⁸ 42 U.S.C. § 262. Generally, the reference biologic is approved by the FDA with a full Biologics License Application pursuant to the requirements

products.¹⁸ Under the BPCIA, a “biosimilar” product is “highly similar to the reference product notwithstanding minor differences in clinically inactive components,” and “there are no clinically meaningful differences between the biological product and the [FDA-licensed biological] reference product in terms of safety, purity, and potency of the product.”¹⁹ The BPCIA requirements for an “interchangeable” biologic product are more stringent. An interchangeable biologic product is expected to produce the same clinical result as the FDA-licensed biological reference product in any given patient. Furthermore, for a product administered more than once, the safety and reduced efficacy risks of switching from the reference drug to an interchangeable drug, or alternating between the reference drug and an interchangeable drug, cannot be greater than the risks posed by use of the reference product without alternating or switching.²⁰

BPCIA provides that interchangeable biologics “may be substituted for the reference biologic without the intervention of the health care provider who prescribed the reference product.”²¹ It does not address substitution of non-interchangeable biosimilars. The FDA is authorized to issue regulations that define the requirements for applicants claiming “interchangeability” or “biosimilar” status, but the agency has not finalized guidelines on these issues.²²

In 2009, the Commission issued a report, *Emerging Healthcare Issues: Follow-On Biologic Drug Competition* (“FTC FOB Report”),²³ which discussed the results of its November 21, 2008 workshop to examine “whether the price of biologics might be reduced by competition if there were a statutory process to encourage [FOBs] to enter and compete with pioneer biologics once a pioneer drug’s patents have expired.”²⁴ In its report, the Commission noted that the scientific differences between biologic and small-molecule drug products would complicate efforts to devise an approval process for FOBs.²⁵ Biologics are often three-dimensional folded proteins, derived from living matter or manufactured within living cells using recombinant DNA biotechnologies.²⁶ They are generally more complex and immunogenic, and more complex to manufacture, than traditional small-molecule drugs.²⁷

Indeed, “[s]mall changes in the manufacturing process can lead to variations in the final product, which can in turn affect safety and clinical effectiveness. Even biologics produced in the same manufacturing facility will have some variation between lots.”²⁸ As of 2011, FDA experts concluded that, “for the foreseeable future,” at least some clinical trials would likely be required in order to assure the therapeutic equivalence of FOBs.²⁹ Thus, compared to the relatively inexpensive and simple abbreviated approval pathway for generic drugs, the abbreviated pathway for biosimilars and

interchangeables will likely be expensive and time consuming.³⁰

Accordingly, the Commission’s report predicted that FOB competitors would offer less price competition to reference biologics than the price competition generated by generic drugs to branded drugs.³¹ Nonetheless, the Commission pointed out, given the enormous costs of biologics, even modest FOB discounts could lead to significant consumer savings.³² As the Congressional Budget Office (“CBO”) has estimated,³³ increased FOB competition leading to lower biologics prices could save consumers millions of dollars each year.

II. Workshop Topics

“Biologics are among the biggest-selling medicines today. In 2010, nine out of the top 20 selling drugs in the U.S. were biologics.”³⁴ Currently, fourteen biosimilars are believed to be in clinical development in the United States, but to date, no FOBs have been approved by the FDA under the abbreviated pathway offered by the BPCIA.³⁵

As was the case with small-molecule generic drugs, the future of FOB competition may be influenced by state laws that regulate the substitution of biosimilars or interchangeable biologic products for reference biologic products. The ability of FOBs to compete against reference biologic products will also depend on whether they are allowed to have the same nonproprietary names. The workshop will also examine the evolution of FOB competition in the United States so far, including possible

¹⁸ 42 U.S.C. 262(k) (2011).

¹⁹ § 262(i)(2).

²⁰ § 262(i)(3).

²¹ *Id.*

²² On February 9, 2013, the FDA issued three draft guidance documents regarding Scientific Considerations, Quality Considerations, and Q&As, and solicited public comments for the draft guidance documents; the public comment period has now closed. No final guidance documents have yet been issued. The Draft Guidance included: (1) “Scientific Considerations in Demonstrating Biosimilarity to a Reference Product;” (2) “Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product;” and (3) “Guidance for Industry on Biosimilars: Q & As Regarding Implementation of the BPCI Act of 2009.” See *Questions and Answers: Issuance of Three Draft Guidance Documents on Biosimilar Product Development*, U.S. Food & Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm291186.htm> (last updated Feb. 9, 2012); see also *Fact Sheet: Issuance of Draft Guidances on Biosimilar Products*, U.S. Food & Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/ApprovalApplications/TherapeuticBiologicApplications/Biosimilars/ucm291197.htm> (last updated Feb. 9, 2012).

²³ See Press Release, Fed. Trade Comm’n, FTC Releases Report on “Follow-on Biologic Drug Competition”: Providing FDA With Authority to Approve Follow-on Biologics Would be an Efficient Way to Bring Them to Market, Lowering Consumers’ Health Care Costs (June 10, 2009), <http://www.ftc.gov/opa/2009/06/biologics.shtm>.

²⁴ FTC FOB Report, *supra* note 11, exec. summ. at i.

²⁵ *Id.* exec. summ. at ii.

²⁶ *Id.* at 8–9.

²⁷ A biologic drug is “immunogenic” if it stimulates an immune response in the patient; this can raise safety and efficacy concerns. See Letter from Frank M. Torti, Principal Deputy Comm’r & Chief Scientist, U.S. Food & Drug Admin., to Frank Pallone, Jr., Chairman, H. Subcomm. on Health 1 (Sept. 18, 2008), available at http://step.berkeley.edu/journal_Club/paper2_110309.pdf.

²⁸ Health Policy Brief: Biosimilars, *supra* note 2, at 1.

²⁹ See Steven Kozlowski, Janet Woodcock, Karen Midthun & Rachel Behrman Sherman, *Developing the Nation’s Biosimilar Program*, 365 New Eng. J. Med. 385, 386 (2011), available at <http://www.nejm.org/doi/pdf/10.1056/NEJMp1107285> (“additional animal and clinical studies will generally be needed for protein biosimilars for the foreseeable future, the scope and extent of such studies may be reduced further if more extensive fingerprint-like characterization is used.”).

³⁰ FTC FOB Report, *supra* note 11, at 12; accord Mandy Jackson, *Pharma Recovering from Patent Cliff Before Next Hit in 2015*, *Scrip Intelligence*, July 5, 2013; Henry Grabowski et al., *Implementation of the Biosimilar Pathway: Economic and Policy Issues*, 41 Seton Hall L. Rev. 511 (2011); Editorial, *Building a wall against Biosimilars*, 31 Nature Biotech. 264 (2013), available at <http://www.nature.com/nbt/journal/v31/n4/pdf/nbt.2550.pdf>.

³¹ The workshop proposed in this notice will consider whether new facts require revisions to the Commission’s prior predictions.

³² FTC FOB Report, *supra* note 11, exec. summ. at v; CBO Report, *supra* note 7, at 5.

³³ The CBO predicted that the BCPIA, if enacted, would “reduce total expenditures on biologics in the United States by \$0.2 billion over the 2009–2013 period and by about \$25 billion over the 2009–2018 period.” CBO Report, *supra* note 7, at 1.

³⁴ Thomas M. Burton & Jonathan D. Rockoff, *FDA Sets Path for Biotech Drug Copies*, Wall St. J., Feb. 10, 2012, available at <http://online.wsj.com/news/articles/SB1000142405297020464260457213143424515820>.

³⁵ Steven Kozlowski, Director, Office of Biotechnology Products, U.S. Food & Drug Admin., Remarks at 11th EGA International Symposium on Biosimilar Medicines: U.S. FDA Perspectives on Biosimilar Development and Approval (April 26, 2013). Whether any applications have been filed with the FDA is not public.

updates to information included in the FTC's 2009 FOB Report, and the experience with FOB competition to date in Europe, Australia, and New Zealand.

A. How State Substitution Laws May Affect the Development of FOB Competition

Whether a follow-on pharmaceutical product is as safe and effective as the brand-name product is a critical issue for doctors and patients considering whether to switch from a brand-name to a follow-on pharmaceutical product. States struggled with this issue as generic drug competition evolved during the 1970s. At first, many state laws prevented the substitution of generic for branded drugs. As states began to consider whether and, if so, how to modify these laws, the FTC also examined whether state anti-substitution laws then in effect struck the appropriate balance between legitimate public health concerns and free market competition.³⁶

The FTC Staff's report, *Drug Product Selection*, concluded that the FDA approval process would result in the approval of safe and effective generic drugs that would be therapeutically equivalent to the reference branded drugs; therefore, the use of such drugs would not create undue public health risks.³⁷ Moreover, the FTC Staff concluded, if pharmacists were free to dispense generic drugs without unnecessary regulatory hurdles, generic drugs would generate price competition that would benefit consumers.³⁸

Many state legislatures reached the same conclusion and legislated a variety of methods to encourage generic drug substitution. In response, and to support state efforts, the FDA created the so-called "Orange Book" to simplify the substitution of generic drugs in the states.³⁹ According to the FDA, "it became apparent that FDA could not serve the needs of each state on an

individual basis[, and t]he Agency also recognized that providing a single list based on common criteria would be preferable to evaluating drug products on the basis of differing definitions and criteria in various state laws."⁴⁰

The Orange Book now "provide[s] a list of all prescription drug products that are approved by FDA for safety and effectiveness, along with therapeutic equivalence determinations for multisource prescription products."⁴¹ The list of FDA-approved drugs has increased by thousands, and in the United States, the FDA's Orange Book provides critical information about drug safety, drug effectiveness, and therapeutic equivalence determinations for multisource prescription drug products.⁴² The availability of this resource has been critical to enabling generic drug competition that has saved consumers billions of dollars through lower prices.

Similar issues affect the adoption of FOBs. Physicians and patients may be reluctant to switch to an FOB product because of the risk that the patient will react differently to the new drug. In its 2009 FOB Report, the FTC predicted that "lingering or institutionalized uncertainty about interchangeability and safety differences between pioneer and FOB products" would likely hamper FOB market penetration.⁴³

Recently, some state legislatures have considered, and some have passed, laws that could affect the substitution of FOBs for biologics and thus would have implications for the development of meaningful competition from FOBs.⁴⁴ Some commentators have raised concerns that differing regulatory barriers among

the states may raise costs, and lessen incentives, to develop FOBs, thereby deterring FOB competition. One commentator has questioned whether policymakers realize how "constraints currently being constructed by some state legislatures" reduce the economic rewards of introducing an FOB as compared with a generic drug.⁴⁵ Questions arise about the costs of complying with all of the provisions in a variety of state laws; whether such provisions are necessary to protect consumers; whether alternative, less burdensome provisions might be sufficient; and whether such proposals and laws are consistent with the standards and definitions established pursuant to the BCPIA.⁴⁶ The workshop will consider these and related questions, as listed below.

Questions Regarding State FOB Legislative Proposals and Laws

1. How would new state substitution laws passed in 2013, or similar proposals pending in other states, affect competition expected to develop between biosimilar or interchangeable biologics and reference biologics? In the context of state substitution laws, what is the likely competitive impact of a biologic product being designated "interchangeable?"

2. What are the compliance costs associated with new state law requirements? How are those costs likely to affect competition from biosimilar and interchangeable biologics?

3. What are the rationales behind new state proposals and laws for regulating FOB substitution? Which provisions are most important? Are some provisions redundant or otherwise unnecessary?

4. Could an FDA publication concerning biologics and FOBs, comparable to the Orange Book, provide an authoritative listing of FOBs that are biosimilar to or interchangeable with reference biologics? Would such a publication facilitate substitution? Would such a publication need to be limited to interchangeable FOBs, or should it include both biosimilar and interchangeable FOBs?

5. Does the potential for many different state laws regulating FOBs affect the prospects for the development of FOBs? Does the answer differ

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ FTC FOB Report, *supra* note 11, at 16.

⁴⁴ As of October 2013, five states have enacted substitution laws that apply expressly to FOBs: Florida, North Dakota, Oregon, Utah, and Virginia. H.B. 365, 2013 H.R., Reg. Sess. (Fla. 2013); S.B. 2190, 63rd Leg. Assemb., Reg. Sess. (N.D. 2013); S.B. 460, 2013 Senate, Reg. Sess. (Or. 2013); S.B. 78, 60th Senate, Reg. Sess. (Utah 2013); H.B. 1422, 2013 Gen. Assemb., Reg. Sess. (Va. 2013). In one state, the legislature passed the bill, but the Governor vetoed it. S.B. 598, 2013–2014 Senate, Reg. Sess. (Cal. 2013); see Andrew Pollack, *Gov. Brown of California Vetoes Biotech Drug Bill*, N.Y. Times, October 13, 2013, at B3, available at <http://www.nytimes.com/2013/10/13/us/governor-vetoes-bill-to-limit-use-of-generic-drugs-in-california.html>. In ten states, such efforts apparently failed: Arkansas, Arizona, Colorado, Delaware, Illinois, Indiana, Maryland, Mississippi, Texas, and Washington. Legislation was pending or is pending in two states: Massachusetts and Pennsylvania. We believe that bills died but went to study in two states: Arkansas and Indiana. See Laura Olson, *Assembly Approves Bill on 'Biosimilar' Medicines*, Bloomberg Businessweek (Aug. 27, 2013), <http://www.businessweek.com/ap/2013-08-27/assembly-approves-bill-on-biosimilar-medicines>.

⁴⁵ See Editorial, *supra* note 30, at 264 ("The question for policymakers is whether they realize how meager the economic advantages are likely to be of introducing a biosimilar onto the market compared with a generic small molecule, especially under the constraints currently being constructed by some state legislatures.").

⁴⁶ There may be a federal preemption issue raised by some state restrictions on FOB substitution by pharmacists.

³⁶ See *Drug Product Selection*, *supra* note 12, at 1.

³⁷ See *id.* at 1.

³⁸ In sum, the FTC Staff Report concluded that (1) "ant substitution laws impose substantial unwarranted costs on consumers by unduly restricting price competition in the multisource prescription drug market;" and (2) repeal of ant substitution laws would "produce significant consumer benefits without compromising the quality of health care." *Id.* To remedy the situation and facilitate pharmacists' use of therapeutically equivalent, but less expensive generic drugs, the FTC Staff recommended that the states adopt a Model Drug Product Selection Act. See *Id.* at 1.

³⁹ See FDA Approved Drug Products with Therapeutic Equivalence Evaluations preface at iv (33rd ed. 2013), <http://www.fda.gov/downloads/drugs/developmentapprovalprocess/ucm071436.pdf>.

between biosimilar versus interchangeable biologic products?

6. Would it be helpful to develop a model state substitution biosimilar law? If so, what provisions should the law include? Should state laws coordinate their guidance with provisions in the BPCIA and guidance from FDA?

B. How Naming Conventions May Affect FOB Competition

As the FTC noted in its FOB report, an FOB's name can influence physician and patient acceptance of the product as a substitute for the branded biologic.⁴⁷ "[Institutionalized uncertainty about interchangeability and safety differences between pioneer and FOB products] may be heightened if the FOB product does not share the same name as the pioneer biologic product."⁴⁸

Branded drugs usually have two names: a brand name, sometimes called a proprietary or trade name; and an active ingredient name, which is a nonproprietary name. A biologic also usually has two names: the brand name and the nonproprietary name, which reflects certain scientific characteristics of the product, such as chemical structure and pharmacological properties. In the United States, the FDA has the authority to determine the nonproprietary name for a biological product.⁴⁹ Non-governmental organizations like the United States Pharmacopeial Convention and the United States Adopted Name Council also have a role in developing nonproprietary names for biological products in the U.S.⁵⁰

A lack of consensus exists regarding the nomenclature to use for FOBs. At

issue is whether biosimilar and interchangeable FOBs should have the same nonproprietary name as the reference biologic. The resolution of this issue has implications for both competition and consumer safety. Differences in the nonproprietary name between a biologic and FOB could affect pharmacy substitution of the FOB for the reference biologic and might cause consumer confusion in the market. On the other hand, some have argued that the absence of adequate "track and trace" systems for biologics requires different FOB and biologic nonproprietary names in order to gather and differentiate adverse events caused by the use of branded biologic or FOB products.⁵¹ This workshop will explore the implications of various nonproprietary naming conventions in FOBs for the development of FOBs, FOB competition, and consumer protection.

Questions Related to the Naming of FOBs

1. What has been learned from the experience under Hatch-Waxman about the incentives necessary to encourage physicians and patients to switch

⁴⁷ See e.g., Amgen Inc., *Biologics and Biosimilars 20–23* (2012), http://www.amgen.com/pdfs/misc/Biologics_and_Biosimilars_Overview.pdf (section titled "Pharmacovigilance and traceability"); Erika Leitzan, Laura Sim & Emily Alexander, *Biosimilar Naming: How Do Adverse Event Reporting Data Support the Need for Distinct Nonproprietary Names for Biosimilars*, 3 FDLI's Food and Drug Policy Forum, Mar. 27, 2013. The FDA monitors drug, biologics, and device safety through its postmarketing surveillance system. 21 CFR §§ 314.80, 314.98, 803.1, 803.30, 803.40, 803.50 (2013). See generally *FDA Adverse Event Reporting System (FAERS)* (formerly AERS), U.S. Food and Drug Admin., U.S. Dept. of Health & Human Servs., <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Surveillance/AdverseDrugEffects/default.htm> (last updated Sept. 10, 2012). This is a database of voluntary reporting by healthcare professionals and consumers of adverse events associated with FDA-approved products. The terms pharmacovigilance and track and trace systems are industry-wide terms generally referring to the various FDA and private mechanisms, such as a product's National Drug Code, and manufacturers quality control and quality assurance programs, that can be utilized during public health crisis, such as the heparin contamination, to resolve the critical public health issues as quickly as possible. However, these pharmacovigilance systems are not without weaknesses and difficulties. See e.g., U.S. Gov't Accountability Office, *Food and Drug Administration: Response to Heparin Contamination Helped Protect Public Health Controls That Were Needed for Working With External Entities Were Needed for Working With External Entities Were Recently Added* (2010), <http://www.gao.gov/assets/320/311879.pdf>. FDA informed the GAO that under the FDA's adverse event reporting system, it does not necessarily receive a report for every adverse event that occurs. Manufacturers are required to submit adverse event reports to FDA if known; however, health providers and consumers are not required to do so but submit adverse event reports on a voluntary basis. *Id.* at 36 n.65.

between branded and lower cost, therapeutically substitutable products? Do naming and name changes affect switching? If so, how?

2. How do the European Medicines Agency ("EMA") and other regulatory authorities comparable to the FDA handle the names of FOBs?

3. A prefix or suffix, such as "ado" or "TBO", has been attached to the nonproprietary names of several biological products licensed under a stand-alone biologic license application. How does the use of such prefixes or suffixes affect the inclusion of that product in third-party publications, compendia references, and health information systems, such as electronic health records and prescription processing systems?

4. How does the use of certain identifiers, such as National Drug Codes, brand names, or nonproprietary names, work with existing adverse event reporting, track and trace, or other pharmacovigilance systems?

5. With respect to prescription drugs, does the use of nonproprietary names globally contribute to or detract from competition and consumer protection? Do any studies exist to show increased or decreased consumer benefits or harms, due to changes in names or naming conventions?

C. How FOB Competition Has Evolved in Other Countries With Comparable Prescription Drug Regulation Regimes, and How FOB Competition Is Evolving in the United States

Some countries or intergovernmental organizations, such as the European Union ("EU"), have drug regulatory approval schemes similar to those in the United States, and have already approved biosimilars. In the EU, for example, the EMA already has an established regulatory pathway for biosimilars, and since 2006 has approved fifteen biosimilars for marketing in the EU.⁵² Unlike the FDA FOB abbreviated approval process, the EMA approval process does not contemplate interchangeable biologics; the EMA approves only biosimilars. Several other countries, including Australia, Canada, and Japan, have adopted similar regulatory approaches

⁴⁸ FTC FOB Report, *supra* note 11, at 16–17 & n.55; see also Stanton J. Lovenworth, *The New Biosimilar Era: The Basics, The Landscape, and the Future*, 6 Life Sci. L. & Industry Rep. 972 (2012), available at http://www.omm.com/files/upload/The%20New%20Biosimilar%20Era_The%20Basics,%20the%20Landscape,%20and%20the%20Future.pdf ("A drug's name significantly influences the degree to which it is embraced and prescribed by health care professionals, which in turn affects the drug's financial viability. If a biosimilar's name matches its reference product's name, physicians likely will feel comfortable substituting it, and pharmacy systems are more likely to integrate the biosimilar.")

⁴⁹ See 21 U.S.C. 358, which provides in relevant part: "The Secretary [of HHS] may designate an official name for any drug or device if he determines that such action is necessary or desirable in the interest of usefulness and simplicity." See also 42 U.S.C. 262(a)(1)(B)(i).

⁵⁰ Outside the United States, the World Health Organization ("WHO") administers the international naming convention known as the International Nonproprietary Naming ("INN") system. See *International Nonproprietary Names, World Health Org.*, <http://www.who.int/medicines/services/inn/en/index.html> (last visited Oct. 31, 2013).

⁵² See European Comm'n, *What you Need to Know about Biosimilar Medicinal Products* 9 n.11 (2013), http://ec.europa.eu/enterprise/sectors/healthcare/files/docs/biosimilars_report_en.pdf; Lovenworth, *supra* note 47; Press Release, Hospira Inc., *Hospira's Inflectra (infliximab) the first biosimilar antibody to be approved in Europe* (Sept. 10, 2013), <http://phx.corporate-ir.net/phoenix.zhtml?c=175550&p=irol-news-Article&ID=1853480>.

to the approval of biosimilars.⁵³ Reports indicate that biosimilars have offered price competition in various EU markets, resulting in ten to forty percent price discounts from branded biologics pricing.⁵⁴

At the workshop, the FTC will explore the status of the development of biosimilars in the United States. Further, the FTC will examine other countries' experiences with the regulation and marketing of biosimilars.⁵⁵ The Commission will explore how biosimilar competition has developed and the extent of biosimilar price competition, along with related questions listed below.

Questions Related to Biosimilar Competition in the United States and in Other Countries

1. What, if any, predictions made in the FTC's 2009 FOB Report should be revised in light of more recent data available on approved biological products or biosimilar development programs?

2. What has been the competitive effect of the market entry of biosimilar competitors in countries with drug regulatory approval standards comparable to those of the U.S. FDA, such as the EU, Australia, or New Zealand? After such entry, have reference biologic manufacturers lowered their prices, offered discounts, engaged in enhanced marketing activities, or increased innovation or next-generation developments?

3. Are there empirical models that could predict the nature of U.S. biosimilar or interchangeable biologics

competition based on existing biologic product competition in Europe, Australia, New Zealand, or other countries? Are there empirical models that could predict the nature of U.S. biosimilar or interchangeable biologics competition based on existing competition in specialty drug markets? What factors increase or detract from robust competition between reference biologic and biosimilars or interchangeable biologics in other countries?

4. Based on the experiences in other countries, does competition from biologics influence investments in research and development for new biologics, improvements to existing biologics, and the timing and rollout of new and/or improved biologics? Does the market experience with generic drugs provide insights into these issues?

5. What data or empirical evidence exist in Europe or other countries regarding immunogenicity or other serious adverse events, if any, caused by substitution or switching between biosimilar and reference biologics?

III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 1, 2014. Write "Workshop on Follow-On Biologics: Project No. P131208" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

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

In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁵⁶ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/biologicsworkshop>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Workshop on Follow-On Biologics: Project No. P131208" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex X), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 1, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013-27406 Filed 11-14-13; 8:45 am]

BILLING CODE 6750-01-P

⁵³ Biosimilars also exist in other countries. See e.g., Pharmaceutical Product Development, Developing Biosimilars Across Emerging Markets: Clinical and Regulatory Considerations (2013), <http://www.healthtrustpg.com/biosimilars/pdf/ppd.pdf>.

⁵⁴ See European Comm'n, *supra* note 53, at 16. See also *Health Policy Brief: Biosimilars*, *supra* note 2, at 2 (average price discount on EU biosimilars is "about 25 percent," and overall EU savings by 2020 "are projected to total \$16-43 billion," although level of biosimilar penetration varies substantially among EU countries, depending on "differences in payment systems and policies, laws related to drug substitution, and the overall size of the generics market within each country").

⁵⁵ See European Comm'n, *supra* note 53, at 9-10 ("The EU is the first region in the world to have set up a legal framework and a regulatory pathway for 'similar biological medicinal products', more commonly called 'biosimilars'. The EU regulatory framework inspired many countries around the world, e.g., Australia, Canada, Japan, Turkey, Singapore, South Africa, Taiwan, USA etc. as well as the World Health Organisation (WHO).") The concept of a "similar biological medicinal product" was adopted in EU pharmaceutical legislation in 2004 and came into effect in 2005. The first biosimilar medicine was approved by the European Commission in 2006.") The FTC will focus on countries with regulatory approval schemes comparable to those of the FDA.

⁵⁶ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS-OS-20875-30D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for reinstating the use of the approved information collection assigned OMB control number 0990-0317, which expired on October 31, 2013. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before December 16, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690-6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690-6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS-OS-20875-30D for reference.

Information Collection Request Title: HHS Supplemental Form to the SF-424 (HHS 5161-1)

OMB No.: 0990-0317.

Abstract: HHS is requesting clearance for reinstatement without change of the previously approved Checklist and Program Narrative used by the Substance Abuse and Mental Health Services Administration (SAMHSA) and former PHS agencies within HHS, including the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA).

Need and Proposed Use of the Information: Each agency's financial assistance program evaluates the information provided by the applicants to select the ones most likely to meet program objectives and to determine that satisfactory progress is being made on funded projects.

Likely Respondents: CDC, SAMHSA, IHS, OS, FDA, and HRSA.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Forms	Number of respondents	Response per respondent	Average burden per response (in hours)	Total burden (in hours)
Program Narrative and Checklist (SAMHSA)	2,121	1	4	8,484
Program Narrative and Checklist (CDC)	59	6	24	8,496
Program Narrative and Checklist (HRSA)	59	1	50	2,950
Total .....	.....	.....	.....	19,930

Darius Taylor,
Deputy, Information Collection Clearance Officer.
[FR Doc. 2013-27410 Filed 11-14-13; 8:45 am]
BILLING CODE 4151-17-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-14-14CJ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To

request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-7570 or send comments to Leroy Richardson, 1600 Clifton Road, MS D-74, Atlanta, GA 30333 or send an email to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Racial and Ethnic Approaches to Community Health (REACH) Demonstration Projects: Evaluation Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, chronic conditions such as heart disease, obesity and diabetes are among the leading causes of death and disability. The devastating effects of these conditions can be reduced by adopting healthy behaviors such as eating nutritious foods, being physically active and avoiding tobacco use.

CDC has supported a variety of programs aimed at promoting evidenced-based strategies to improve public health. However, despite indications of progress in overall population health, disparities in health status persist for many minority groups.

In fiscal year 2012, CDC received Affordable Care Act (ACA) funding to support Racial and Ethnic Approaches to Community Health (REACH) demonstration projects in two sites (Boston, Massachusetts, and Los Angeles, California). The sites are implementing culturally-tailored policy, systems, and environmental (PSE) strategies aimed at reducing rates of obesity and hypertension, and promoting health equity.

CDC plans to assess the effectiveness of the REACH demonstration projects through the "REACH Demonstration Projects: Evaluation Study (RES)." The RES is designed to examine the health impact of PSE strategies for promoting health. As required by the ACA, the evaluation will specifically assess changes in weight, proper nutrition, physical activity, tobacco use prevalence, and emotional well-being. Information collected for the RES will consist of targeted surveillance data, biometric measures, and information about health and life style decision making at the REACH demonstration program sites and one non-intervention comparison site (Atlanta, Georgia). Information will also be collected about key cultural and contextual factors that affect health and lifestyle decision-making. This information will provide insights about the barriers and facilitators that affect the adoption of healthy behaviors.

The specific aims of the RES include the following: (1) Examine trends of risk factors for chronic disease using behavioral and biometric indicators. (2)

Examine the reduction in health disparities within targeted populations for obesity and hypertension. (3) Identify factors that contribute to the decision-making process for individual change in health-related behavior and lifestyle change through the REACH health and lifestyle decision-making domain (HD).

The RES uses a cross-sectional design and will be conducted over a period of two years, collecting survey and biometric data in two cycles of data collection approximately 12 to 15 months apart. Respondents will be representative samples of adults who are 18 years of age or older, and youths between the ages of 9 and 17 years of age, who reside in the two REACH Demonstration sites or the comparison site. An address-based sampling (ABS) approach will be used to select the sample for each site. The sampling design will oversample households containing Black and Hispanic persons (targeted populations) and youths. For each REACH demonstration site, this will result in a sample of up to 1,800 adults and 400 youths for each cycle of data collection. The sample for the comparison site will consist of 2,400 adults and 800 youth for each cycle of data collection.

The information collection plan and instruments for the RES are modeled on the instruments and procedures developed by CDC for Community Transformation Grant (CTG) awardees (Targeted Surveillance and Biometric Studies for Enhanced Evaluation of CTGs, Office of Management and Budget

(OMB) No. 0920-0977, exp. 8/31/2016). For the RES, a Health and Lifestyle Decision-Making domain has been added to the Adult Targeted Surveillance Survey (ATSS) to assess individual change in health-related behavior and lifestyle. The Health and Lifestyle Decision-Making domain was developed by an expert panel that convened to conceptualize and operationalize the survey items based on the literature and existing instruments.

The RES will enable CDC to compare data across the three sites at two time periods and to use these data for comparisons with other sources of information, such as state-based behavioral risk factor surveys and the National Health and Nutrition Examination Survey (NHANES, OMB No. 0920-0237, exp. 10/31/2013). In addition, the added REACH Demonstration health and lifestyle decision-making domain will identify key contextual factors, such as perceived discrimination, perceived neighborhood safety, mistrust, and other concerns or issues that could potentially serve as mediating and moderating variables that impact health and lifestyle decisions.

The study will use computer-assisted personal interviewing technology. The names of respondents will not be included in any data sets or reports prepared from this project. Office of Management and Budget approval is requested for two years. Participation is voluntary, and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Adults ≥ 18 years of age in REACH Demonstration Program Sites or the Comparison Site.	Adult Telephone/In-person Recruitment Screener.	8,000	1	3/60	400
	Adult Targeted Surveillance Survey with HD Module	6,000	1	45/60	4,500
Youth ages 9–17 years in REACH Demonstration Program Sites or the Comparison Site. Youth Biometric Measures	Adult Biometric Measures	2,400	1	30/60	1,200
	Youth Targeted Surveillance Survey	1,600	1	20/60	533
		1,600	1	20/60	533
Total .....	.....	.....	.....	.....	7,166

Leroy A. Richardson,
*Chief, Information Collection Review Office,
 Office of Scientific Integrity, Office of the
 Associate Director for Science, Office of the
 Director, Centers for Disease Control and
 Prevention.*

[FR Doc. 2013-27372 Filed 11-14-13; 8:45 am]

BILLING CODE 4163-18-P

**DEPARTMENT OF HEALTH AND
 HUMAN SERVICES**

**Centers for Disease Control and
 Prevention**

[30-Day-14-0255]

**Agency Forms Undergoing Paperwork
 Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 359-5806. Written comments should be received within 30 days of this notice.

Proposed Project

Resources and Services for the CDC National Prevention Information Network—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, & TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention

(NCHHSTP) proposes to continue data collection for the Resources and Services Database of the CDC National Prevention Information Network and is requesting a 3-year approval of this revised information collection request (ICR).

The CDC, NCHHSTP program has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, viral hepatitis, sexually transmitted diseases (STDs), and tuberculosis (TB), as well as for community-based HIV prevention activities, syphilis and TB elimination programs. To support NCHHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, viral hepatitis, STDs, and TB. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, viral hepatitis, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 9,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, viral hepatitis, STDs, and TB, services such as

counseling and testing, prevention, education and support. The NPIN reference staff relies on the Resources and Services Database to respond to thousands of requests each year for information or referral from community based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC-INFO (formerly the CDC National AIDS Hotline) staff also uses the NPIN Resources and Services Database to refer up to 110,000 callers each year to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 56 million hits by the public to the Web site are recorded annually.

A representative from each new organization identified will be administered the resource organization questionnaire via the telephone. Representatives may include registered nurses, social and community service managers, health educators, or social and human service assistants. As part of the verification process for organizations currently included in the Resources and Services Database, about 33 percent of the organization's representatives will receive a copy of their current database entry by electronic mail, including an introductory message and a list of instructions. The remaining 70 percent will receive a telephone call to review their database record. There are no costs to respondents other than their time. The total estimated annual burden hours are 1,882.

ESTIMATED ANNUALIZED BURDEN HOURS

Form	Respondents	Number of respondents	Number of responses per respondent	Average burden per response
Initial Questionnaire Telephone Script	Registered Nurses	100	1	20/60
	Social and Community Service Managers	50	1	10/60
	Health Educators	50	1	13/60
Telephone Verification	Social and Human Service Assistants	400	1	15/60
	Registered Nurses, Social and Community Service Managers, and Health Educators.	2,400	1	10/60
Email Verification (3,000 organizations)	Social and Human Service Assistants	4,800	1	9/60
	Registered Nurses, Health Educators, and Social and Human Service Assistants.	3,300	1	10/60
	Social and Community Service Managers	300	1	12/60

LeRoy Richardson,

Chief, Information Collection Review Office,
Office of Scientific Integrity, Office of the
Associate Director for Science, Office of the
Director, Centers for Disease Control and
Prevention.

[FR Doc. 2013-27402 Filed 11-14-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-2013-0023; Docket Number NIOSH
240-A]

Draft Current Intelligence Bulletin “Update of NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace”

AGENCY: National Institute for
Occupational Safety and Health
(NIOSH) of the Centers for Disease
Control and Prevention (CDC),
Department of Health and Human
Services (HHS).

ACTION: Notice of draft document
available for public comment and public
meeting.

SUMMARY: The National Institute for
Occupational Safety and Health
(NIOSH) of the Centers for Disease
Control and Prevention (CDC)
announces the availability of the
following draft document for public
comment entitled “Current Intelligence
Bulletin: Update of NIOSH Carcinogen
Classification and Target Risk Level
Policy for Chemical Hazards in the
Workplace.” To view the notice,
document and related materials, visit
<http://www.regulations.gov> and enter
CDC-2013-0023 in the search field and
click “Search.” Additional information
is also located at the following Web site:
[http://www.cdc.gov/niosh/topics/
cancer/policy.html](http://www.cdc.gov/niosh/topics/cancer/policy.html). Comments may be
provided to the NIOSH docket, as well
as given orally at the following meeting.

Public Comment Period: Comments
must be received by February 13, 2014.

Public Meeting Time and Date:
December 16, 2013, 9 a.m.–4 p.m.,
Eastern Time. Please note that public
comments may end before the time
indicated, following the last call for
comments. Members of the public who
wish to provide public comments
should plan to attend the meeting at the
start time listed.

Place: Surface Transportation Board
Hearing Room, Patriots Plaza One, 395
E Street SW., 1st Floor, Room 120,
Washington, DC 20201.

Status: The meeting is open to the
public, limited only by the space
available. The meeting space
accommodates approximately 150
people. In addition, there will be an
audio conference for those who cannot
attend in person. There is no
registration fee to attend this public
meeting. However, those wishing to
attend are encouraged to register by
December 3, 2013 with the NIOSH
Docket Office at 513/533-8611 or email
nioshdocket@cdc.gov.

Security Considerations: Due to
mandatory security clearance
procedures at the Patriots Plaza
Building, in-person attendees must
present valid government-issued picture
identification to security personnel
upon entering the building and go
through an airport-type security check.

Non-U.S. citizens: Because of CDC
Security Regulations, any non-U.S.
citizen wishing to attend this meeting
must provide the following information
in writing to the NIOSH Docket Officer
at the address below no later than
November 22, 2013 to allow time for
mandatory CDC facility security
clearance procedures to be completed.

1. Name:
2. Gender:
3. Date of Birth:
4. Place of birth (city, province, state,
country):
5. Citizenship:
6. Passport Number:
7. Date of Passport Issue:
8. Date of Passport Expiration:
9. Type of Visa:
10. U.S. Naturalization Number (if a
naturalized citizen):
11. U.S. Naturalization Date (if a
naturalized citizen):
12. Visitor's Organization:
13. Organization Address:
14. Organization Telephone Number:
15. Visitor's Position/Title within the
Organization:

This information will be transmitted
to the CDC Security Office for approval.
Visitors will be notified as soon as
approval has been obtained. Non-U.S.
citizens are encouraged to participate in
the audio conferencing due to the extra
clearance involved with in-person
attendance.

Attendee and Speaker Registration:
Attendees are encouraged to sign up by
December 3, 2013 with the NIOSH
Docket Office. Individuals wishing to
speak during the meeting may sign up
when registering with the NIOSH
Docket Office no later than December 3,
at 513/533-8611 or by email at
nioshdocket@cdc.gov. Those who have
not signed up to present in advance may
be allowed to present at the meeting if
time allows.

Persons wanting to provide oral
comments will be permitted up to 20
minutes. If additional time becomes
available, presenters will be notified.
Oral comments given at the meeting
must also be submitted to the docket in
writing in order to be considered by the
Agency.

Priority for attendance will be given
to those providing oral comments. Other
requests to attend the meeting will then
be accommodated on a first-come basis.
Unreserved walk-in attendees will not
be admitted due to security clearance
requirements.

Purpose of Meeting: To discuss and
obtain comments on the draft document,
“Current Intelligence Bulletin: Update
of NIOSH Carcinogen Classification and
Target Risk Level Policy for Chemical
Hazards in the Workplace.” Special
emphasis will be placed on discussion
of the following:

Overall Questions

(1) Are the proposed carcinogen
policies consistent with the current
scientific knowledge of toxicology, risk
assessment, industrial hygiene, and
occupational cancer? If not, provide
specific information and references that
should be considered.

(2) Is there additional scientific
information related to the issues of the
proposed NIOSH carcinogen policies
that should be considered for inclusion?
If so, provide information and specify
references for consideration. Is there any
discussion in the document that should
be omitted?

(3) Is the proposed carcinogen
classification policy explained in a clear
and transparent manner? Is the basis for
the proposed policy adequately
explained? If not, specify (section, page,
and line number) where clarification is
needed.

(4) Are there issues relevant to the
classification of occupational
carcinogens that have not been
adequately addressed in this proposed
policy? If so, provide information and
specify references for consideration.

(5) NIOSH adapted the OSHA Hazard
Communication Table Relating
Approximate Equivalences among
IARC, NTP RoC, and GHS
Carcinogenicity Classifications
(Appendix F, Part D, OSHA Globally
Harmonized System for Hazard
Communication) to provide a simple,
systematic method of determining GHS
cancer hazard categories. However,
NIOSH has further considered the GHS
carcinogen categories 1B and 2 because
NTP classification *reasonably
anticipated to be a human carcinogen*
and IARC classification 2B have criteria
that overlap the two GHS categories.

NIOSH has reviewed the criteria for GHS classification and has determined that chemicals classified by NTP as *reasonably anticipated* and chemicals classified as IARC 2B “that have sufficient evidence from animal data” meet the criteria for GHS Carcinogen Category 1B. Chemicals classified by NTP as *reasonably anticipated* and chemicals classified by IARC as 2B “that have limited evidence from animal data” meet the criteria for GHS Carcinogen Category 2. NIOSH is requesting comments on the validity of the NIOSH Correspondence table (Table 2) and its usefulness as a guide to determine GHS hazard categories.

(6) Is the proposed target risk level policy explained in a clear and transparent manner? Is the basis for the proposed policy adequately explained? If not, specify (section, page, and line number) where clarification is needed.

(7) An analytical feasibility (AF) notation will be used to identify those RELs that are established to reflect the limitations of the sampling and analytical method (i.e., AF) and not the target risk level of 1 in 1,000. Is this notation adequately explained?

(8) Is the proposed analytical feasibility and technical achievability policy explained in a clear and transparent manner? Is the basis for the proposed policy adequately explained? If not, specify (section, page, and line number) where clarification is needed.

Written comments will be accepted at the meeting. Written comments may also be submitted by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail*: NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C-34, Cincinnati, Ohio 45226.

All material submitted to the Agency should reference the agency name and docket number [CDC-2013-0023; NIOSH 240-A]. All electronic comments should be formatted as Microsoft Word. Please make reference to CDC-2013-0023 and Docket Number NIOSH 240-A.

Transcript: A transcript will be prepared and posted to NIOSH Docket within 30 days after the meeting. Each person making a comment will be asked to give his or her name and affiliation, and all comments (including their name and affiliation) are considered to be in the public domain, and the transcript will be archived in the NIOSH Docket and posted on a public Web site.

All information received in response to this notice will be available for public examination and copying at the NIOSH

Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Background: This draft NIOSH document provides an update of the NIOSH Carcinogen Classification and relevant Recommended Exposure Limit (REL) policies. The proposed update of policies is prompted by comments from the public and stakeholders and recent developments in how the carcinogenic risk to substances is assessed. NIOSH stakeholders have recently expressed concerns about limitations in the NIOSH approach to classifying and controlling carcinogens. A major limitation identified is use of the term “Potential Occupational Carcinogen” which dates to the OSHA hazard classification for carcinogens outlined in 29 CFR 1990.103 (see below). The adjective “potential” conveys uncertainty that is not warranted with many carcinogens such as asbestos, benzene, and others.

Further, the existing NIOSH carcinogen policy does not allow for classification on the basis of the magnitude and sufficiency of the scientific evidence. In contrast, other organizations such as the National Toxicology Program (NTP), the International Agency for Research on Cancer (IARC) and the Environmental Protection Agency (EPA) have differential classification systems with categories that reflect the weight of scientific evidence.

Coincident with NIOSH recognition of this language limitation was international recognition of the need for more efficient and faster classification of substances and the consideration of alternative substances that are less toxic and more environmentally sustainable.

In August 2011, NIOSH published in the **Federal Register** its intent to review and request for information regarding its approach to classifying carcinogens and establishing recommended exposure limits for occupational exposures to hazards associated with cancer. The initial comment period of September 22, 2011 was subsequently extended until December 30, 2011. On December 12, 2011, a public meeting was held at the Hubert H. Humphrey Building in Washington, DC to engage stakeholders and members of the public in discussions of the relevant issues pertaining to the NIOSH assessment. Input received from the public and stakeholders during this process was considered and is reflected in the draft document now available for public review. To view this docket’s previous information go to: <http://www.cdc.gov/niosh/docket/archive/docket240.html>.

The purpose of the public review of the draft document is to obtain comments on whether NIOSH has adequately explained the basis for its revised policies on classifying chemicals as carcinogens and deriving RELs that are transparent, consistent, and that contribute to the effective risk management of chemical carcinogens in the workplace.

Contact Persons for Technical Information: T.J. Lentz, telephone (513) 533-8260, or Faye Rice, telephone (513) 533-8335, NIOSH, MS-C32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Dated: November 8, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013-27375 Filed 11-14-13; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-14-0210]

Proposed Data Collections Submitted for Public Comment and Recommendations; List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products; Withdrawn

AGENCY: Centers for Disease Control and Prevention (CDC), Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Department of Health and Human Services (HHS).

ACTION: Notice Withdrawal. In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 FR Doc. 2013-26469 Filed 11-4-13; 8:45am.

SUMMARY: The Centers for Disease Control and Prevention requests withdrawal from publication the 60-Day **Federal Register** Notice (FRN) 14 0210 concerning the *List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products* (FR Doc. 2013-26469), which was submitted on October 30, 2013 for public inspection in the **Federal Register**.

The purpose behind this notice withdrawal request is that an original 60-day FRN was previously published on October 31, 2013 (Document Number—2013-25799). A duplicate 60-day FRN was inadvertently published on November 5, 2013. Please disregard the duplicate FRN.

DATES: The duplicate FRN published on [11/5/13] at [Vol. 78, No. 214 Page 66363] is withdrawn as of [11/12/13].

FOR FURTHER INFORMATION CONTACT: (404) 639-7570 or send comments to CDC LeRoy Richardson, 1600 Clifton Road, MS D-74, Atlanta, GA 30333 or send an email to omb@cdc.gov.

SUPPLEMENTARY INFORMATION: N/A.

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Science Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013-27403 Filed 11-14-13; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10508, CMS-10507 and CMS-855A]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *January 14, 2014*.

ADDRESSES: When commenting, please reference the document identifier or

OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786-1326

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10508 Evaluation of the Rural Community Hospital Demonstration (RCHD)

CMS-10507 State-based Marketplace Annual Report (SMAR)

CMS-855A Medicare Enrollment Application: Medicare Part A Institutional Providers

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collections

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluation of the Rural Community Hospital Demonstration (RCHD); *Use:* Section 10313 of the Affordable Care Act of 2010 (ACA) extended and expanded the Rural Community Hospital Demonstration (RCHD). Originally authorized under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), the RCHD provides enhanced reimbursement for inpatient services to small rural hospitals that do not qualify as critical access hospitals (CAHs). The RCHD is intended to increase the capability of these hospitals to meet the health care needs of rural beneficiaries in their service areas. As a demonstration, the RCHD aims to provide information that can be used to assess the feasibility and advisability of establishing a new category of rural community hospitals for reimbursement policy. As of January 2013, 23 hospitals from 11 states are participating in the RCHD. This number includes seven hospitals continuing from the original demonstration as authorized under the MMA and 15 new hospitals that joined under the expansion authorized under the ACA.

For the original demonstration, the MMA required a Report to Congress six months after the end of the demonstration, a requirement unchanged by the ACA. An initial evaluation was conducted between 2007 and 2011 toward preparing for a Report to Congress and focused on the 17 hospitals that had participated at some point between October 2004 and March 2011. Findings from this evaluation were reported to the Centers for Medicare and Medicaid Services (CMS) in the *Interim Evaluation Report of the Rural Community Hospital Demonstration* (an unpublished report).

The current five-year evaluation of the RCHD will extend and build on the prior evaluation and produce the Report to Congress required by the MMA. It will assess the impact of the RCHD in meeting its goals: To enable hospitals to

achieve community benefits such as improved services for their communities (especially Medicare beneficiaries), meet their individual strategic goals, and improve the financial solvency and viability of the participating hospitals. In addition, the evaluation will determine if it is feasible and advisable to create a new payment category of rural hospitals. To achieve this objective, the evaluation will examine how RCHD hospitals responded to payment options and assess how the costs to Medicare under RCHD compare to existing alternative payment options.

The evaluation will also summarize the characteristics of the markets served by RCHD hospitals, including beneficiaries' proximity to inpatient providers and competition among providers in the area. The information will be used to assess the implications of expanding the RCHD payment system to hospitals in various market environments. In addition, the evaluation will examine the potential costs of expanding the RCHD payment methodology, accounting for alternative approaches to targeting rural hospitals. *Form Number:* CMS-10508 (OCN: 0938-NEW); *Frequency:* Annually; *Affected Public:* State, Local or Tribal Governments, Private sector—Business or other for-profit and Not-for-profit organizations; *Number of Respondents:* 57; *Total Annual Responses:* 101; *Total Annual Hours:* 245. (For policy questions regarding this collection contact Woolton Lee at 410-786-4942.)

2. Title of Information Collection: State-based Marketplace Annual Report (SMAR); **Type of Information Collection Request:** New collection (Request for a new OMB control number); **Use:** The annual report is the primary vehicle to insure comprehensive compliance with all reporting requirements contained in the Affordable Care Act. It is specifically called for in section 1313(a)(1) of the Act which requires an State-based Marketplace (SBM) to keep an accurate accounting of all activities, receipts, and expenditures, and to submit a report annually to the Secretary concerning such accounting. We will use the information collected from states to assist in determining if a state is maintaining a compliant operational Exchange. It will also provide a mechanism to collect innovative approaches to meeting challenges encountered by the SBMs during the preceding year. Additionally, it will provide information to us regarding potential changes in priorities and approaches for the upcoming year. *Form Number:* CMS-10507 (OCN: 0938-NEW); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal

governments; *Number of Respondents:* 19; *Number of Responses:* 19; *Total Annual Hours:* 1,482. (For policy questions regarding this collection, contact Shelley Bain at 301-492-4453.)

3. Title of Information Collection: Medicare Enrollment Application: Medicare Part A Institutional Providers; **Type of Information Collection Request:** Revision of a currently approved collection ; **Use:** We are revising the CMS-855 Medicare Enrollment Applications information collection request to remove the CMS-855I, CMS-855B and CMS-855R applications from its collection. We have found that the regulations governing the enrollment requirements for health care facilities occur at intervals separate from the other provider and supplier types reimbursed by Medicare. Consequently, we may need to revise and submit the CMS-855A enrollment application for OMB approval at intervals separate from the other enrollment applications which include the CMS-855B, CMS-855I and CMS-855R enrollment applications. The ability to revise the CMS-855A separately from the other CMS-855 enrollment applications will lessen the burden on us and OMB as well as the public during the **Federal Register** notice period, as only one subset of provider or suppliers will be effected by CMS-855A revisions. We intend to maintain the continuity of the CMS-855 enrollment applications by using the same formats and lay-out of the current CMS-855 enrollment applications, regardless of the separation of the CMS 855A from the collective enrollment application package.

At this time we are also using this opportunity to make editorial and clerical corrections to the CMS-855A to simplify and clarify the current data collection and to remove obsolete requirements and data collection. The sections and sub-sections within the form are also being re-numbered and re-sequenced to create a more logical flow of the data collection. In addition, we are adding a data collection for an address to mail the periodic request for the revalidation of enrollment information (only if it differs from other addresses currently collected). More specific information regarding types of Home Health Agency sub-units will also be collected. Other than the information above, new data being collected in this revision package is information on, if applicable, where the supplier stores its patient records electronically.

Form Number: CMS-855A (OCN: 0938-0685); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal governments; *Number of Respondents:* 18,000; *Number of Responses:* 18,000;

Total Annual Hours: 78,000. (For policy questions regarding this collection, contact Kim McPhillips at 410-786-5374.)

Dated: November 8, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013-27305 Filed 11-14-13; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2013-D-0715]

Draft Guidance for Industry on Acrylamide in Foods; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance entitled "Guidance for Industry: Acrylamide in Foods." The draft guidance is intended to provide information that may help growers, manufacturers, and food service operators reduce acrylamide in certain foods. Acrylamide is a chemical that can form in some foods during certain types of high-temperature cooking. The draft guidance is intended to suggest a range of possible approaches to acrylamide reduction and not to identify specific recommended approaches.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 14, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS-300), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS-317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-1639.

SUPPLEMENTARY INFORMATION:**I. Background**

We are announcing the availability of a draft guidance entitled "Guidance for Industry: Acrylamide in Foods." We are issuing this draft guidance as a Level 1 draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on acrylamide in foods. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

The draft guidance is intended to provide information that may help growers, manufacturers, and food service operators reduce acrylamide in certain foods. Acrylamide is a chemical that can form in some foods during certain types of high-temperature cooking, and is a concern because it can cause cancer in laboratory animals at high doses, and is reasonably anticipated to be a human carcinogen. Reducing acrylamide in foods may mitigate potential human health risks from exposure to acrylamide. The draft guidance is intended to suggest a range of possible approaches to acrylamide reduction and not to identify specific recommended approaches.

In particular, the draft guidance is intended to give information to manufacturers on selecting and handling raw materials, modifying processing practices, and choosing ingredients, so as to reduce acrylamide in potato-based foods (such as fries, sliced potato chips, and fabricated potato chips) and cereal-based foods (such as cookies, crackers, and breads). The draft guidance also discusses acrylamide reduction in coffee. The draft guidance also is intended to give information to manufacturers for placing preparation and cooking instructions on frozen French fry packages. Lastly, the draft guidance is intended to give information for food service operations on preparation of potato-based and cereal-based foods.

II. Paperwork Reduction Act of 1995

This draft guidance contains proposed information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

(the PRA) (44 U.S.C. 3501-3520). "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Federal law at 44 U.S.C. 3506(c)(2)(A) requires Federal Agencies to publish a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, we will publish a 60-day notice of the proposed collection of information in a future issue of the **Federal Register**.

III. Comments

Interested persons may submit either electronic comments regarding the draft guidance to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of 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, and will be posted to the docket at <http://www.regulations.gov>.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/FoodGuidances> or <http://www.regulations.gov>. Use the FDA Web site listed in the previous sentence to find the most current version of the draft guidance.

Dated: November 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-27362 Filed 11-14-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2013-N-1306]

International Medical Device Regulators Forum; Medical Device Single Audit Program International Coalition Pilot Program; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing participation in the Medical Device Single Audit Program International Coalition Pilot Program. The Medical

Device Single Audit Program (MDSAP) was designed and developed to ensure a single audit will provide efficient yet thorough coverage of the diverse international regulatory requirements of medical devices quality management systems and other specific regulatory requirements of the regulatory authorities participating in the pilot program. FDA will be participating in the MDSAP and will accept the resulting audit reports as a substitute for routine Agency inspections.

ADDRESSES: Submit electronic comments on the MDSAP International Coalition Pilot Program 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:

Kimberly A. Trautman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5400, Silver Spring, MD 20993-0002, 301-796-5515, Kimberly.Trautman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

The International Medical Device Regulators Forum (IMDRF) was conceived in 2011 as a forum to discuss future directions in medical device regulatory harmonization. It is a voluntary group of medical device regulators from around the world, which includes FDA, who have come together to build on the strong foundational work of the Global Harmonization Task Force on Medical Devices. The purpose of the IMDRF is to accelerate international medical device regulatory harmonization and convergence. See <http://www.imdrf.org/>.

The IMDRF recognizes the value in developing a global approach to auditing and monitoring the manufacturing of medical devices to ensure safe medical devices. The IMDRF, at its inaugural meeting in Singapore in 2012, identified a Work Group (WG) to develop specific documents for advancing the concept of the MDSAP. See <http://www.imdrf.org/>.

This global approach opens possibilities and pathways to support the development of an international initiative of countries dedicated to pooling technology, resources, and services to improve the safety and oversight of medical devices on an

international scale in a pilot program starting in January 2014. The international partners for the MDSAP pilot, Therapeutic Goods Administration of Australia, Brazil's Agência Nacional de Vigilância Sanitária, Health Canada, FDA, and Japan's Ministry of Health, Labour and Welfare and Pharmaceuticals and Medical Devices Agency, are official observers and active participants in the pilot program's Regulatory Authority Council and subject matter expert groups.

The mission of the participants in the MDSAP International Coalition is to jointly leverage regulatory resources to manage an efficient, effective, and sustainable single audit program focused on the oversight of medical device manufacturers. The development of the MDSAP includes the use of third party auditors, much like some current regulatory audit programs, as well as regulatory inspectorates. Recognizing the increasingly global nature and number of medical device manufacturers, the use of third party auditors in addition to regulatory authority inspectorates, allows greater coverage in auditing manufacturers as opposed to relying solely on the government resources of individual countries. The government resources can then be focused on high risk or problematic medical devices, manufacturers that are not in compliance with the regulations, and oversight of the third party auditing organizations. The MDSAP Pilot is intended to allow MDSAP-recognized auditing organizations to conduct a single audit of a medical device manufacturer that will satisfy the relevant requirements of the medical device regulatory authorities participating in the pilot.

The regulatory authorities involved in the pilot will base their recognition and assessment process on the following final IMDRF MDSAP documents:

- IMDRF MDSAP WG N3—
“Requirements for Medical Device Auditing Organizations for Regulatory Authority Recognition;”
- IMDRF MDSAP WG N4—
“Competence and Training Requirements for Auditing Organizations;”
- IMDRF MDSAP WG N5—
“Regulatory Authority Assessment Method for the Recognition and Monitoring of Medical Device Auditing Organizations;” and
- IMDRF MDSAP WG N6—
“Regulatory Authority Assessor Competency and Training Requirements.”

Each of these documents was proposed in draft by the IMDRF and comments were solicited. IMDRF is in the process of revising these documents based on comments received. The IMDRF MDSAP Working Group has submitted the four proposed final documents for the IMDRF Management Committee meeting in Brussels on November 12 to 14, 2013.

The proposed drafts for each document are not available during the revision process. When final, these documents will be available on the IMDRF Web site (see <http://www.imdrf.org/>).

In addition, the MDSAP International Coalition has also developed several documents in order to implement the pilot. As documents are finalized by the MDSAP International Coalition Regulatory Authority Council, the documents will be posted on FDA's Web site.

The MDSAP audit process was designed and developed to ensure a single audit will provide efficient yet thorough coverage of the requirements of medical devices. FDA will accept the MDSAP audit reports as a substitute for routine Agency inspections. Inspections conducted “For Cause” or “Compliance Followup” by FDA will not be affected by this program. Moreover, this MDSAP Pilot would not apply to any necessary preapproval or postapproval inspections for Premarket Approval (PMA) applications or to decisions under section 513(f)(5) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)(5)) concerning the classification of a device.

III. Electronic Access

Additional information on the IMDRF MDSAP can be found at: <http://www.imdrf.org/> and at <http://www.fda.gov/MedicalDevices/>.

V. Comments

Interested persons may submit either electronic comments regarding the MDSAP International Coalition Pilot Program to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of 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, and will be posted to the docket at <http://www.regulations.gov>.

Dated: November 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–27358 Filed 11–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1038]

Over-the-Counter Ophthalmic Drug Products—Emergency Use Eyewash Products; Rescheduling of Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; rescheduling of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is rescheduling a December 4, 2013, public hearing to obtain information on the formulation, manufacturing, and labeling of currently marketed over-the-counter (OTC) emergency use eyewash products, announced in the **Federal Register** of Wednesday, September 18, 2013. Based on a request received by the Agency, we are rescheduling the public hearing to March 7, 2014, and updating the related procedural dates that appeared in the September 18, 2013, notice.

DATES: The public hearing will be held on March 7, 2014, from 9 a.m. to 5 p.m. Submit electronic or written requests to make oral presentations and comments by February 14, 2014. If you wish to attend the hearing or make an oral presentation during the hearing, you must register by submitting an electronic request to CDEREYEWASHMEETING@fda.hhs.gov by close of business on February 14, 2014. For those unable to attend in person, FDA will provide a Webcast to the meeting; additional information about the Webcast location will be posted on the Web page at <http://www.fda.gov/Drugs/NewsEvents/ucm356526.htm> prior to March 7, 2014. Electronic or written comments will be accepted after the hearing until June 6, 2014.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–3519, FAX: 301–847–8753, mary.gross@fda.hhs.gov; or Elaine Abraham, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire

Ave., Silver Spring, MD 20903, 301-796-0843, FAX: 301-796-9899, elaine.abraham@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 18, 2013 (78 FR 57397), FDA announced that it would hold a public hearing on December 4, 2013, to obtain information on the formulation, manufacturing, and labeling of currently marketed OTC emergency use eyewash products. Based on a request received by the Agency, we are rescheduling the public hearing to March 7, 2014. Because we are rescheduling the hearing, we are also rescheduling the procedural dates (see **DATES**) that appeared in the September 18, 2013, notice. For additional information about the purpose and scope of the hearing, see the September 18, 2013, notice available on FDA's Web site at <http://www.fda.gov/Drugs/NewsEvents/ucm356526.htm>.

Dated: November 8, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013-27359 Filed 11-14-13; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: December 5-6, 2013.

Time: December 05, 2013, 9:00 a.m. to 5:00 p.m.

Agenda: NIH Director's report; ACD Working Group Implementation Team reports, NIH updates, and other business of the Committee.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Time: December 06, 2013, 9:00 a.m. to 12:00 p.m.

Agenda: ACD Working Group Implementation Team reports, NIH updates, and other business of the Committee.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 103, Bethesda, MD 20892, 301-496-4272, woodgs@od.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: <http://acd.od.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: November 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27348 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, NIAID Resource Related Research Projects (R24).

Date: December 11, 2013.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Sujata Vijh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301-594-0985, vijhs@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27350 Filed 11-14-13; 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; Musculoskeletal Diseases.

Date: December 6, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yanming Bi, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301-451-0996, ybi@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Interventions for Health Promotion and Disease Prevention in Native American Populations.

Date: December 10, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Wenchi Liang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, 301-435-0681, liangw3@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR11-346: Interventions for Health Promotion and Disease Prevention in Native American Populations.

Date: December 10, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Martha L. Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451-8504, harem@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biomedical Computing and Health Informatics.

Date: December 10, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301-435-1017, tdrgon@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle Biology.

Date: December 11, 2013.

Time: 11:00 a.m. to 2:00 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: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435-1215, mcdonald@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: DNA Replication, Repair, Recombination, Disease and Mutations.

Date: December 11, 2013.

Time: 1:30 p.m. to 5:00 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: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301-435-1779, riverase@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: December 12-13, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435-1166, roebuck@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: November 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27353 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Advisory Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: December 8-10, 2013.

Time: 7:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A908, Bethesda, MD 20892, (301) 435-2232, koretskya@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: November 8, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27352 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: December 3, 2013.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Ken Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301-402-0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 8, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27349 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Review Committee.

Date: December 11, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, Ph.D., Scientific Review Officer, Scientific Review Program, NIH/NIAID/DEA/ARRB, 6700 B Rockledge Drive, Room 3256, Bethesda, MD 20892, 301-451-1740, varthakaviv@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 8, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27351 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Urologic and Genitourinary Physiology and Pathology, October 25, 2013, 08:00 a.m. to October 25, 2013, 05:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 01, 2013, 78 FR 190 Pgs. 60296-60297.

The meeting will start on December 6, 2013 at 8:00 a.m. and end on December 6, 2013 at 5:00 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: November 12, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27357 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Behavioral Medicine, Interventions and Outcomes Study Section, October 03, 2013, 8:00 a.m. to October 04, 2013, 5:00 p.m., The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611 which was published in the Federal Register on September 9, 2013, 78 FR 55087.

The meeting is cancelled due to the reassignment of applications.

Dated: November 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27354 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Synthetic and Biological Chemistry A,

October 21, 2013, 12:00 p.m. to October 21, 2013, 01:00 p.m., Hotel Palomar, 2121 P Street NW., Washington, DC 20037 which was published in the **Federal Register** on September 26, 2013, 78 FR 59362.

The meeting will be held at the National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892. The meeting will be held on December 18, 2013 at 3:00 p.m. and end December 18, 2013 at 4:00 p.m. The meeting is closed to the public.

Dated: November 8, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013-27355 Filed 11-14-13; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2014 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a single source grant to the Community Anti-Drug Coalitions of America (CADCA).

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) intends to award \$459,505 (total costs) for up to five years to CADCA for the National Substance Abuse Leadership Forum Cooperative Agreement. Under this initiative, CADCA will provide training and technical assistance to a large number of community leaders across the country who are committed to behavioral health (i.e., prevention, recovery, resilience, and wellness); and address current issues related to the prevention and treatment of substance abuse, and/or mental disorders across the nation.

Conference and training activities supported through this cooperative agreement include SAMHSA's Prevention Day, the Community Anti-Drug Coalitions of America's (CADCA) National Leadership Forum, and CADCA's Mid-Year Training Institute. These conferences serve as a portal for knowledge dissemination and state-of-the-art information transfer; and assist community leaders in developing effective local programs, practices, and policies that support national substance abuse prevention goals, outcomes and efforts, such as National Alcohol and

Drug Addiction Recovery Month, National Substance Abuse Prevention Month, and underage drinking prevention. The CADCA Conference initiative directly supports SAMHSA's mission to reduce the impact of substance abuse and mental illness on America's communities.

This is not a formal request for applications. Assistance will be provided only to CADCA based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Title: SP-14-001.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section 516 of the Public Health Services Act, as amended. Funds for a portion of this initiative are also authorized under Sections 509, 516 and 520A of the Public Health Service Act, as amended.

Justification: Eligibility for this award is limited to CADCA. The purpose of this cooperative agreement is to provide training and technical assistance for thousands of members of community coalitions dedicated to preventing substance abuse through a national leadership conference. CADCA is the only national organization that has special expertise and unique broad, national-level experience in working with community anti-drug coalitions. For more than 18 years, coalitions and coalition leadership have turned to CADCA to obtain the assistance they need to implement, operate, and sustain effective local community anti-drug strategies. The CADCA will take advantage of the resources of multiple agencies located throughout the federal, state and local governments, philanthropies, and universities to bring the best available knowledge, information, and technology to local community anti-drug coalitions working to prevent and reduce drug use among the youth of America. CADCA is the only identified organization with the required experience and national reach to over 5,000 identified anti-drug coalitions across the country. CADCA has long been recognized in communities as well as states throughout the nation as the national voice for the advocacy and technical support of anti-drug coalitions. As such, it is uniquely qualified and positioned to carry out the requirements of this announcement.

Contact: Cathy Friedman, Substance Abuse and Mental Health Services Administration, 1 Choke Cherry Road, Room 8-1097, Rockville, MD 20857;

telephone: (240) 276-2316; email: cathy.friedman@samhsa.hhs.gov.

Cathy J. Friedman,

SAMHSA Public Health Analyst.

[FR Doc. 2013-27334 Filed 11-14-13; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5681-N-44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 7, 2013.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2013-27125 Filed 11-14-13; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-R-2012-N115; 81683-1265-0000-S3]

Seal Beach National Wildlife Refuge, Orange County, CA; Final Comprehensive Conservation Plan and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final Comprehensive Conservation Plan (CCP) and finding of no significant impact (FONSI) for the Seal Beach National Wildlife Refuge (Refuge). In the CCP, we describe how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed on September 30, 2011. The Final CCP was signed on May 18, 2012 and implementation of the CCP is underway.

ADDRESSES: You may view or obtain copies of the Final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD-ROM.

Agency Web site: Download a copy of the document(s) at http://www.fws.gov/refuge/Seal_Beach/what_we_do/planning.html.

Email: Victoria_Touchstone@fws.gov. Include "Seal Beach CCP" in the subject line of the message.

Fax: Attn: Victoria Touchstone, (619) 476-9150, extension 103.

Mail: Victoria Touchstone, U.S. Fish and Wildlife Service, San Diego NWR Complex, P.O. Box 2358, Chula Vista, CA 91912.

In-Person Viewing or Pickup: Copies of the Final CCP and FONSI may also be viewed at the San Diego National Wildlife Refuge Complex, 1080 Gunpowder Point Drive, Chula Vista, CA 91910 (call 619-476-9150, extension 103, for directions and hours).

Local Library: The full document is also available at the Seal Beach/Mary Wilson Library, 707 Electric Avenue, Seal Beach, CA 90740.

FOR FURTHER INFORMATION CONTACT: Victoria Touchstone, Refuge Planner, at 619-476-9150, extension 103 (see **ADDRESSES**), or Kirk Gilligan, Refuge Manager, at 562-598-1024.

SUPPLEMENTARY INFORMATION:

Background

Legislation authorizing the establishment of the Seal Beach National Wildlife Refuge was signed by

President Richard M. Nixon on August 29, 1972. The Refuge boundaries, which are located entirely within Naval Weapons Station Seal Beach, were determined by the Secretary of the Interior with the advice and consent of the Secretary of the Navy. In accordance with the authorizing legislation, the Refuge is to be managed pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and pursuant to plans that are mutually acceptable to the Secretary of the Interior and the Secretary of the Navy. The 956-acre Refuge was officially established on July 11, 1974, following approval of a general management plan for the Refuge by the Service and the Navy. Refuge purposes include preservation and management of habitat for endangered species (i.e., light-footed clapper rail, California least tern) and preservation of habitat to support migratory waterfowl, shorebirds, and other water birds.

We announce our decision and the availability of the FONSI for the final CCP for the Seal Beach NWR in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the environmental assessment (EA) that accompanied the draft CCP.

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education and interpretation. We intend to review and update the CCP at least every 15 years in accordance with the Administration Act.

Our draft CCP and EA were available for a 45-day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (76 FR 16634; March 24,

2011). The draft CCP/EA identified and evaluated three alternatives for managing the Refuge for the next 15 years.

Under Alternative A (No Action), management would continue unchanged. Under Alternative B, the Service would expand current management to include evaluation of current Refuge baseline data for fish, wildlife, and plants; identification of data gaps; implementation of species surveys to address data gaps; restoration of intertidal and native upland habitat; implementation of an integrated approach to pest management; and support for new research projects that would benefit Refuge resources and Refuge management. Alternative C, which was identified as the preferred alternative, would implement the majority of the management activities proposed in Alternative B and expand opportunities for wildlife observation on the Refuge. The primary differences in habitat management between Alternatives B and C relate to the extent of intertidal restoration proposed in Alternative B versus the extent of upland and wetland/upland transitional habitat restoration proposed in Alternative C.

We received five letters on the draft CCP and EA during the review and comment period. Comments focused on constituents of concern related to past activities on Naval Weapons Station Seal Beach, mosquito management, and habitat management and restoration. We incorporated comments we received into the CCP when appropriate, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative C for implementation. The FONSI documents our decision and is based on information and analysis contained in the EA.

Under the selected alternative, the Service will expand both natural resource management and opportunities of wildlife observation on the Refuge. Wildlife and habitat management actions will be implemented to support listed species, coastal habitats, and migratory birds; native upland and wetland/upland transitional habitat will be restored to provide refugia for rails and shorebirds during high tide; and existing visitor serving facilities will be improved.

The selected alternative most effectively achieves Refuge's purposes, goals, and objectives, particularly those related to the recovery and protection of federally listed species and the enhancement of public appreciation, understanding, and enjoyment of Refuge resources; contributes to the Refuge

System mission; and is consistent with principles of sound fish and wildlife management. Based on the associated environmental assessment, this alternative is not expected to result in significant environmental impacts and therefore does not require the preparation of an environmental impact statement.

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2013-27405 Filed 11-14-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 134A2100DD
AOR3B3030.999900]

Draft Environmental Impact Statement for the Proposed Fee-to-Trust Transfer of Property and Subsequent Development of a Resort/Hotel and Ancillary Facilities in the City of Taunton, Massachusetts and Tribal Government Facilities in the Town of Mashpee, Massachusetts by the Mashpee Wampanoag Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs as lead agency, with the Mashpee Wampanoag Tribe, serving as a cooperating agency, intends to file a draft environmental impact statement (DEIS) with the U.S. Environmental Protection Agency regarding the Tribe's application for the conveyance into trust of title to lands located in Mashpee and Taunton, Massachusetts, for the benefit of the Mashpee Wampanoag Tribe. This notice also announces that the DEIS is now available for public review and that public hearings will be held to receive comments on the DEIS.

DATES: The date of the public hearing will be announced at least 15 days in advance through notices in the following newspapers: *Taunton Daily Gazette* and the *Cape Cod Times*, and on the following Web site:

www.mwteis.com. Written comments on the DEIS must arrive within 45 days after the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Franklin Keel, Eastern Regional Director, Bureau of Indian Affairs, Eastern Region, 545 Marriott Drive,

Suite 700, Nashville, Tennessee 37214. Public hearings will be held at the Taunton High School, 50 William Street, Taunton, Massachusetts, and Mashpee High School, 500 Old Barnstable Road, Mashpee, Massachusetts. See the **SUPPLEMENTARY INFORMATION** section of this notice for addresses where the DEIS is available for review.

FOR FURTHER INFORMATION CONTACT: Mr. Chet L. McGhee, Regional Environmental Scientist, Bureau of Indian Affairs, Eastern Regional Office, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214; fax (615) 564-6571; telephone (615) 564-6500.

SUPPLEMENTARY INFORMATION: Public review of the DEIS is part of the administrative process for the evaluation of the Mashpee Wampanoag Tribe's application under section 5 of Indian Reorganization Act (IRA) (25 U.S.C. 461, et. seq). Under Council on Environmental Quality National Environmental Policy Act (NEPA) regulations (40 CFR 1506.10), the publication of the Notice of Availability by Environmental Protection Agency in the **Federal Register** initiates the 45-day public comment period.

The Tribe's proposed development contemplated for the trust lands consists of the following components:

(1) Acquisition in trust of approximately 151 acres in Taunton, Massachusetts, and approximately 170 acres in Mashpee in accordance with section 5 of the IRA and the procedures set forth in 25 CFR part 151;

(2) The Secretary of the Interior's issuance of a reservation proclamation under section 7 of the IRA under which the site would be the "initial reservation" of the Tribe eligible for gaming under section 20(b)(1)(B) of the Indian Gaming Regulatory Act; and

(3) Development of a resort/hotel and gaming facility within the project site in Taunton, Massachusetts, and development of Tribal Government facilities within the site area located in Mashpee, Massachusetts.

At full build-out, the Tribe's proposed resort/hotel and gaming facility would have approximately 132,000 square feet of gaming floor. Access to the Taunton site would be via O'Connell Way, off of Stevens Street, near the intersection of Stevens Street and Route 140 in Taunton, Massachusetts.

The following alternatives are considered in the DEIS:

(A) The development as proposed by the Tribe;

(B) Reduced Intensity I Alternative;

(C) Reduced Intensity II Alternative;

and

(D) No Action Alternative.

Environmental issues addressed in the DEIS include: Transportation; wetlands and other waters of the U.S.; storm water; geology and soils; rare species and wildlife habitat; hazardous materials; water supply; wastewater; utilities; solid waste; air quality; greenhouse gas; cultural resources; noise, visual impacts; socio-economics; environmental justice; cumulative effects and indirect and growth-inducing effects.

The BIA held public scoping meetings for the project on June 20, 2012, at Taunton High School in Taunton, Massachusetts, and on June 21, 2012, at Mashpee High School in Mashpee, Massachusetts.

Directions for Submitting Comments: Please include your name, return address, and the caption: "DEIS comments for proposed fee-to-trust transfer of lands by the Mashpee Wampanoag Tribe" on the first page of your written comments.

Locations Where the DEIS Is Available for Review: The DEIS will be available for review at the Taunton Public Library, 12 Pleasant St Taunton, Massachusetts 02780; the Mashpee Public Library, 64 Steeple Street, Mashpee, Massachusetts 02649; and the Mashpee Wampanoag Tribe Headquarters at 483 Great Neck Rd. South, Mashpee, Massachusetts, 02649. The DEIS is also available online at: <http://www.mwteis.com>.

To obtain a compact disk copy of the DEIS, please provide your name and address in writing or by voicemail to Mr. Chet L. McGhee, Regional Environmental Scientist, Bureau of Indian Affairs, Eastern Regional Office. Contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the DEIS will be provided only upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email 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 may ask in your comment that your personal identifying information be withheld from public

review, the BIA cannot guarantee that this will occur.

Authority: This notice is published in accordance with § 1503.1 of the Council on Environmental Quality regulations (40 CFR 1500 et seq.) and the Department of the Interior Regulations (43 CFR part 46) implementing the procedural requirements of the NEPA (42 U.S.C. 4321 et seq.), and in accordance with the exercise of authority delegated to the Assistant Secretary—Indian Affairs by part 209 of the Department Manual.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013-27374 Filed 11-14-13; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD09000,
L51010000.LVRWB09B2380.FX0000]

Notice of Availability of a Final Environmental Impact Statement and Environmental Impact Report for the Proposed Stateline Solar Farm and Proposed California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Proposed California Desert Conservation Area (CDCA) Plan Amendment and a Final Environmental Impact Statement (EIS) and Draft Environmental Impact Report (EIR) for the Stateline Solar Farm Project (SSFP) and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed CDCA Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the SSFP Final EIS and Proposed CDCA Plan Amendment have been sent to affected Federal, State, and local government agencies and to other stakeholders. Copies of the SSFP Final EIS and Proposed CDCA Plan Amendment are available for public inspection at the BLM Needles Field Office and

California Desert District Office. Interested persons may also review the SSFP Final EIS and Proposed CDCA Plan Amendment on the Internet at <http://www.blm.gov/ca/st/en/fo/cdd.html>. All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024-1382.
Overnight Delivery: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT:

Jeffery Childers, Project Manager; telephone 951-697-5308; address BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, California 92553-9046; email jchilders@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: First Solar Development, Inc. (First Solar) has requested a right-of-way (ROW) authorization to construct, operate, maintain and decommission the 300-megawatt (MW) photovoltaic SSFP from the BLM and a well permit from the County of San Bernardino. The BLM is responding to the ROW application as required by FLPMA. The proposed project located on BLM-administered lands would include access roads, photovoltaic arrays, electrical substation, meteorological station, monitoring and maintenance facility, water wells, and a 2.3 mile generation tie-line on up to 2,143 acres. The project location is in San Bernardino County approximately 2 miles south of the Nevada-California border and 0.5 miles west of Interstate 15.

The BLM's purpose and need for the SSFP is to respond to First Solar's application for a ROW grant to construct, operate, maintain, and decommission a photovoltaic solar energy facility on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. The BLM will decide whether to grant, grant with modification, or deny a ROW to First Solar for the proposed SSFP. The CDCA Plan (1980, as amended), while recognizing the potential compatibility of solar energy generation facilities with other uses on public lands, requires that

all sites proposed for power generation or transmission not already identified in the plan be considered through the plan amendment process. The BLM is proposing to amend the CDCA Plan by designating the project area as either suitable or unsuitable for solar energy projects. In addition to the proposed action, which is analyzed as Alternative 1: 300 MWs on 2,143 acres, the BLM is analyzing three other project alternatives: Alternative 2: 300 MW on 2,385 acres; Revised Alternative 3: 300 MW on 1,685 acres; and, Alternative 4: 232 MW generated on 1,766 acres. All project alternatives also analyze an expansion of the Ivanpah Desert Wildlife Management Area (DWMA). The management prescriptions for the Ivanpah DWMA are defined in Appendix A, Section A.2, of the Northern and Eastern Mojave Desert Management Plan Amendment to the California Desert Conservation Area Plan (July 2002). If the DWMA is expanded, these management prescriptions will be applied to the expansion.

The Proposed Plan Amendment and Final EIS/EIR also analyzes three No Project alternatives: Alternative 5: No Action; Alternative 6: No Project, Amend the CDCA Plan to find the Project area unsuitable for solar development; and Alternative 7: No Project, Amend the CDCA Plan to find the Project area suitable for solar development. The Final EIS/EIR and CDCA Plan Amendment evaluates the potential impacts of the proposed SSFP on air quality and greenhouse gas emissions; biological resources; cultural resources; special status species; geology and soils; hazards and hazardous materials; hydrology and water quality; land use; noise; recreation; traffic; visual resources; lands with wilderness characteristics; cumulative effects and areas with high potential for renewable energy development.

Comments on the Draft EIS/EIR and CDCA Plan Amendment received from the public and internal BLM review were considered and incorporated as appropriate into the Final EIS/EIR and Proposed Plan Amendment. Public comments resulted in modification of Alternative 3, now evaluated in the Final EIS/EIR as Revised Alternative 3. However, the public comments did not significantly change proposed land use plan decisions. Instructions for filing a protest with the Director of the BLM regarding the Proposed Plan Amendment may be found in the "Dear Reader" letter of the SSFP Final EIS/EIR and Proposed Plan Amendment and at 43 CFR 1610.5-2. All protests must be

in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular mail or overnight delivery postmarked by the close of the protest period. Under these conditions, the BLM will consider the email as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to bhudgets@blm.gov.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2013-27416 Filed 11-14-13; 8:45 am]

BILLING CODE 4310-40-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-900]

Certain Navigation Products, Including GPS Devices, Navigation and Display Systems, Radar Systems, Navigational Aids, Mapping Systems and Related Software; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 23, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Furuno Electric Co., Ltd. of Japan and Furuno U.S.A., Inc. of Camas, Washington. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain navigation products, including GPS devices, navigation and display systems, radar systems, navigational aids, mapping systems and related software by reason of infringement of certain claims of U.S. Patent No. 6,084,565 ("the '565 patent");

U.S. Patent No. 6,424,292 (“the ’292 patent”); U.S. Patent No. 7,161,561 (“the ’561 patent”); and U.S. Patent No. 7,768,447 (“the ’447 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 8, 2013, ordered that —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain navigation products, including GPS devices, navigation and display systems, radar systems, navigational aids, mapping systems and related software by reason of infringement of one or more of claims 1–5, and 7–20 of the ’565 patent; claims 1–6 of the ’292 patent; claims 1–10, 12, and 14 of the ’561 patent; and claims 1–

25 of the ’447 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:
Furuno Electric Co., Ltd., 9–52
Ashihara-cho, Nishinomiya City,
Hyogo, 662–8580 Japan
Furuno U.S.A., Inc., 4400 NW. Pacific
Rim Boulevard, Camas, WA 98607

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
Garmin Ltd., Mühlentalstrasse 2, 8200
Schaffhausen, Switzerland
Garmin International, Inc., 1200 East
151st Street, Olathe, KS 66062
Garmin North America, Inc., 1200 East
151st Street, Olathe, KS 66062
Garmin USA, Inc., 1200 East 151st
Street, Olathe, KS 66062
Navico Holding AS, Nyåskaiveien 2,
4370 Egersund, Norway
Navico UK Limited, Premier Way,
Abbey Park, Romsey Hampshire, S051
9DH, United Kingdom
Navico Inc., 4500 S. 129th East Avenue,
Suite 200, Tulsa, OK 74134
Raymarine, Inc., 9 Townsend West,
Nashua, NH 03063
Raymarine UK Ltd., Marine House,
Cartwright Drive, Fareham, PO15 5RJ,
United Kingdom

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to

19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 8, 2013.

William R. Bishop,

*Supervisory Hearings and Information
Officer.*

[FR Doc. 2013–27318 Filed 11–14–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–901]

Certain Handheld Magnifiers and Products Containing Same; Institution of Investigation Pursuant to United States Code

AGENCY: U.S. International Trade
Commission

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 26, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Freedom Scientific, Inc. of St. Petersburg, Florida. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handheld magnifiers and products containing same by reason of infringement of U.S. Design Patent No. D624,107 (“the ’107 design patent”) and certain claims of U.S. Patent No. 8,264,598 (“the ’598 patent”). The complaint further alleges that an

industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 8, 2013, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain handheld magnifiers and products containing same by reason of infringement of one or more of the claim of the '107 design patent and claims 1-7 of the '598 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Freedom Scientific, Inc., 11800 31st Court North, St. Petersburg, FL 33716-1805.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Aumed Group Corp., 3/F Building D, No. 31 Jiaoda Dong Road, Haidian District, Beijing 100044, China.

Aumed Inc., 131 Glenn Way, Unit 5, San Carlos, CA 94070.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 8, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013-27319 Filed 11-14-13; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation, Consent Decree and Settlement Agreement Under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act

On November 8, 2013, the Department of Justice lodged a proposed Stipulation, Consent Decree and Settlement Agreement with the United States Bankruptcy Court for the Southern District of New York in *In re DPH Holdings Corporation, et al.*, Civil Action No. 05-44481 (RDD).

Under the settlement, Reorganized Debtor DPH Holdings Corporation, f/k/a Delphi Corporation, and certain of its affiliated Reorganized Debtors have agreed to transfer title to four debtor-owned real properties to an environmental response trust and contribute a total of \$23,142,065.00 to the trust to fund clean-up of these properties and the administrative expenses of the trust. The beneficiaries of the environmental response trust will be United States on behalf of the EPA, the State of Michigan on behalf of the Michigan Department of Environmental Quality ("MDEQ") and the State of Ohio on behalf of the Ohio Environmental Protection Agency ("Ohio EPA").

The environmental response trust will receive \$9,148,524 for the Delphi Automotive Systems Dort Highway Flint East Plant 400 and Plant 500 in Flint, Michigan, \$10,425,449 for the former Delphi Saginaw Division Plant 2 in Saginaw, Michigan, \$1,191,641 for an inactive asbestos landfill in Rootstown, Ohio, formerly operating under Delphi's Packard Electric/Electronic Architecture Division, and \$2,376,451 for the administrative expenses of the trust. The Reorganized Debtors also will pay \$157,935 as an allowed administrative expense claim for oversight costs incurred with respect to the Dayton VOC Site in Dayton, Ohio.

The publication of this notice opens a period for public comment on the Stipulation, Consent Decree and Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re DPH Holdings Corporation, et al.*, Civil Action No. 05-44481 (RDD), D.J. Ref. No. 90-11-3-08913. All comments must be submitted no later than fifteen (15) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Stipulation, Consent Decree and Settlement Agreement may be examined and downloaded at this Justice Department Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. We will provide a paper copy of the Stipulation, Consent Decree and Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$21.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–27341 Filed 11–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterans Retraining Assistance Participant Outreach Reporting

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, “Veterans Retraining Assistance Participant Outreach Reporting,” to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before December 16, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of

response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201306-1205-007 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, by Fax: 202–395–6881 (this is not a toll-free number), or by email to: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Information Policy and Assessment Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210, or by email to: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks continued PRA authorization for the ETA to collect quarterly reports from States about employment services offered to Veterans Retraining Assistance Program (VRAP) participants and for American Job Centers to contact VRAP participants. This information collection allows for VRAP reporting and employment services outreach described in VOW to Hire Heroes Act of 2011, Public Law 112–56, section 211, directing the Department of Veterans’ Affairs (VA)—in cooperation with the DOL—to pay for up to 12 months of a training program in a high demand occupation for unemployed eligible veterans between 35 and 60 years of age. The DOL will use the information collected to ensure services are being offered throughout all States and to provide any technical assistance, if necessary. The information will also be incorporated in a report to the Congress about the program.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA

and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0511.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on November 30, 2013. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL also notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 24, 2013 (78 FR 44600).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0511. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Veterans Retraining Assistance Participant Outreach Reporting.

OMB Control Number: 1205–0511.

Affected Public: Individuals or Households and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 33,054.

Total Estimated Number of Responses: 69,024.

Total Estimated Annual Burden Hours: 8,632.

Total Estimated Annual Other Costs Burden: \$0.

Dated: November 6, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013-27380 Filed 11-14-13; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Announcement Regarding a Change in Eligibility for Unemployment Insurance (UI) Claimants in Alaska, Mississippi, and Wisconsin in the Emergency Unemployment Compensation 2008 (EUC08) Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (Department) produces trigger notices indicating which states qualify for EUC08 benefits, and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notices covering state eligibility for this program can be found at: http://ows.doleta.gov/unemploy/claims_arch.asp.

The following changes have occurred since the publication of the last notice regarding states' EUC08 trigger status:

- Alaska has triggered "off" Tier 3 of EUC08 effective August 24, 2013. Based on data from Alaska for the week ending August 3, 2013, the 13 week insured unemployment rate in Alaska was 3.9 percent, falling below the 4.0 percent trigger rate threshold to remain "on" in Tier 3 of EUC08. The week ending August 24, 2013, was the last week in which EUC08 claimants in Alaska who had exhausted Tier 2, and were otherwise eligible, could establish Tier 3 eligibility.

- Mississippi has triggered "off" Tier 4 of EUC08 effective September 14, 2013. Based on data released by the Bureau of Labor Statistics on August 19, 2013, the three month average, seasonally adjusted total unemployment rate in Mississippi was 8.9 percent, falling below the 9.0 percent trigger rate threshold to remain "on" in Tier 4 of

EUC08. The week ending September 14, 2013, was the last week in which EUC08 claimants in Mississippi who have exhausted Tier 3, and are otherwise eligible, could establish Tier 4 eligibility.

- Wisconsin has triggered "off" Tier 3 of EUC08 effective September 14, 2013. Based on data released by the Bureau of Labor Statistics on August 19, 2013, the three month average, seasonally adjusted total unemployment rate in Wisconsin was 6.9 percent, falling below the 7.0 percent trigger rate threshold to remain "on" in Tier 3 of EUC08. The week ending September 14, 2013, was the last week in which EUC08 claimants in Wisconsin who have exhausted Tier 2, and are otherwise eligible, could establish Tier 3 eligibility.

Information for Claimants

The duration of benefits payable in the EUC08 program, and the terms and conditions under which they are payable, are governed by Public Laws 110-252, 110-449, 111-5, 111-92, 111-118, 111-144, 111-157, 111-205, 111-312, 112-96, and 112-240, and the operating instructions issued to the states by the Department.

In the case of a state beginning or concluding a payable period in EUC08, the State Workforce Agency (SWA) will furnish a written notice of any change in potential entitlement to each individual who could establish, or had established, eligibility for benefits (20 CFR 615.13 (c)(1) and (c)(4)). Persons who believe they may be entitled to benefits in the EUC08 program, or who wish to inquire about their rights under this program, should contact their SWA.

FOR FURTHER INFORMATION CONTACT:

Tony Sznoluch, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S-4524, Washington, DC 20210, telephone number (202) 693-3176 (this is not a toll-free number) or by email: sznoluch.anatoli@dol.gov.

Signed in Washington, DC, this 5th day of November 2013.

Eric M. Seleznow,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2013-27379 Filed 11-14-13; 8:45 am]

BILLING CODE 4510-FW-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2013-0013]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of FACOSH meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet December 5, 2013, in Washington, DC.

DATES: *FACOSH meeting:* FACOSH will meet from 1 to 4:30 p.m., Thursday, December 5, 2013.

Submission of comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to speak at the FACOSH meeting, speaker presentations, and requests for special accommodations to attend the meeting by November 29, 2013.

ADDRESSES: *FACOSH meeting:* FACOSH will meet in Rooms N-4437 A-D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the FACOSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for making submissions;

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693-1648; or

Mail, express delivery, hand delivery, or messenger/courier service: You may submit materials to the OSHA Docket Office, Docket No. OSHA-2013-0013, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350, (OSHA's TTY (877) 889-5627). Deliveries (hand, express mail, messenger/courier service) are accepted during the Department's and the OSHA Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t., weekdays.

Requests for special accommodations to attend the FACOSH meeting: You may submit requests for special accommodations by hard copy,

telephone, or email to Ms. Frances Owens, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email owens.frances@dol.gov.

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA-2013-0013). Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger/courier service. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change at <http://www.regulations.gov>. Therefore, OSHA cautions individuals about submitting certain personal information, such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email meilinger.francis2@dol.gov.

For general information: Mr. Francis Yebes, Director, OSHA Office of Federal Agency Programs, U.S. Department of Labor, Room N-3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2122; email ofap@dol.gov.

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet December 5, 2013, in Washington, DC. Some FACOSH members may attend the meeting electronically. The meeting is open to the public.

The tentative agenda for the FACOSH meeting includes:

- Updates from FACOSH subcommittees;
- Status of FACOSH's recommendations on occupational exposure limits;
- Recordkeeping rule changes affecting Federal agencies;
- Whistleblower protection program best practices;
- Presidential POWER Initiative—update and future metrics; and

- OPM status report regarding the GS-0018 job series.

FACOSH is authorized by 5 U.S.C. 7902; section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668); and Executive Order 11612, as amended, to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce, and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs.

OSHA transcribes and prepares detailed minutes of FACOSH meetings. The Agency puts meeting transcripts and minutes plus other materials presented at the meeting in the public record of the FACOSH meeting, which is posted at <http://www.regulations.gov>.

Public Participation, Submissions, and Access to Public Record

FACOSH meetings: FACOSH meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building the Visitors' Entrance, 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification to enter. For additional information about building security measures, and requests for special accommodations for attending the FACOSH meeting, please contact Ms. Owens (see **ADDRESSES** section).

Submission of requests to speak and speaker presentations. You may submit a request to speak to FACOSH by one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time you request to speak;
- The interest you represent (e.g., organization name), if any; and,
- A brief outline of your presentation.

PowerPoint speaker presentations and other electronic materials must be compatible with Microsoft Office 2010 formats. The FACOSH chair may grant requests to address FACOSH at his discretion, and as time and circumstances permit.

Submission of written comments. You also may submit written comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. Your submissions, including attachments and other materials, must identify the agency name and the OSHA docket number for this notice (Docket No. OSHA-2013-

0013). You may supplement electronic submissions by uploading documents electronically. If you wish to submit hard copies of supplementary documents instead, you must submit them to the OSHA Docket Office following the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date, and docket number. OSHA will provide copies of your submissions to FACOSH members prior to the meeting.

Because of security-related procedures, submitting comments, requests to speak, and speaker presentations by regular mail may cause a significant delay in their receipt. For information about security procedures concerning submissions by hand, express delivery, and messenger/courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

Access to submissions and public record. OSHA places comments, requests to speak, speaker presentations, meeting transcripts and minutes, and other documents presented at the FACOSH meeting in the public record without change. Those documents also may be available online at <http://www.regulations.gov>. Therefore, OSHA cautions individuals about submitting certain personal information, such as Social Security numbers and birthdates.

To read or download documents in the public record, go to Docket No. OSHA-2013-0013 at <http://www.regulations.gov>. Although all meeting documents are listed in the <http://www.regulations.gov> index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the <http://www.regulations.gov> to make submissions and to access the public record of the FACOSH meeting is available at that Web page. Please contact the OSHA Docket Office for information about materials not available through that Web page and for assistance making submissions and obtaining documents in the public record.

Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information about FACOSH, also is available at OSHA's Web page at <http://www.osha.gov>.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the OSH Act (29 U.S.C. 668); 5 U.S.C. 7902; the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2); 41 CFR Part 102-3; section 1-5 of Executive Order 12196 (45 CFR 12629 (2/27/1980)); and Secretary of Labor's Order No. 1-2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on November 12, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013-27382 Filed 11-14-13; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Office of Workers' Compensation Programs****Division of Longshore and Harbor Workers' Compensation**

Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c) (2) (A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: Application for Continuation of Death Benefit for Student (LS-266). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 14, 2014.

ADDRESSES: Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution

Ave. NW., Room S-3201, Washington, DC 20210, telephone (202) 693-0701, fax (202) 693-1449, Email ferguson.yoon@dol.gov. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Workers' Compensation Programs, (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act was amended on October 27, 1972, to provide for continuation of death benefits for a child or certain other surviving dependents after the age of 18 years (to age 23) if the dependent qualifies as a student as defined in section 2 (18) of the Act. The benefit would also be terminated if the dependent completes four years of education beyond high school. Form LS-266 is to be submitted by the parent or guardian for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the education institution. The information is used by the DOL to determine whether a continuation of the benefits is justified. This information collection is currently approved for use through March 31, 2014.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- * Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- * Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- * Enhance the quality, utility and clarity of the information to be collected; and

- * Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.
Title: Application for Continuation of Death Benefit for Student.
OMB Number: 1240-0026.
Agency Number: LS-266.
Affected Public: Individuals or households; Business or other for-profit.
Total Respondents: 20.
Total Annual Responses: 20.
Estimated Total Burden Hours: 10.
Estimated Time per Response: 30 minutes.
Frequency: On occasion.
Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$10.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 8, 2013.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2013-27310 Filed 11-14-13; 8:45 am]

BILLING CODE 4510-CF-P

NUCLEAR REGULATORY COMMISSION**Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on US-APWR; Notice of Meeting**

The ACRS Subcommittee on US-APWR will hold a meeting on November 20-21, 2013, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, November 20, 2013—8:30 a.m. Until 5:00 p.m.; and Thursday, November 21, 2013—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review Chapter 3, "Design of Structures, Systems, Components, and Equipment," (except Sections 3.7 and 3.8) of the Safety Evaluation Report (SER) associated with the US-APWR design certification and the Comanche Peak Combine License Application (COLA). The Subcommittee will also review Chapter 9, "Auxiliary Systems," of the SER for the Comanche Peak COLA. The Subcommittee will hear presentations by and hold discussions with

representatives of the NRC staff, Mitsubishi Heavy Industries, Ltd., and Luminant Generation Company, LLC. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301-415-6855 or Email: Girija.Shukla@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146-64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240-888-9835) to be escorted to the meeting room.

Dated: November 6, 2013.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013-27446 Filed 11-14-13; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0001]

Sunshine Act Meeting Notice

DATES: Week of November 18, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 18, 2013

Thursday, November 21, 2013

4:00 p.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6)

* * * * *

*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 Baval, 301-415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/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 Kimberly Meyer, NRC Disability Program Manager, at 301-287-0727, or by email at kimberly.meyer-chambers@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an email to Darlene.Wright@nrc.gov.

Dated: November 12, 2013.

Rochelle C. Baval,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013-27558 Filed 11-13-13; 4:15 pm]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. R2014-1; Order No. 1873]

First-Class Mail Postage Payment Option

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Alternate Postage Payment as a price category for First-Class Mail Single-Piece letters and cards. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: Comments are due: November 25, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Postal Service Filing
- III. Commission Action
- IV. Ordering Paragraphs

I. Introduction

On November 5, 2013, the Postal Service filed a notice with the Commission announcing its intent to add Alternate Postage Payment as a price category for First-Class Mail Single-Piece letters and cards pursuant to 39 U.S.C. 3622 and 39 CFR part 3010.¹ The classification and price adjustment will permit producers of First-Class Mail Single-Piece letters and cards to prepay postage so that the mailer would not need to affix a stamp (Adjustment). *Id.* at 2. The Adjustment is proposed to take effect at 12:01 a.m. on January 1, 2014. *Id.* at 1.

II. Postal Service Filing

Alternate Postage Payment category. The Postal Service plans to add Alternate Postage Payment as a price category for First-Class Mail Single-Piece letters and cards. *Id.* at 2. The Postal Service states that the Adjustment will permit producers of First-Class Mail Single-Piece letters and cards to prepay the mailer's postage without the need for affixing a stamp. *Id.* Customers need only address the letter or card and drop it in a collection box. *Id.* at 3. Its simplicity will make customers more likely to mail greeting

¹ United States Postal Service Notice of Market Dominant Classification and Price Changes for the Alternate Postage Payment Method, November 5, 2013 (Notice).

cards and other correspondence. *Id.* The Adjustment will be a premium offering and will be priced above current First-Class Mail Single-Piece postage rates. *Id.*

The Postal Service states that participating businesses will produce and distribute pre-approved envelopes and postcards according to specific design requirements established by the Postal Service and have the option of increasing the value of the pre-approved envelopes by applying a customized Picture Permit at no additional charge. *Id.* Postage will be paid by participating businesses in two stages: (1) An agreed upon prefunded portion of the total postage when the mailpiece is produced or distributed, and (2) the remaining portion when the Intelligent Mail barcode (IMb) on the mailpiece is scanned during normal processing. *Id.* IMb technology will be used to identify and count each mailpiece during processing, and once scanned, the participating business' Centralized Automated Processing System (CAPS) account will be debited. *Id.* After purchasing the pre-approved envelopes from participating businesses, individual customers can then mail the item without using regular postage. *Id.*

The Postal Service states that it has been conducting research through the Alternate Postage Payment Method for Greeting Cards Market Test.² The Postal Service asserts that the market test has been successful and demonstrates the demand for this service as well as verifying the Postal Service's ability to capture the scan data needed to collect postage from participating businesses. Notice at 4. The Postal Service has included as an attachment a redacted version of the most recent data from the Alternate Postage Market Test. *Id.* at Attachment B. In addition, the Postal Service filed as a non-public library reference an unredacted version of the most recent data from the Alternate Postage Market Test.³

The Postal Service proposes a tiered pricing approach. Notice at 5. The proposed pricing approach accommodates price tiers that require up to 20 percent, 21–50 percent, and over 50 percent of the postage to be prefunded. *Id.* at 5. The Postal Service also proposes to charge a slightly lower per-piece postage rate when companies

choose a higher prefunding level, thus allowing businesses to choose a prefunding level based on their unique business needs. *Id.* It indicates the starting price differentials between tiers will be small, but may be adjusted in future filings based on customer response.

The Postal Service provides the proposed pricing structure and requests that the Commission set the Alternate Postage rates as described in Table 1. *Id.* at 6. Due to the prevailing uncertainty surrounding First-Class Mail Single-Piece letter and card rates in 2014, the Postal Service states that it does not intend for the Commission to set the Alternate Postage rates in this manner in subsequent years. *Id.* at n.9. In addition, as the ultimate Alternate Postage price is uncertain, the Postal Service has left prices listed in the Mail Classification Schedule (MCS) blank. *Id.*, see also *id.* at Attachment A.

Impact on the price cap. The Postal Service states that the planned prices have no impact on price cap issues because they do not change the prices for any existing First-Class Mail price categories. *Id.* at 6. Therefore, it made no cap or price change calculations as described in rules 3010.14(b)(1) through (4). *Id.* at 7.

Objectives and factors, workshare discounts, and preferred rates. The Postal Service lists the relevant objectives and factors of 39 U.S.C. 3622, and claims the Adjustment does not substantially alter the degree to which First-Class Mail prices already address the objectives and factors. *Id.* at 7–11. In particular, the Postal Service contends that the Adjustment is an example of the increased pricing flexibility under the Postal Accountability and Enhancement Act (objective 4), and will encourage new mail volumes, which will have the effect of enhancing the financial position of the Postal Service (objective 5). *Id.* at 10. Similarly, the Postal Service claims that the Adjustment encourages increased mail volume (factors 1 and 7) and, by providing a more convenient option for sending letters and cards, with additional postage exceeding any additional costs, will help First-Class Mail cover attributable costs (factor 2). *Id.* at 10–11. Finally, the Postal Service states the Adjustment's use of an IMb to collect postage will promote use of Intelligent Mail (factor 13). *Id.* at 11.

Workshare discounts and preferred rates. According to the Postal Service, the Adjustment will not impact current workshare discounts and no preferred rates are implicated. *Id.* at 11.

Mail Classification Schedule (MCS). The Postal Service provides proposed

MCS language in Attachment A of its Notice.

III. Commission Action

The Commission establishes Docket No. R2014–1 to consider all matters related to the Notice. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the Notice. See 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010. Comments are due no later than November 25, 2013.

The Commission appoints Sean C. Duffy to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2014–1 to consider matters raised by the Postal Service's November 5, 2013 Notice.

2. Interested persons may submit comments on the planned price category implementation. Comments are due no later than November 25, 2013.

3. Pursuant to 39 U.S.C. 505, Sean C. Duffy is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,
Acting Secretary.

[FR Doc. 2013–27282 Filed 11–14–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 103; SEC File No. 270–410, OMB Control No. 3235–0466.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 103 of Regulation

² See Docket No. MT2011–1, Order No. 617, Order Approving Market Test of Alternate Postage Payment Method for Greeting Cards, December 21, 2010; see also Docket No. MT2011–1, Order No. 1577, Order Granting Motion Concerning Market Test, December 13, 2012.

³ See Notice of the United States Postal Service of Filing of Non-Public Library Reference USPS–LR–R2014–1/CP1, November 5, 2013. This filing also included an application for non-public treatment of materials.

M (17 CFR 242.103), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 103—Nasdaq Passive Market Making—permits passive market-making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making.

There are approximately 255 respondents per year that require an aggregate total of 255 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 1 hour to complete. Thus, the total compliance burden per year is 255 burden hours. The total estimated internal labor cost of compliance for the respondents is approximately \$16,065.00, resulting in an estimated internal labor cost of compliance per response of approximately \$63.00 (i.e., \$16,065.00/255 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: November 8, 2013.

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2013–27326 Filed 11–14–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 101

SEC File No. 270–408, OMB Control No. 3235–0464.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 101 of Regulation M (17 CFR 242.101), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 101—Activities by Distribution Participants—prohibits distribution participants from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by this rule may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimus transactions.

There are approximately 1,762 respondents per year that require an aggregate total of 34,525 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes on average approximately 19.594 hours to complete. Thus, the total compliance burden per year is 34,525 burden hours. The total estimated internal labor compliance cost for the respondents is approximately \$2,175,075.00, resulting in an estimated internal labor cost of compliance for each respondent per response of approximately \$1,234.435 (i.e., \$2,175,075.00/1,762 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity

of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: November 8, 2013.

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2013–27324 Filed 11–14–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 5 SEC File No. 270–323, OMB Control No. 3235–0362.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Under Section 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered pursuant to Section 12 of the Exchange Act, or who is a director or an officer of the issuer of such security (collectively “reporting persons”), must file statements setting forth their security holdings in the issuer with the Commission. Form 5 (17 CFR 249.105)

is an annual statement of beneficial ownership of securities. Approximately 4,600 reporting persons file Form 5 annually and we estimate that it takes approximately one hour to prepare the form for a total of 4,600 annual burden hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 8, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-27346 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 104; SEC File No. 270-411, OMB Control No. 3235-0465.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 104 of Regulation M (17 CFR 242.104), under the Securities Exchange Act of 1934 (15

U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 104—Stabilizing and Other Activities in Connection with an Offering—permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (i.e. the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the Self-Regulatory Organization.

There are approximately 795 respondents per year that require an aggregate total of 159 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total compliance burden per year is 159 hours. The total estimated internal labor compliance cost for the respondents is approximately \$10,017.00, resulting in an estimated internal labor cost of compliance for the respondent per response of approximately \$12.60 (i.e., \$10,017/795 responses).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington,

DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 8, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-27327 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 102, SEC File No. 270-409, OMB Control No. 3235-0467.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 102 of Regulation M (17 CFR 242.102), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 102—Activities by Issuers and Selling Security Holders During a Distribution—prohibits distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as exclusion for actively traded reference securities and the maintenance of policies regarding information barriers between their affiliates.

There are approximately 945 respondents per year that require an aggregate total of 1,845 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes on average approximately 1.952 hours to complete. Thus, the total compliance burden per year is 1,845 burden hours. The total compliance cost for the respondents is approximately \$116,235.00, resulting in a cost of compliance for the respondent per response of approximately \$123.00 (i.e., \$116,235.00/945 responses). These are internal labor costs and there are no other costs.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: November 8, 2013.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-27325 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70843; File No. PCAOB-2013-02]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards

November 8, 2013.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), notice is hereby given that on October 30, 2013, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On October 10, 2013, the Board adopted Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements* and related amendments to its interim auditing standards (collectively, the "proposed rules"). The text of the proposed rules is set out below.

Auditing Standard No. 17

Auditing Supplemental Information Accompanying Audited Financial Statements

Introduction

1. This standard sets forth the auditor's responsibilities when the auditor of the company's financial statements is engaged to perform audit procedures and report on *supplemental information*¹ that accompanies financial statements² audited pursuant to Public Company Accounting Oversight Board ("PCAOB") standards.

Objective

2. The objective of the auditor of the financial statements, when engaged to perform audit procedures and report on supplemental information that accompanies audited financial statements, is to obtain sufficient appropriate audit evidence to express an opinion on whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole.

Performing Audit Procedures on Supplemental Information Accompanying Audited Financial Statements

3. The auditor should perform audit procedures to obtain appropriate audit evidence that is sufficient to support the auditor's opinion regarding whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole. The nature, timing, and extent of audit procedures necessary to obtain sufficient appropriate audit evidence and to report on the supplemental information depends on, among other things:

a. The risk of material misstatement of the supplemental information;

¹ Terms defined in Appendix A, Definitions, are set in *boldface type* the first time they appear.

² For purposes of this standard, supplemental information "accompanies financial statements" when it is (1) presented in the same document as the audited financial statements, (2) presented in a document in which the audited financial statements are incorporated by reference, or (3) incorporated by reference in a document containing the audited financial statements.

b. The materiality considerations relevant to the information presented;

Note: When planning and performing the audit procedures to report on supplemental information, the auditor generally should use the same materiality considerations as those used in planning and performing the audit of the financial statements.³ However, if applicable regulatory requirements specify a lower materiality level to be applied to certain supplemental information, the auditor should use those prescribed threshold requirements in planning and performing audit procedures for the supplemental information.

c. The evidence obtained from the audit of the financial statements and, if applicable, other engagements by the auditor or affiliates of the firm,⁴ for the period presented; and

Note: The procedures performed regarding the supplemental information should be planned and performed in conjunction with the audit of the financial statements. For audits of brokers and dealers, the procedures should be coordinated with the attestation engagements related to compliance or exemption reports required by the U.S. Securities and Exchange Commission ("SEC").⁵ The auditor should take into account relevant evidence from the audit of the financial statements and, for audits of brokers or dealers, the attestation engagements, in planning and performing audit procedures related to the supplemental information and in evaluating the results of the audit procedures to form the opinion on the supplemental information.

d. Whether a qualified opinion, an adverse opinion, or a disclaimer of opinion was issued on the financial statements.

4. In performing the audit procedures on supplemental information, the auditor should:

a. Obtain an understanding of the purpose of the supplemental information and the criteria management used to prepare the supplemental information, including relevant regulatory requirements;

³ Auditing Standard No. 11, *Consideration of Materiality in Planning and Performing an Audit*, establishes requirements regarding the auditor's consideration of materiality in planning and performing an audit.

⁴ The term "affiliates of the firm" as used in this standard has the same meaning as the term "affiliates of the accounting firm" as defined in PCAOB Rule 3501.

⁵ See Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, and Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*.

b. Obtain an understanding of the methods of preparing the supplemental information, evaluate the appropriateness of those methods, and determine whether those methods have changed from the methods used in the prior period and, if the methods have changed, determine the reasons for and evaluate the appropriateness of such changes;

c. Inquire of management about any significant assumptions or interpretations underlying the measurement or presentation of the supplemental information;

d. Determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements, as applicable;

e. Perform procedures to test the completeness and accuracy of the information presented in the supplemental information to the extent that it was not tested as part of the audit of financial statements; and

f. Evaluate whether the supplemental information, including its form and content, complies with relevant regulatory requirements or other applicable criteria, if any.

Management Representations

5. The auditor should obtain written representations from management, including:

a. A statement that management acknowledges its responsibility for the fair presentation of the supplemental information and, if applicable, the form and content of that supplemental information, in conformity with relevant regulatory requirements or other applicable criteria;

b. A statement that management believes the supplemental information, including its form and content, is fairly stated, in all material respects;

c. A statement that the methods of measurement or presentation have not changed from those used in the prior period or, if the methods of measurement or presentation have changed, the reasons for such changes and why those changes are appropriate;

d. If the form and content of the supplemental information is prescribed by regulatory requirements or other applicable criteria, a statement that the supplemental information complies, in all material respects, with the regulatory requirements or other applicable criteria, and identification of those requirements or other applicable criteria; and

e. A description of any significant assumptions or interpretations underlying the measurement or presentation of the supplemental information, and a statement that

management believes that such assumptions or interpretations are appropriate.

Evaluation of Audit Results

6. To form an opinion on the supplemental information, the auditor should evaluate whether the supplemental information, including its form and content, is fairly stated, in all material respects, in relation to the financial statements as a whole, including whether the supplemental information is presented in conformity, in all material respects, with the relevant regulatory requirements or other applicable criteria.

7. The auditor should accumulate misstatements regarding the supplemental information identified during performance of audit procedures on the supplemental information and in the audit of the financial statements.⁶ The auditor should communicate accumulated misstatements regarding the supplemental information to management on a timely basis to provide management with an opportunity to correct them.

8. The auditor should evaluate whether uncorrected misstatements related to the supplemental information are material, either individually or in combination with other misstatements, taking into account relevant quantitative and qualitative factors.

Note: The auditor should evaluate the effect of uncorrected misstatements related to the supplemental information in evaluating the results of the financial statement audit.⁷

9. The auditor should evaluate the effect of any modifications to the audit report on the financial statements when forming an opinion on the supplemental information:

a. When the auditor expresses a qualified opinion on the financial statements and the basis for the qualification also applies to the supplemental information, the auditor should describe the effects of the qualification on the supplemental information in the report on supplemental information and should express a qualified opinion on the supplemental information.

b. When the auditor expresses an adverse opinion on the financial statements, the auditor should express an adverse

⁶ See paragraph 10 of Auditing Standard No. 14, *Evaluating Audit Results*, which discusses the auditor's responsibilities regarding the accumulation of misstatements in an audit of financial statements.

⁷ See paragraph 17 of Auditing Standard No. 14, which discusses evaluation of uncorrected misstatements in the financial statement audit.

opinion, or disclaim an opinion, on the supplemental information, whichever is appropriate.

Reporting

10. The auditor's report on supplemental information accompanying audited financial statements should include the following:

a. Identification of the supplemental information.

Note: Identification may be by descriptive title of the supplemental information or reference to the page number and document where the supplemental information is located.

b. A statement that the supplemental information is the responsibility of management.

c. A statement that the supplemental information has been subjected to audit procedures performed in conjunction with the audit of the financial statements.

Note: If the financial statements are presented in a separate document from the supplemental information or otherwise are not readily identifiable to the user of the supplemental information, the auditor's report on supplemental information should identify the document containing the company's financial statements.

d. A statement that the audit procedures performed included determining whether the supplemental information reconciles to the financial statements or the underlying accounting and other records, as applicable, and performing procedures to test the completeness and accuracy of the information presented in the supplemental information.

e. A statement that in forming the auditor's opinion, the auditor evaluated whether supplemental information, including its form and content, complies, in all material respects, with the specified regulatory requirements or other criteria, if applicable.

f. A statement, if applicable, that the supplemental information is presented on a basis that differs from the financial statements and is not prescribed by regulatory requirements. When such a statement is made, the report should describe the basis for the supplemental information presentation.

g. An opinion on whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole, or a disclaimer of opinion.

11. Unless prescribed by regulatory requirements, the auditor may either include the auditor's report on the supplemental information in the auditor's report on the financial

statements or issue a separate report on the supplemental information. If the auditor issues a separate report on the supplemental information, that report should identify the auditor's report on the financial statements.

12. The date of the auditor's report on the supplemental information in relation to the financial statements as a whole should not be earlier than:

a. The date of the auditor's report on the financial statements from which the supplemental information was derived, and

b. The date on which the auditor obtained sufficient appropriate audit evidence to support the auditor's opinion on the supplemental information in relation to the financial statements as a whole.⁸

13. The following is an example of an auditor's report on supplemental information when included in the auditor's report on the financial statements:

The [identify supplemental information] has been subjected to audit procedures performed in conjunction with the audit of [Company's] financial statements. The [supplemental information] is the responsibility of the Company's management. Our audit procedures included determining whether the [supplemental information] reconciles to the financial statements or the underlying accounting and other records, as applicable, and performing procedures to test the completeness and accuracy of the information presented in the [supplemental information]. In forming our opinion on the [supplemental information], we evaluated whether the [supplemental information], including its form and content, is presented in conformity with [specify the relevant regulatory requirement or other criteria, if any]. In our opinion, the [identify supplemental information] is fairly stated, in all material respects, in relation to the financial statements as a whole.

14. If the auditor determines that the supplemental information is materially misstated in relation to the financial statements as a whole, the auditor should describe the material misstatement in the auditor's report on

the supplemental information and express a qualified or adverse opinion on the supplemental information.

15. If the auditor is unable to obtain sufficient appropriate audit evidence to support an opinion on the supplemental information, the auditor should disclaim an opinion on the supplemental information. In those situations, the auditor's report on the supplemental information should describe the reason for the disclaimer and state that the auditor is unable to and does not express an opinion on the supplemental information.

Note: If the supplemental information consists of two or more schedules, and the auditor is able to obtain sufficient appropriate audit evidence to support an opinion on some but not all schedules, the auditor may express an opinion on only those schedules for which he or she obtained sufficient appropriate evidence but should disclaim an opinion on the other schedules.

APPENDIX A—Definitions

A1. For purposes of this standard, the term listed below is defined as follows:

A2. Supplemental Information—Refers to the following information when it accompanies audited financial statements:

a. Supporting schedules that brokers and dealers are required to file pursuant to Rule 17a-5 under the Securities Exchange Act of 1934;⁹

b. Supplemental information (i) required to be presented pursuant to the rules and regulations of a regulatory authority and (ii) covered by an independent public accountant's report on that information in relation to financial statements that are audited in accordance with PCAOB standards; or

c. Information that is (i) ancillary to the audited financial statements, (ii) derived from the company's accounting books and records, and (iii) covered by an independent public accountant's report on that information in relation to the financial statements that are audited in accordance with PCAOB standards.

Amendments to PCAOB Standards

Auditing Standard No. 16, "Communications With Audit Committees"

Auditing Standard No. 16, *Communications with Audit Committees*, is amended as follows:

a. The second sentence of footnote 27 to paragraph 14 is replaced with:

In addition to AU sec. 550, discussion of the auditor's consideration of other information is included in Auditing

Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, AU sec. 558, *Required Supplementary Information*, and AU sec. 711, *Filings Under Federal Securities Statutes*.

AU sec. 9342, "Auditing Accounting Estimates: Auditing Interpretations of Section 342"

AU sec. 9342, "Auditing Accounting Estimates: Auditing Interpretations of Section 342," as amended, is amended as follows:

a. The second sentence of paragraph .07 is replaced with:

When the audited disclosures do not constitute a complete balance sheet presentation and are included in a supplemental schedule or exhibit, the auditor should look to the requirements in Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*.

b. The second sentence of paragraph .08 is replaced with:

If the unaudited voluntary disclosures are located on the face of the financial statements or in the footnotes, the voluntary disclosures should be labeled "unaudited." If the unaudited information is presented in a supplemental schedule, the voluntary disclosures should be labeled "unaudited" and the auditor should disclaim an opinion on the unaudited information.

c. In the second flowchart in paragraph .10, "Auditing Guidance for Fair Value Information, Required and Voluntary Information," the box text that states:

The voluntary disclosures should be labeled "unaudited" and the auditor should disclaim an opinion on the unaudited information as discussed in section 551.13.

is replaced with:

The voluntary disclosures should be labeled "unaudited" and the auditor should disclaim an opinion on the unaudited information.

d. In the second flowchart in paragraph .10, "Auditing Guidance for Fair Value Information, Required and Voluntary Information," the box text that states:

The auditor should add an additional paragraph to the report as discussed in section 551.12

is replaced with:

The auditor should add an additional paragraph to the report. See paragraph 10 of Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*.

⁸ AU sec. 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*, sets forth procedures to be followed by the auditor who, subsequent to the date of the report upon audited financial statements becomes aware that facts may have existed at that date that might have affected the report had he or she then been aware of such facts. AU sec. 561 applies to situations in which the auditor identifies a material misstatement of the financial statements while performing audit procedures on supplemental information after the date of the auditor's report on the financial statements.

⁹ See 17 CFR § 240.17a-5(d)(2).

AU Sec. 530, "Dating of the Independent Auditor's Report"

SAS No. 1, "Codification of Auditing Standards and Procedures," section 530, "Dating of the Independent Auditor's Report" (AU sec. 530, "*Dating of the Independent Auditor's Report*"), as amended, is amended as follows:

Within paragraph .06 at the end of the paragraph, the sentence, "(See Section 551.)" is deleted.

AU Sec. 550, "Other Information in Documents Containing Audited Financial Statements"

SAS No. 8, "Other Information in Documents Containing Audited Financial Statements" (AU sec. 550, "*Other Information in Documents Containing Audited Financial Statements*"), as amended, is amended as follows:

a. Within paragraph .03

• At the end of the paragraph, the sentence "(see sections 551* and 623**)" is replaced with:

(See Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, and AU sec. 623**).

• Footnote * to paragraph .03 is deleted.

b. Paragraph .07 is deleted.

AU Sec. 551, "Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents"

SAS No. 29, "Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents" (AU sec. 551, "*Reporting on Information Accompanying the Basic Financial Statements in Auditor-Submitted Documents*") as amended, is superseded.

AU Sec. 552, "Reporting on Condensed Financial Statements and Selected Financial Data"

SAS No. 42, "Reporting on Condensed Financial Statements and Selected Financial Data" (AU sec. 552, "*Reporting on Condensed Financial Statements and Selected Financial Data*"), as amended, is amended as follows:

The second sentence in paragraph .01 is replaced with:

Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, sets forth the auditor's responsibilities when the auditor of the company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements

audited pursuant to Public Company Accounting Oversight Board standards.

AU Sec. 558, "Required Supplementary Information"

SAS No. 52, "Required Supplementary Information" (AU sec. 558, "*Required Supplementary Information*"), as amended, is amended as follows:

a. Footnote 3 to paragraph .03 is deleted.

b. The second sentence of paragraph .05 is replaced with:

Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, sets forth the auditor's responsibilities when the auditor of the company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements audited pursuant to Public Company Accounting Oversight Board standards.

c. Footnote 7 to paragraph .08 is replaced with:

Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, sets forth the auditor's responsibilities when the auditor of the company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements audited pursuant to Public Company Accounting Oversight Board standards.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, for application to audits of emerging growth companies ("EGCs"), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 ("Exchange Act"). The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Section 103 of the Sarbanes-Oxley Act directs the Board, by rule, to establish, among other things, "auditing and related attestation standards . . . to be used by registered public accounting firm in the preparation and issuance of audit reports, as required by th[e] [Sarbanes-Oxley] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." Auditing Standard No. 17 requires auditors to perform certain audit procedures when engaged to audit and report on supplemental information accompanying financial statements. Supplemental information is required by regulators, including the SEC,¹⁰ who have determined the information is important in carrying out their regulatory oversight. The standard includes auditor performance requirements to (1) determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements, as applicable; (2) test the completeness and accuracy of the supplemental information, to the extent that it was not tested as part of the audit of the financial statements; and (3) evaluate whether the supplemental information, including its form and content, complies with relevant regulatory requirements or other applicable criteria, if any. The standard has been designed to promote coordination between the work performed on the supplemental information and the work performed on the financial statement audit. This approach should enhance audit effectiveness as well as avoid duplication of audit procedures.

In the Board's view, Auditing Standard No. 17 should provide regulators with greater confidence in the quality and consistency of supplemental information accompanying audited

¹⁰ Rule 17a-5 under the Securities Exchange Act of 1934 ("Exchange Act") requires brokers and dealers registered with the SEC to submit financial reports to the SEC that include audited financial statements as well as certain required supporting schedules ("SEC Rule 17a-5"). See 17 CFR 240.17a-5. On July 30, 2013, the SEC adopted amendments to SEC Rule 17a-5 to strengthen and clarify broker and dealer financial reporting requirements and also require that broker and dealer audits be conducted in accordance with PCAOB standards. See SEC Exchange Act Release No. 34-70073, *Broker-Dealer Reports* (July 30, 2013), 78 *Federal Register* 51910 (August 21, 2013) ("SEC Release").

financial statements of brokers,¹¹ dealers¹², and others.¹³ Supplemental information is often required by regulators for their oversight purposes. For example, the supplemental information brokers and dealers are required to include in their annual reports relates to their compliance with certain SEC rules regarding maintaining minimum net capital and reserves,¹⁴ specifically those governing the safeguarding of customer securities and funds in their filings with the Commission. Also, supplemental information includes schedules included in annual reports filed by employee stock purchase, savings, and similar plans on Form 11-K (“11-K filers”), *For Annual Reports Of Employee Stock Purchase, Savings and Similar Plans Pursuant To Section 15(D) Of The Securities Exchange Act Of 1934*,¹⁵ when those entities elect to file plan financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA.¹⁶

As discussed more fully in Exhibit 3, a number of developments led the Board to re-examine its requirements regarding supplemental information. Primarily, Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act¹⁷ (the “Dodd-Frank Act”) gave the Board oversight of audits of brokers and dealers registered with the SEC. Under

¹¹ According to PCAOB Rule 1001(b)(iii), the term “broker” means a broker (as defined in Section 3(a)(4) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

¹² According to PCAOB Rule 1001(d)(iii), the term “dealer” means a dealer (as defined in Section 3(a)(5) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

¹³ For example, certain employee benefit plans that are subject to the Employee Retirement Income Security Act of 1974 (“ERISA”) file an annual report with the Commission on Form 11-K, which includes the plan’s financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA. See 17 CFR § 240.15d–21, 17 CFR § 249.311 and item 4 of the “Required Information” section of SEC Form 11-K “For Annual Reports Of Employee Stock Purchase, Savings And Similar Plans Pursuant To Section 15(D) Of The Securities Exchange Act Of 1934.”

¹⁴ See paragraph (d)(2) of SEC Rule 17a–5.

¹⁵ See 29 CFR 2520.103–1.

¹⁶ See 17 CFR 240.15d–21, 17 CFR § 249.311, and item 4 of the “Required Information” section of SEC Form 11-K “For Annual Reports Of Employee Stock Purchase, Savings And Similar Plans Pursuant To Section 15(D) Of The Securities Exchange Act Of 1934.”

¹⁷ Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

SEC Rule 17a–5, brokers and dealers are required to submit to the SEC financial reports containing certain schedules, including supporting schedules regarding (i) the computation of net capital; (ii) the computation for determination of reserve requirements; and (iii) information related to the broker’s or dealer’s possession or control of its clients’ assets.¹⁸ These schedules provide important information that can support and assist the Commission and other broker or dealer “designated examining authorities”¹⁹ in their oversight of financial responsibility practices of brokers and dealers. In addition, as described in the SEC’s release, one of the SEC’s motivations for its amendments to SEC Rule 17a–5 to require that audits of brokers and dealers—including the examination of the financial statements and supplemental schedules in the financial report—be conducted in accordance with PCAOB standards was to “better ensure alignment between broker-dealer audits and the regulatory policy objectives reflected in the Commission’s financial responsibility rules.”²⁰

On July 30, 2013, the Commission adopted amendments to SEC Rule 17a–5 to require, among other things, that an auditor engaged by the broker or dealer provide an audit report based on an auditor’s examination of the broker’s or dealer’s financial report, which consists of the financial statements and supporting schedules, in accordance with the standards of the PCAOB.²¹ However, the PCAOB’s existing audit standards do not contemplate the SEC’s requirements for an auditor’s report on the examination of the financial statements and supporting schedules of a broker or dealer. As noted earlier, the Board’s existing standard, AU sec. 551, describes the auditor’s reporting responsibilities regarding supplemental information accompanying audited financial statements in terms of *auditor-submitted* documents and, additionally, does not specify audit procedures to be

¹⁸ See paragraph (d)(2) of SEC Rule 17a–5.

¹⁹ Under SEC Rule 17d–1, *Examination for Compliance with Applicable Financial Responsibility Rules*, a registered broker or dealer that is a member of more than one securities self-regulatory organization may be assigned a “designated examining authority” or “DEA” that is responsible for examining the broker or dealer for compliance with SEC financial responsibility rules. An example of a securities self-regulatory organization that is a DEA is the Financial Industry Regulatory Authority.

²⁰ See the SEC Release at 208.

²¹ See paragraphs (f)(1) and (g)(1) of SEC Rule 17a–5. See also paragraph (d)(1)(i)(C) of SEC Rule 17a–5, which requires that the auditor’s report on the examination of the financial report of the broker or dealer be filed with the Commission.

applied to test the supplemental information that is provided to the regulator. Accordingly, the Board decided to adopt Auditing Standard No. 17 and align its standard for performing auditing procedures and reporting on supplemental information with the SEC’s requirements. Due to the importance of the required supplemental information for regulatory purposes, the Board also determined to include audit procedures designed to support the auditor’s reporting requirements, including procedures for testing the supplemental information accompanying the financial statements.

Additionally, the amendments to SEC Rule 17a–5 also require certain brokers and dealers to include in their annual reports a compliance report that addresses, among other things, the broker’s or dealer’s compliance with the SEC rules requiring a broker or dealer to maintain a minimum level of net capital and a reserve of funds or qualified securities in an amount at least equal to the value of the amount of net funds owed to customers of the respective broker or dealer.²² In conjunction with these recent amendments, the Board also is adopting new standards for attestation engagements (the “attestation standards”) that relate to brokers’ and dealers’ compliance reports required in SEC Rule 17a–5.²³ The requirements in the attestation standards are closely related to the audit requirements in this standard regarding supporting schedules for brokers and dealers. Among other things, the attestation standards emphasize the importance of coordinating the work in the compliance attestation engagement with the audit of the financial statements and audit procedures performed on the schedules required under SEC Rule 17a–5.²⁴

In addition to the schedules required by SEC Rule 17a–5, Auditing Standard No. 17 covers supplemental information required to be presented pursuant to the rules and regulations of a regulatory authority when that information is reported on in relation to financial statements that are audited in accordance with PCAOB standards. For example, Auditing Standard No. 17 covers the schedules in Form 11-K of an 11-K filer that elects to file plan

²² See paragraphs (f)(1), (g)(2)(i) and (ii) of SEC Rule 17a–5. The net capital rule is 17 CFR 240.15c3–1, and the reserve requirements rule is paragraph (e) of 17 CFR 240.15c3–3.

²³ See *Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards*, PCAOB Release No. 2013–007 (October 10, 2013).

²⁴ *Id.*

financial statements and schedules prepared in accordance with the financial reporting requirements of ERISA (“covered 11-K filer”).²⁵

In the Board’s view, Auditing Standard No. 17 promotes investor protection because of the importance of supplemental information in meeting regulatory objectives regarding audits of financial statements of brokers, dealers, and others. Because such information is often critical to the effectiveness of regulatory oversight, Auditing Standard No. 17 requires the performance of audit procedures to test the supplemental information to support the auditor’s report on the supplemental information. The standard also requires the auditor to evaluate whether the supplemental information complies with applicable regulatory requirements, which should help facilitate consistent compliance with regulatory requirements and give regulators greater confidence about the reliability of the supplemental information provided for regulatory oversight activities that are important to investor protection.

For example, in the context of oversight of brokers and dealers, the requirements in the standard for testing and evaluating supplemental information could improve the quality of the supporting schedules that regulators rely on when considering whether the broker or dealer maintains adequate safeguards over customer funds and securities. Also, strengthening and clarifying the auditing requirements for applying procedures and reporting on supplemental information could facilitate consistent compliance with SEC Rule 17a-5.

For 11-K filers, the requirements in the standard for testing and evaluating supplemental information may increase the quality of information available to investors, especially the plans’ participants.

Auditing Standard No. 17 also requires the auditor to coordinate the auditor’s work with the financial statement audit. To the extent that the supplemental information relates to information in the financial statements, the enhanced audit attention to the supplemental information could enhance the confidence of regulators and other users in the reliability of the financial statements and supplemental information.

²⁵ The new standard would not apply to 11-K filers that do not make that election because the SEC-required schedules for those 11-K filers are part of the audited financial statements.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Sarbanes-Oxley Act.

B. Board’s Statement on Burden on Competition

Not Applicable.

C. Board’s Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rules for public comment in PCAOB Release No. 2013-008 (October 10, 2013). The Board received eleven written comment letters. The Board has carefully considered all comments received. The Board’s response to the comments it received and the changes made to the rules in response to the comments received are discussed below.

Applicability of the Standard and Definition of Supplemental Information (Appendix A—Definitions)

Auditing Standard No. 17 applies when the auditor of the company’s financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements audited pursuant to PCAOB standards.

The SEC and other regulators may require regulated entities, such as brokers and dealers, to file supplemental information with their annual financial reports for regulatory purposes.²⁶ In other cases, companies may voluntarily provide supplemental information that is derived from, or ancillary to, the company’s financial statements audited pursuant to PCAOB standards.

The proposed standard included a definition of the types of supplemental information to which this standard would apply. In response to questions in the proposing release, several commenters stated that the proposed definition was appropriate, while other commenters expressed concern that, as the proposed definition was expressly tailored to supplemental information included in certain SEC filings by brokers and dealers, the definition did not describe all types of supplemental information that auditors of issuers,

²⁶ Rule 17a-5 under the Securities Exchange Act of 1934 (“Exchange Act”) requires brokers and dealers registered with the SEC to submit financial reports to the SEC that include audited financial statements as well as certain required supporting schedules (“SEC Rule 17a-5”). See 17 CFR 240.17a-5. Paragraph (d)(2) of SEC Rule 17a-5 specifically addresses the supporting schedules. See also SEC Exchange Act Release No. 34-70073, *Broker-Dealer Reports* (July 30, 2013), 78 **Federal Register** 51910 (August 21, 2013) (“SEC Release”).

brokers, and dealers might be engaged to report on.

In particular, several commenters expressed concern that the proposed definition would exclude certain types of supplemental information because that information is not included in SEC filings. One commenter noted that information that is ancillary to financial statements and not otherwise required to be presented pursuant to the rules and regulations of the SEC or another relevant regulatory body, may also be reported on, but not included in an SEC filing. Another commenter gave examples of situations when issuers engage auditors to report on supplemental information that would be excluded under the proposed standard’s definition of supplemental information, including subsidiary-specific data or information used to calculate financial ratios related to a loan covenant or other contractual provision.

After consideration of these comments, the definition of supplemental information has been revised to remove the references to SEC filings. Auditing Standard No. 17 covers the following types of supplemental information:

a. Supporting schedules that brokers and dealers are required to file pursuant to SEC Rule 17a-5;²⁷

b. Supplemental information (i) required to be presented pursuant to the rules and regulations of a regulatory authority and (ii) covered by an independent public accountant’s report on that information in relation to financial statements that are audited in accordance with PCAOB standards; or

c. Information that is (i) ancillary to the audited financial statements, (ii) derived from the company’s accounting books and records, and (iii) covered by an independent public accountant’s report on that information in relation to the financial statements that are audited in accordance with PCAOB standards.

As mentioned previously, the standard covers supplemental information required by regulatory authorities and supplemental information that is voluntarily provided, when the auditor is engaged to report on that information in relation to the financial statements as a whole and the financial statements are audited in accordance with PCAOB standards. However, the standard itself does not impose an obligation to audit such supplemental information.

By its terms, the standard would not apply to unaudited supplemental information. For example, the standard would not apply to the information

²⁷ See paragraph (d)(2) of SEC Rule 17a-5.

required by the accounting standards or Item 302 of SEC Regulation S–K, 17 CFR 229.302. Similarly, auditors should continue to look to the requirements of AU sec. 558, *Required Supplementary Information*, regarding unaudited information about oil and gas producing activities required by Item 302(b) of Regulation S–K 17 CFR 229.302(b) and Financial Accounting Standards Board’s Accounting Standards Codification, Topic 932, Extractive Industries—Oil and Gas, section 932–50–2. Likewise, auditors should continue to look to the requirements of AU sec. 722, *Interim Financial Information*, regarding selected quarterly financial data required by Item 302(a) of Regulation S–K. Additionally, auditors should continue to look to AU sec. 550, *Other Information in Documents Containing Audited Financial Statements*, including Management’s Discussion and Analysis of Financial Condition and Results of Operations, unless the auditor is engaged to examine and report on that information.

Further, the standard does not apply if the auditor who is engaged to audit and report on supplemental information did not audit the financial statements. In those situations, the auditor would not have the knowledge of the company’s financial statements or the evidence regarding the accounts and disclosures in the financial statements necessary to express an opinion regarding whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole. Accordingly, in those instances, the auditor of the supplemental information should look to the requirements in AU sec. 623, *Special Reports*.

Some commenters suggested that the standard would not apply to supplemental information prepared after the financial statement audit because of the requirement in the proposed standard, and related statement in the auditor’s report, that the audit procedures on the supplemental information be performed in conjunction with the audit of the financial statements. Auditing Standard No. 17 applies when the auditor of the company’s financial statements is engaged to perform audit procedures and report on supplemental information that accompanies audited financial statements, regardless of the timing of the preparation of the supplemental information.

To address issues regarding timing, a footnote was added to paragraph 1 of the standard to clarify that supplemental information “accompanies financial statements”

when it is (1) presented in the same document as the audited financial statements, (2) presented in a document in which the audited financial statements are incorporated by reference, or (3) incorporated by reference in a document containing the audited financial statements.

Additionally, the note to paragraph 3.c. of the standard includes the phrase “in conjunction with.” That phrase is meant to indicate that the auditor of the financial statements is in a position to take into account other information available as a result of the financial statement audit, but Auditing Standard No. 17 does not require that the two engagements be performed simultaneously. The note to paragraph 3.c. explains the auditor’s responsibilities for performing audit procedures on the supplemental information “in conjunction with” the audit of the financial statements. That note states that the auditor should take into account relevant evidence from the audit of the financial statements and the attestation engagements²⁸ in planning and performing audit procedures related to the supplemental information and in evaluating the results of the audit procedures to form the opinion on the supplemental information. As such, the language in the standard was retained largely as proposed.

Exclusion of Schedules Required by SEC Regulation S–X

Some commenters expressed concern with the definition of supplemental information because of the discussion in the proposing release,²⁹ which stated that the standard would not apply to schedules prepared pursuant to SEC Regulation S–X.³⁰ One commenter noted that diversity in practice suggests that these schedules may be considered supplementary and not part of the basic financial statements covered by the standard auditor’s opinion. The views of these commenters are not consistent with SEC requirements. Section 1–01(b) of SEC Regulation S–X³¹ states “the term financial statements as used . . . shall be deemed to include all notes to

²⁸ See *Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards*, PCAOB Release No. 2013–007 (October 10, 2013).

²⁹ See Section I.A.1 of Proposed Auditing Standard, *Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards*, PCAOB Release No. 2011–005 (July 12, 2011).

³⁰ See Section 1–01(b) of SEC Regulation S–X, 17 CFR 210.1–01(b).

³¹ See e.g., Rules 5–04, 6–10, 6A–05, 7–05, and Article 12 of Regulation S–X, 17 CFR 210.5–04, 6–10, 6A–05, 7–05, and 12.

the statements and all related schedules”. Thus, it is clear that the schedules required by SEC Regulation S–X are part of the financial statements. As such, no changes were made to the standard.³²

“In Relation to” the Financial Statements as a Whole (Paragraphs 1 and 2)

As stated in the proposing release, the auditor’s report on supplemental information in the standard includes an expression of an opinion on whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole. In order to express an opinion on the supplemental information the auditor performs the procedures set forth in the standard, to the extent not performed in the course of the audit. The concept of expressing an opinion on the supplemental information “in relation to” the financial statements as a whole carries over from the Board’s existing standard for supplemental information, AU sec. 551.

The proposing release requested comment regarding whether to change from the AU sec. 551 “in relation to” approach to reporting on supplemental information to a stand-alone reporting approach. Overall, commenters supported the decision to retain the “in relation to” approach. One commenter stated that it was an appropriate degree of responsibility for supplemental information. Another commenter stated that the level of assurance provided by this type of engagement meets the needs of users in a cost-effective manner.

After consideration of the comments received, the Board determined that the “in relation to” approach remains appropriate for reporting on supplemental information accompanying audited financial statements. Nothing in the comments received indicates that an “in relation to” opinion on supplemental information is inadequate for financial statement users or that the additional cost for stand-alone assurance is warranted for all engagements involving supplemental information. The Board also considered that existing standards, specifically AU sec. 623, establish requirements in those limited situations in which auditors are engaged to audit supplemental information on a stand-alone basis.

Some commenters expressed concern that use of the word “audit” in the

³² The schedules required by SEC Regulation S–X should be referred to in the introductory paragraph and in the opinion of the standard auditor’s report set forth in AU sec. 508, *Reports on Audited Financial Statements*.

introduction and objective paragraphs of the proposed standard implied that the standard requires the auditor to issue a stand-alone audit opinion on supplemental information and that the reference to audit goes beyond the meaning of “in relation to.”

The standard does not require the auditor to issue a stand-alone audit opinion on the supplemental information. However, the standard emphasizes that the auditor should perform procedures to obtain sufficient appropriate audit evidence to support his or her opinion that the supplemental information is fairly stated, in all material respects, “in relation to” the financial statements as a whole. To avoid misperceptions, the wording in paragraphs 1 and 2 of the standard has been revised to state, “. . . when the auditor of the company’s financial statements is engaged to perform audit procedures and report on supplemental information. . . .” Further, several of the amendments to PCAOB standards were revised to reflect this wording.

Materiality (Paragraph 3)

The proposed standard included a requirement for the auditor, in the performance of audit procedures on supplemental information, to use the same materiality considerations as those used in planning and performing the audit of the financial statements. Auditing Standard No. 11, *Consideration of Materiality in Planning and Performing an Audit*, describes the auditor’s responsibilities for considering materiality in planning and performing an audit of the financial statements. Commenters generally supported using the same materiality considerations for supplemental information as those used in the financial statement audit. In general, auditors that are engaged to express an opinion on supplemental information “in relation to” the financial statements as a whole use the same materiality considerations for the audit of the supplemental information as those used in planning and performing the audit of the financial statements.

One commenter recommended that the standard acknowledge instances in which regulatory requirements may prescribe a materiality level for audit procedures over supplemental information that differs from the materiality level used in the audit of the financial statements. As auditors might encounter instances in which this occurs, a note has been added to paragraph 3.b. of the standard stating that “if applicable regulatory requirements specify a lower materiality level to be applied to certain

supplemental information, the auditor should use those prescribed threshold requirements in planning and performing audit procedures for the supplemental information.” For example, if the supplemental information consisted of a list of transactions over a threshold specified by a regulatory agency, the auditor should use that prescribed threshold in planning and performing the audit procedures to be applied to the supplemental information. This is consistent with the requirement in Auditing Standard No. 11 to use a lower materiality level for accounts and disclosures for which there is a substantial likelihood that misstatements of lesser amounts than the materiality level established for the financial statements as a whole would influence the judgment of a reasonable investor.³³

Another commenter expressed concern that paragraph 3 of the proposed standard, which requires the auditor to base the nature, timing, and extent of audit procedures on, among other things, the materiality of the information presented, implied that the auditor will undertake a second audit, separate from the audit of the financial statements. Paragraph 3 of the standard does not require the auditor to perform a second audit. The note to paragraph 3.b. specifically provides that the auditor should use the same materiality considerations for the supplemental information as that for the audit of the financial statements. In general, the objective of using the same materiality considerations from the financial statement audit is consistent with the principle of reporting on the supplemental information in relation to the financial statements as a whole. As such, paragraph 3 was retained substantially as proposed. If the auditor is engaged to audit and report on a stand-alone basis (*i.e.*, not “in relation to”), separate and apart from the audit of the financial statement, the auditor should look to the requirements in AU sec. 623. A stand-alone audit of supplemental information under AU sec. 623 is usually more extensive than applying audit procedures and reporting on supplemental information in relation to the financial statements taken as a whole.³⁴

Performing Audit Procedures on Supplemental Information Accompanying Audited Financial Statements (Paragraphs 3 and 4)

Similar to AU sec. 551, the standard auditor’s report on supplemental information pursuant to Auditing Standard No. 17 includes an opinion on whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole. As with any audit opinion, it is necessary for the auditor to obtain reasonable assurance so the auditor has a reasonable basis for that opinion.³⁵ Accordingly, Auditing Standard No. 17 includes a requirement for the auditor to perform audit procedures to obtain appropriate audit evidence that is sufficient to support the auditor’s opinion on the supplemental information in relation to the financial statements as a whole.

At the same time, Auditing Standard No. 17 recognizes that the circumstances in which the auditor expresses an opinion on supplemental information differ from those of a stand-alone audit. That is, the opinion under Auditing Standard No. 17 is expressed in relation to the financial statements as a whole, and the auditor’s procedures on the financial statements ordinarily provide substantial evidence that is relevant to the supplemental information. Thus, the standard provides that the nature, timing, and extent of audit procedures necessary to obtain sufficient appropriate audit evidence and to report on the supplemental information depend on, among other things:

- The risk of material misstatement of the supplemental information;
- The materiality considerations relevant to the information presented;
- The evidence obtained from the audit of the financial statements and, if applicable, other engagements by the auditor or affiliates of the accounting firm for the period presented; and
- Whether a qualified opinion, an adverse opinion, or a disclaimer of opinion was issued on the financial statements.

Further, the standard states that the procedures performed regarding the supplemental information should be planned and performed in conjunction

³⁵ This also is consistent with the requirements of SEC Rule 17a–5, which requires the auditor to perform an examination of the broker’s or dealer’s financial report, which consists of the financial statements and supplemental schedules. See paragraph (g) of SEC Rule 17a–5. See also the SEC Release at 74, which discusses the SEC’s intention that the auditor obtain reasonable assurance regarding the financial statements and supporting schedules of brokers and dealers.

³³ See paragraph 7 of Auditing Standard No. 11.

³⁴ See AU sec. 623.13.

with the audit of the financial statements and, for audits of brokers and dealers, the procedures should be coordinated with the attestation engagements related to compliance or exemption reports required by the SEC.³⁶ One commenter stated that this requirement implies that the auditor would be required to separately consider and document audit planning considerations relative to supplemental information.

While the standard requires the auditor to assess the risk of material misstatement of the supplemental information as part of determining the nature, timing, and extent of audit procedures, the standard allows this assessment to be performed with, and informed by, the planning and performance of procedures relating to the financial statement audit. The auditor's knowledge obtained from the audit of financial statements and any related engagements (such as an attestation engagement) should generally provide necessary knowledge for the auditor to assess the risk of material misstatement regarding the supplemental information.

For example, evidence regarding the completeness and accuracy of the supplemental information that brokers and dealers are required to file pursuant to SEC Rule 17a-5 may be obtained from procedures performed during an attestation engagement regarding compliance for a broker or dealer and include procedures regarding safeguarding securities or compliance with certain SEC rules.

In addition, paragraph 4 of the standard includes requirements for the auditor to perform the following procedures on supplemental information:

- a. Obtain an understanding of the purpose of the supplemental information and the criteria management used to prepare the supplemental information, including relevant regulatory requirements;
- b. Obtain an understanding of the methods of preparing the supplemental information, evaluate the appropriateness of those methods, and determine whether those methods have changed from the methods used in the prior period and, if the methods have changed, determine the reasons for and

evaluate the appropriateness of such changes;

- c. Inquire of management about any significant assumptions or interpretations underlying the measurement or presentation of the supplemental information;
- d. Determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements, as applicable;
- e. Perform procedures to test the completeness and accuracy of information presented in the supplemental information to the extent that it was not tested as part of the audit of financial statements; and
- f. Evaluate whether the supplemental information, including its form and content, complies with relevant regulatory requirements or other applicable criteria, if any.

Some commenters stated that certain of the required procedures in the proposed standard exceeded those procedures necessary to support an auditor's "in relation to" opinion on supplemental information. Commenters stated that the required procedures in paragraph 4.d. and 4.e. expand the scope of the auditor's responsibility as compared to the existing requirements in AU sec. 551 with respect to information that was not derived from the underlying accounting records. One commenter further stated that information not derived from the underlying accounting records, by its nature, is not subject to internal control over financial reporting and likely would not have been subjected to the auditor's procedures in the audit of the financial statements.

In many instances, supplemental information reported on under PCAOB standards is required by regulators that have determined that the information required is important to carrying out their regulatory authority, and users of that information can reasonably expect that an auditor's report on supplemental information means that the supplemental information has been subjected to audit procedures. This is consistent with AU sec. 551.07, which states that the auditor may "choose to modify or redirect certain of the procedures to be applied in the audit of the basic financial statements so that [the auditor] may express an opinion on the accompanying information" under that standard. If, as some commenters suggested, the auditor's procedures are limited to solely those procedures performed in the financial statement audit, it is possible that few or no audit procedures might be applied directly to the supplemental information in some engagements, and the auditor would

have little or no basis for his or her opinion.

One commenter suggested a revision to the proposed requirement regarding the auditor's responsibility for understanding and evaluating the methods used by management to prepare the supplemental information. The commenter recommended that the auditor should evaluate the appropriateness of the methods used by management to prepare the supplemental information, as well as any changes to those methods. Such a suggestion can be viewed as a necessary step in evaluating whether the supplemental information is fairly stated, so the standard has been revised to specifically include that procedure.

One commenter suggested that consultation with legal counsel or other experts may be necessary. The standard does not prohibit such consultations. Other commenters suggested that additional procedures be included in the standard, such as a requirement for the auditor to consider the complexity of the methodology used to prepare supplemental information, particularly in those situations in which complex analytical or sampling techniques have been employed in the preparation of underlying data. These suggestions did not warrant changes to the standard because the suggested examples are factors that affect the risk of material misstatement of the supplemental information, which the standard already addresses in paragraph 3.

Management Representations (Paragraph 5)

The proposed standard included a requirement for the auditor to obtain written representations from management. Commenters generally supported the language as proposed. One commenter recommended that the standard include an additional requirement for auditors to obtain a representation that management acknowledge its responsibility for the fair presentation of the supplemental information, including its form and content, in accordance with regulatory requirements or other applicable criteria. This additional requirement has been incorporated into the standard.

One commenter suggested that the standard specifically address management representations with respect to supplemental information arising after the auditor has been engaged to perform the financial statement audit. As discussed previously, the auditor's and management's responsibilities relating to supplemental information are not affected by timing considerations, such

³⁶ For example, a compliance examination performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, includes compliance tests relating to the schedules the broker or dealer used to determine compliance with the SEC's net capital rule, 17 CFR 240.15c3-1, and the reserve requirements rule, paragraph (e) of 17 CFR 240.15c3-3.

as whether or not the audit procedures required for the supplemental information were considered when the auditor was first engaged to audit the financial statements; therefore, no changes were made to the standard to address such circumstances. Further, the standard does not prohibit auditors from obtaining additional representations from management in the case in which the auditor believes additional management representations would be appropriate under the circumstances.

Evaluation of Audit Results (Paragraphs 6–9)

The proposed standard included a requirement for the auditor to evaluate whether the supplemental information, including its form and content, is fairly stated, in all material respects, in relation to the financial statements as a whole, including whether the supplemental information is presented in conformity, in all material respects, with the relevant regulatory requirements or other applicable criteria. The evaluation should encompass, among other things, whether the information is complete and accurate, is consistent with the audited financial statements, and complies with relevant regulatory requirements, if applicable.

Commenters generally agreed that the auditor's evaluation of form and content is important to the auditor's evaluation as to whether the supplemental information is fairly stated. One commenter suggested that modification be made to paragraph 6 so that the evaluation of audit results is in the context of the auditor's responsibility to form an opinion on the supplemental information. This recommendation has been reflected in the standard because it provides additional context that helps to clarify the auditor's responsibilities in this area.

Paragraph 9 of the proposed standard included a requirement for the auditor to consider the effect of any modifications to the audit report on the financial statements when evaluating whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole. One commenter stated that the auditor should be prohibited from expressing an "in relation to" opinion on the supplemental information when an adverse or disclaimer of opinion has been issued. Other commenters suggested that additional guidance would be necessary regarding the effect of modification of the auditor's report on the financial statements on the auditor's report on supplemental

information. Some commenters suggested that the standard be revised to follow the requirements in the existing standard more closely regarding when the auditor has issued an adverse opinion or disclaims an opinion on the financial statements.

After consideration of the comments received, the standard was revised to include updated and expanded direction on reporting in these situations. Specifically, paragraph 9 of the standard has been revised to state that the auditor should evaluate the effect of any modifications to the audit report on the financial statements when forming an opinion on supplemental information. The standard provides that:

a. When the auditor expresses a qualified opinion on the financial statements and the basis for the qualification also applies to the supplemental information, the auditor should describe the effects of the qualification on the supplemental information in the report on supplemental information and should express a qualified opinion on the supplemental information.

b. When the auditor expresses an adverse opinion, or disclaims an opinion on the financial statements, the auditor should express an adverse opinion, or disclaim an opinion, on the supplemental information, whichever is appropriate.

Reporting (Paragraphs 10–15)

The proposed standard included requirements regarding reporting on supplemental information that described the auditor's responsibilities when reporting on the types of supplemental information covered by the proposed standard.

The standard does not retain from AU sec. 551 the statement that the supplemental information "is presented for purposes of additional analysis and is not a required part of the basic financial statements." One commenter supported retaining this wording in the standard. However, such a statement could be misunderstood by users as indicating that the supplemental information is supplied on a voluntary basis even when governed by rules regarding content or presentation. In fact, supplemental information presented by brokers, dealers, and others often is presented in conjunction with audited financial statements to comply with rules of regulatory agencies that generally specify the form and content of the information to be provided.

Further, the standard does not retain from AU sec. 551 the statement that "the audit has been performed for the

purpose of forming an opinion on the basic financial statements taken as a whole." One commenter supported including this wording in the standard. However, such a statement could confuse users regarding the relationship between the audit of financial statements and the auditor's "in relation to" opinion on supplemental information given that audit procedures have been performed on the supplemental information that serve to support the auditor's "in relation to" opinion.

The reporting language in the standard is intended to clearly communicate the auditor's responsibilities regarding evaluating the supplemental information. For example, the standard requires the auditor's report to state that the supplemental information has been subjected to audit procedures performed in conjunction with the audit of the financial statements. Also, the standard includes a requirement for the auditor to describe the audit procedures on the supplemental information. This approach differs from the report language provided in AU sec. 551, which provides that the auditor's report should state that the supplemental information has been subjected to the auditing procedures that were applied in the audit of the basic financial statements.

Consistent with AU sec. 551, paragraph 11 of the standard states that, unless prescribed by regulatory requirements,³⁷ the auditor may either include the auditor's report on the supplemental information in the auditor's report on the financial statements or issue a separate report on the supplemental information. If the auditor issues a separate report on the supplemental information, the standard provides that the auditor's report on the supplemental information should identify the auditor's report on the financial statements.

The standard also includes an example of the auditor's report on supplemental information when included with the auditor's report on the financial statements.

One commenter suggested that the reporting elements include a statement that the supplemental information is the responsibility of management and that such a revision would serve to clarify the auditor's responsibility in this area. This recommendation has been incorporated into the list of required

³⁷ For example, paragraph (g)(1) of SEC Rule 17a-5 requires the auditor to prepare an auditor's report on the broker's or dealer's financial report, which covers both the financial statements and supporting schedules.

elements in the auditor's report on supplemental information. Some commenters expressed concern that report language in paragraph 13 of the proposed standard, ". . . and accordingly, its form and content comply, in all material respects, with the relevant regulatory requirements," could be viewed as a separate opinion regarding compliance or as conveying more responsibility for form and content than appropriate.

Because the intention of the proposed standard was not to require a stand-alone opinion on the supplemental information or on compliance, the standard includes revised report elements intended to emphasize that the auditor's evaluation of form and content is part of determining whether the supplemental information is fairly stated, in all material respects, in relation to the audited financial statements rather than a separate opinion on compliance. The revisions are also responsive to commenters who were generally supportive that evaluating form and content is important to the auditor's determination of whether supplemental information is fairly stated in relation to the audited financial statements.

The standard states that if the auditor is unable to obtain sufficient appropriate audit evidence to support an opinion on the supplemental information, the auditor should disclaim an opinion on the supplemental information. In those situations, the auditor's report on the supplemental information should describe the reason for the disclaimer and state that the auditor is unable to and does not express an opinion on the supplemental information.

If the supplemental information consists of two or more schedules and the auditor is able to obtain sufficient appropriate audit evidence to support an opinion on some but not all schedules, the auditor may express an opinion on only those schedules for which he or she obtained sufficient appropriate evidence but should disclaim an opinion on the other schedules. The standard provides the elements that should be included in the auditor's report on supplemental information, many of which are the same as those included in the proposed standard.

Other commenters expressed concern that the reporting requirements in the proposed standard would require a registered public accounting firm to make a legal determination regarding a company's compliance with relevant regulatory rules. The auditor's report issued pursuant to the standard does not

provide, or purport to provide, a legal determination of a broker's or dealer's compliance with the net capital rule or the reserve requirements rule or any other legal determination. However, such a report may be useful to legal counsel or others in making such determinations.

One commenter suggested including a reference to AU sec. 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*, in the proposed standard. The commenter suggested that this standard might be applicable in situations in which the date of the auditor's report on supplemental information is subsequent to the date of the auditor's report on the financial statements. Such a revision would serve to remind auditors of their responsibilities under AU sec. 561. A footnote to paragraph 12.b. was added to address this topic.

Comparison of the Requirements of Auditing Standard No. 17 with the Analogous Standard of the Auditing Standards Board of the American Institute of Certified Public Accountants

The release accompanying the proposed standard discussed certain noteworthy differences between requirements of Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, and the analogous standard of the Auditing Standards Board ("ASB") of the American Institute of Certified Public Accountants ("AICPA"). The analogous standard of the AICPA is Statement on Auditing Standards, *Supplementary Information in Relation to the Financial Statements as a Whole* ("AU-C Section 725").³⁸ This comparison does not cover the application and explanatory material in the ASB standard.³⁹ The International Auditing and Assurance Standards Board does not have an analogous standard.

This discussion is provided for informational purposes only. It is not a summary of or substitute for Auditing Standard No. 17 itself. This comparison

³⁸ These AU-C Sections are contained in Statement on Auditing Standards No. 122, *Statement on Auditing Standards: Clarification and Recodification* ("SAS No. 122"). In October 2011, the ASB adopted SAS No. 122, which contains 39 clarified SASs with "AU-C" section numbers for each clarified SAS. The "AU-C" is a temporary identifier to avoid confusion with references to existing "AU" sections in AICPA Professional Standards.

³⁹ Paragraph A64 of the AU-C 200, Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards, states that although such guidance "does not in itself impose a requirement, it is relevant to the proper application of the requirements of an AU-C section."

may not represent the views of the ASB regarding its standard.

Conditions in Order to Opine on Supplemental Information

PCAOB

Auditing Standard No. 17 does not include conditions in order to opine on supplemental information. Such conditions are not considered necessary in the standard because the supplemental information covered by Auditing Standard No. 17 is generally required by the SEC or other regulatory bodies.

ASB

AU-C Section 725 states that, in order to opine on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole, the auditor should determine that: (a) The supplementary information was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements; (b) the supplementary information relates to the same period as the financial statements; and (c) the auditor issued an audit report on the financial statements that contained neither an adverse opinion nor a disclaimer of opinion. Although Auditing Standard No. 17 does not contain such explicit conditions, the scope of Auditing Standard No. 17 is similar to AU-C Section 725 in that both standards apply only when the auditor of the financial statements is engaged to perform audit procedures and report on supplemental information accompanying audited financial statements.

AU-C Section 725 also states that the auditor should determine that the supplementary information will accompany the entity's audited financial statements or that such audited financial statements will be made readily available by the entity. Auditing Standard No. 17 does not require that the supplementary information accompany the entity's audited financial statements, or that such audited financial statements will be made readily available by the entity. Rather, rules of the SEC and other regulatory agencies specify the requirements for filing or furnishing supplemental information, and whether that supplemental information is to be made publically available.

Performing Audit Procedures on Supplemental Information Accompanying Audited Financial Statements

PCAOB

Paragraph 4 of Auditing Standard No. 17 requires that the auditor perform the following procedures:

- Obtain an understanding of the purpose of the supplemental information and the criteria management used to prepare the supplemental information, including relevant regulatory requirements;
- Obtain an understanding of the methods of preparing the supplemental information, evaluate the appropriateness of those methods, and determine whether those methods have changed from the methods used in the prior period and, if the methods have changed, determine the reasons for and evaluate the appropriateness of such changes;
- Inquire of management about any significant assumptions or interpretations underlying the measurement or presentation of the supplemental information;
- Determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements, as applicable;
- Perform procedures to test the completeness and accuracy of the information presented in the supplemental information to the extent that it was not tested as part of the audit of financial statements; and
- Evaluate whether the supplemental information, including its form and content, complies with relevant regulatory requirements or other applicable criteria, if any.

Additionally, a note to paragraph 3.b. of Auditing Standard No. 17 includes a requirement that when planning and performing the audit procedures to report on supplemental information, the auditor generally should use the same materiality considerations as those used in planning and performing the audit of the financial statements. Additionally, that note further states that if applicable regulatory requirements specify a lower materiality level to be applied to certain supplemental information, the auditor should use those prescribed threshold requirements in planning and performing audit procedures for the supplemental information.

ASB

AU-C Section 725 requires that, in addition to the procedures performed during the audit of the financial statements, in order to opine on whether supplementary information is fairly

stated, in all material respects, in relation to the financial statements as a whole, the auditor should perform certain procedures using the same materiality level used in the audit of the financial statements.

AU-C Section 725 specifically requires the auditor to inquire of management about the purpose of the supplementary information and the criteria used by management to prepare the supplementary information, such as an applicable financial reporting framework, criteria established by a regulator, a contractual agreement, or other requirements, and to determine whether the form and content of the supplementary information complies with the applicable criteria.

Paragraph 4.a. of Auditing Standard No. 17 includes a requirement for the auditor to obtain an understanding of the purpose of the supplemental information and the criteria management used to prepare the supplemental information, including relevant regulatory requirements.

AU-C Section 725 requires the auditor to obtain an understanding about the methods of preparing the supplementary information and to determine whether the methods of preparing the supplementary information have changed from those used in the prior period and, if the methods have changed, the reasons for such changes.

Paragraph 4.b. of Auditing Standard No. 17 includes requirements that the auditor obtain an understanding of the methods of preparing the supplemental information, evaluate the appropriateness of those methods, and determine whether those methods have changed from the methods used in the prior period, and, if the methods have changed, determine the reasons for and evaluate the appropriateness of such changes. This last requirement can be important in determining whether the form and content of the information complies with relevant regulatory requirements.

AU-C Section 725 requires the auditor to compare and reconcile the supplementary information to the underlying accounting and other records used in preparing the financial statements or to the financial statements themselves. Paragraph 4.d. of Auditing Standard No. 17 includes a requirement for the auditor to determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements rather than only to those records used in preparing the financial statements. Certain schedules may be required by the SEC or other regulators that are

prepared from information not directly used to prepare financial statements.

Management's Representations

PCAOB

Paragraph 5 of Auditing Standard No. 17 includes a requirement for the auditor to obtain from management certain written representations regarding the supplemental information.

ASB

AU-C Section 725 requires the auditor to obtain similar representations from management.

AU-C Section 725 states that the auditor should obtain from management representations that when the supplementary information is not presented with the audited financial statements, management will make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance by the entity of the supplementary information and the auditor's report thereon. Auditing Standard No. 17 does not require the auditor to obtain that representation because rules of the SEC and other regulatory agencies specify the requirements for furnishing supplemental information. Further, Auditing Standard No. 17 does not include a requirement that the auditor's report on the supplemental information be included in any document that contains supplemental information for the same reason, so a similar requirement in Auditing Standard No. 17 is not appropriate.

Evaluation of Audit Results

PCAOB

Paragraph 6 of Auditing Standard No. 17 includes a requirement that to form an opinion on the supplemental information, the auditor should evaluate whether the supplemental information, including its form and content, is fairly stated, in all material respects, in relation to the financial statements as a whole, including whether the supplemental information is presented in conformity, in all material respects with the relevant regulatory requirements or other applicable criteria.

Paragraph 7 of Auditing Standard No. 17 includes a requirement for the auditor to accumulate misstatements regarding supplemental information identified during performance of audit procedures on the supplemental information and in the audit of the financial statements and to communicate the accumulated misstatements regarding the

supplemental information to management on a timely basis to provide management with an opportunity to correct them.

Paragraph 8 of Auditing Standard No. 17 includes a requirement for the auditor to evaluate whether uncorrected misstatements related to the supplemental information are material, either individually or in combination with other misstatements, taking into account relevant quantitative and qualitative factors.

ASB

AU-C Section 725 requires the auditor to evaluate the appropriateness and completeness of the supplementary information, considering the results of the procedures performed and other knowledge obtained during the audit of the financial statements.

Reporting

PCAOB

Paragraph 10 of Auditing Standard No. 17 includes a requirement for the auditor to include certain elements in the auditor's report, including identification of the supplemental information, a statement that the supplemental information is the responsibility of management, a statement that the supplemental information has been subjected to audit procedures performed in conjunction with the audit of the financial statements, and a description of certain audit procedures performed.

Paragraph 10 of Auditing Standard No. 17 also includes a requirement that, if the form and content of the supplemental information are prescribed by regulatory requirements or other applicable criteria, the auditor's report should include a statement that, in forming the auditor's opinion on whether the supplemental information was fairly stated, the auditor evaluated whether supplemental information, including its form and content, complies, in all material respects, with the specified regulatory requirements or other criteria.

Additionally, paragraph 10 of Auditing Standard No. 17 includes a requirement that if the supplemental information is presented on a basis that differs from the financial statements and that basis is not prescribed by regulatory requirements, the report should state that and describe the basis for the presentation.

ASB

AU-C Section 725 requires the auditor to include in an explanatory paragraph or separate report on supplementary information a statement

that the audit was conducted for the purpose of forming an opinion on the financial statements as a whole.

Auditing Standard No. 17 does not include similar language.

D. Request to Apply Auditing Standard No. 17 to Audits of Emerging Growth Companies

In developing Auditing Standard No. 17, the Board sought to develop a new auditing standard that takes into account the SEC's requirements for supplemental information in SEC Rule 17a-5. As part of its process, the Board also considered the SEC's economic analysis for its amendments to SEC Rule 17a-5, which included considerations relating to efficiency, competition, and capital formation. Notably, the SEC's analysis considers the economic effects, including the costs and benefits, of the required use of PCAOB standards, and discusses the impact of such change on audits of financial statements and supporting schedules that are required by the SEC to be filed by registered brokers and dealers pursuant to SEC Rule 17a-5.⁴⁰

In addition to considering the SEC's requirements and economic analysis, the Board also took into account other related economic considerations, including comments received on the proposed standard, as discussed further below.⁴¹

Economic Baseline

Regulators such as the SEC make the determination regarding whether an entity must file supplemental information and whether auditors are required to report on that information.

To the Board's knowledge, the only entities that are required to file supplemental information to which the standard would apply are (1) brokers and dealers pursuant to SEC Rule 17a-5⁴² and (2) covered 11-K filers.

⁴⁰ See the SEC Release at 220-226. Notably, after analysis of the views of commenters on the costs of the SEC's proposal to replace GAAS with PCAOB standards with respect to audits of brokers and dealers, the SEC concluded that the Commission "does not expect that a requirement that an audit of financial statements and supporting schedules be conducted in accordance with the standards of the PCAOB instead of with GAAS will result in substantial changes for broker-dealer audit programs and therefore the Commission does not anticipate that this change will result in significant costs to broker-dealers in the form of increased audit fees."

⁴¹ The Board did not specifically request comments that attempted to quantify costs related to the auditing standard, but the Board did request comment on the appropriateness of the standard and received comments that pertained to audit effort and related costs that it considered. The discussion in this section reflects the Board's qualitative assessment of the standard.

⁴² See paragraphs (d)(1)(i)(A) and (d)(2) of SEC Rule 17a-5.

Accordingly, the Board's consideration of the economic consequences of Auditing Standard No. 17 takes into account how the new standard differs from the pre-existing auditing standards applicable to supplemental information required in audits of brokers and dealers and covered 11-K filers.

For brokers and dealers, as discussed previously, the SEC's amendments to Rule 17a-5 require audits of brokers and dealers to be conducted in accordance with PCAOB standards. This includes the examination of the financial report, which consists of the financial statements and supporting schedules. Before the SEC's amendments to Rule 17a-5, audits of brokers and dealers were performed under generally accepted auditing standards ("GAAS"), established by the American Institute of Certified Public Accountants ("AICPA"). Specifically, AU-C Section 725-C, *Supplementary Information in Relation to the Financial Statements as a Whole*, addressed the auditor's responsibilities when auditors were engaged to report on supplemental information in relation to audited financial statements.

For covered 11-K filers, auditors generally use the reporting language in AU sec. 551 in preparing their auditor's reports on the supplemental information under PCAOB standards.

Both GAAS and AU sec. 551 use an "in relation to" approach to reporting. That is, the auditor's report on the supplemental information generally presents an opinion on whether the supplemental information is fairly stated in all material respects "in relation to" the audited financial statements taken as a whole. When reporting using the "in relation to" approach, the materiality considerations generally are the same as those used in forming an opinion on the basic financial statements taken as a whole.⁴³ However, GAAS includes requirements for audit procedures to be applied to the supplemental information, whereas AU sec. 551 generally does not specify audit procedures.

Consideration of Alternatives of Audit Approach

In developing Auditing Standard No. 17, the PCAOB sought to adopt a standard that is tailored to the circumstances under which supplemental information is required in SEC filings of brokers and dealers and covered 11-K filers.

⁴³ See e.g., AU sec. 551.08, which provides that the "measurement of materiality" under that standard is the same as that used in forming an opinion on the financial statements.

Two principal alternatives were considered in developing the new standard⁴⁴—

- A stand-alone audit of the supplemental information

- An “in relation to” approach

As adopted, Auditing Standard No. 17 builds on existing auditing standards by retaining the “in relation to” approach for reporting on supplemental information “in relation to” the financial statements as a whole. The PCAOB assessed the alternative, which would have required the supplemental information to be audited on a stand-alone basis. In the Board’s view, the stand-alone alternative could require substantial additional audit effort because the materiality considerations would be substantially lower than in an “in relation to” approach.⁴⁵ The Board does not believe that this additional audit effort would enhance the quality of supplemental information significantly over properly performed testing and evaluation under the “in relation to” approach. In the Board’s view, the use of the “in relation to” approach—together with the required coordination with the work on the financial statement audit—can accomplish the objectives of the financial statement audit and audit procedures on the supplemental information with more efficient use of resources than the alternative stand-alone approach.

Commenters on the proposed standard generally supported the use of the “in relation to” approach and generally observed that the “in relation to” audit opinion meets the needs of users in a cost-effective manner. Nothing in the comments received indicates that an “in relation to” opinion on supplemental information is inadequate for users of that information.

Additional Considerations

Auditing Standard No. 17 differs from AU sec. 551 in the following key respects:

- Auditing Standard No. 17 specifies audit procedures to be applied to test supplemental information, while AU sec. 551 generally does not specify audit procedures. Furthermore, those audit procedures include consideration of the regulatory requirements for supplemental information, for example,

requirements to evaluate whether the supplemental information complies with the applicable regulatory requirements.

- The new audit procedures are risk-based so that the required level of testing of the supplemental information is commensurate with the risks of material misstatement.

- Auditing Standard No. 17 requires that the audit procedures on the supplemental information be “planned and performed” “in conjunction with” the auditor’s work on the financial statement audit and, if applicable, other engagements.

In developing Auditing Standard No. 17, the Board has taken note of observations from its oversight activities regarding the inconsistencies and deficiencies in auditing practices regarding the application of auditing procedures to supplemental information. For example, a 2013 PCAOB inspection report on audits of brokers and dealers, which were performed under GAAS, indicated that PCAOB inspections staff in their inspections of broker and dealer audits identified auditing deficiencies in 57 of 60 audits and that deficiencies in auditing procedures regarding supporting schedules were among the most frequently noted deficiencies in compliance with audit requirements.⁴⁶

The Board believes that strengthening and clarifying the requirements for supplemental information—and tailoring the required procedures for the supplemental information required by regulatory authorities—will promote consistent auditor performance to support audit reports on supplemental information. Similarly, the risk-based approach set forth in the standard should direct auditors to devote more audit attention to the areas of greatest risk to material misstatement of the supplemental information. The auditor’s enhanced focus on the supplemental information should help give regulators greater confidence about the reliability of the supplemental information used in their regulatory oversight, which is

important to investor protection. For example, as noted previously, in the context of oversight of brokers and dealers, the audit performance requirements in the standard could improve the quality of supplemental information that regulators rely on when considering whether the broker or dealer maintains adequate safeguards over customer funds and securities.

The Board also has taken into account cost considerations in developing Auditing Standard No. 17. As discussed previously, the use of the “in relation to” approach can accomplish the objectives of the financial statement audit and audit procedures on the supplemental information with more efficient use of resources than the alternative stand-alone approach. Also, the risk-based approach helps avoid unnecessary procedures by focusing audit attention on areas of higher risk. Furthermore, the required coordination of the audit procedures on the supplemental information with the audit of the financial statements—and other engagements, when applicable—helps avoid unnecessary duplication of audit procedures. These measures can facilitate the transition to the new standard and help lessen the effects of the associated costs.

Auditing Standard No. 17 has some commonalities with GAAS, for example, the “in relation to” approach and the requirement to apply audit procedures to the supplemental information. This should help facilitate the transition from GAAS to Auditing Standard No. 17 generally and lessen the associated costs for 11-K filers that are audited under both GAAS and PCAOB standards.

The PCAOB acknowledges that the new standard will create some additional compliance costs for affected market participants. These costs include the one-time implementation costs for registered firms to update their audit methodologies to reflect the new standard and train their personnel. However, because, as mentioned above, the new standard builds on concepts in existing standards and has commonalities with GAAS, the PCAOB does not anticipate that changes associated with initial implementation will result in significant costs to auditors (or to brokers and dealers or covered 11-K filers in the form of increased audit fees).

Further compliance costs, which are associated with audit effort, may depend on auditors’ existing auditing practices under pre-existing auditing standards and the size and complexity of the entity being audited.

The Board has taken note of the views of commenters on the proposed

⁴⁴ The preceding section discusses the Board’s decision to adopt a new standard rather than retain AU sec. 551.

⁴⁵ In a stand-alone audit, the auditor would apply materiality considerations for the supplemental information by itself, which typically would be substantially lower than the materiality level for the financial statements as a whole. See e.g., paragraph .13 of AU sec 623.

⁴⁶ See *Second Report on the Progress of the Interim Inspection Program Related to Audits of Brokers and Dealers*, PCAOB Release No. 2013-006 (August 19, 2013), which reports that PCAOB inspection staff identified auditing deficiencies in 57 of the 60 audits of brokers and dealers selected for inspection and that deficiencies in compliance with audit requirements for brokers and dealers under the Exchange Act that were among the most frequently noted by PCAOB inspection staff included deficiencies in audit procedures related to net capital and customer reserve supporting schedules, compliance with the conditions of the exemption claimed by the broker or dealer, and the accountant’s supplemental report on material inadequacies. See PCAOB Release 2013-006, Executive Summary, at ii.

standard in assessing economic considerations. Some auditors who commented on the Board's proposal indicated that the procedures required by the proposed auditing standard were similar to their current practices. Comments from other auditors suggested that they did not perform specific procedures to test supplemental information. To the extent that auditors already are testing supplemental information, the PCAOB does not anticipate significant incremental costs associated with compliance with Auditing Standard No. 17. Those incremental costs might be somewhat higher for auditors that have not been performing specific tests of supplemental information.⁴⁷

Auditing Standard No. 17 is designed to be scalable based on an entity's size and complexity. Specifically, the audit effort under the standard likely will be greater for entities that have more supplemental information or more complex supplemental information. For example, audit effort generally would be greater for larger, more complex brokers or dealers that carry securities for customers than for smaller, less complex brokers that neither carry nor clear securities. Similarly, audit effort generally would be greater for larger, more complex covered 11-K filers that have more investments and reportable transactions subject to regulatory reporting requirements.

Applicability to Audits of Emerging Growth Companies

The Board is adopting Auditing Standard No. 17 pursuant to its authority under the Sarbanes-Oxley Act.⁴⁸

Before rules adopted by the Board can take effect, they must be approved by the SEC. Pursuant to Section 107(b)(3) of the Sarbanes-Oxley Act, the SEC shall

approve a proposed rule if it finds that the rule is "consistent with the requirements of [the Sarbanes-Oxley] Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors."

Additionally, Section 104 of the Jumpstart Our Business Startups Act ("JOBS Act")⁴⁹ amended the Sarbanes-Oxley Act to provide that any additional rules adopted by the PCAOB after April 5, 2012 do not apply to audits of emerging growth companies ("EGCs")⁵⁰ unless the SEC "determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation."⁵¹

The following discussion is intended to provide information that may assist the SEC in any determination it may make regarding whether to apply the new standard to audits of EGCs.

As noted above, Auditing Standard No. 17:

- Strengthens and clarifies the audit requirements regarding supplemental information to promote consistent audit performance and compliance with regulatory requirements, which can enhance the quality of information that is used in regulatory oversight for investor protection and, with respect to covered 11-K filers, increase the quality of information available to investors;
- Helps lessen the effects of the costs associated with the new auditing standard by retaining the "in relation to" approach, setting forth a risk-based approach for the required audit procedures, and requiring coordination with the financial statement audit to avoid redundancy in testing; and

- Is designed to be scalable based on the size and complexity of the entity.

The PCAOB has begun monitoring implementation of the JOBS Act to better understand the characteristics of EGCs and inform the Board's considerations regarding whether it should recommend to the SEC that it apply the new standard and related amendments to audits of EGCs. Based on the PCAOB's research of self-identified EGCs, a substantial majority of EGCs are smaller reporting companies that began reporting under the Exchange Act in 2012 or later.⁵²

Currently, the PCAOB is not aware of EGCs for which auditors would be required to apply this standard. PCAOB staff has performed research on filings of self-identified EGCs. Text searches were used to identify any issuers with audit reports that opine on supplemental information required by Rule 17a-5, and PCAOB staff read the most recent filings of those companies. For those companies for which audited financial statements were available and based on information included in the most recent audited financial statements filed as of May 15, 2013, PCAOB staff has observed that none of the EGCs is a broker or dealer or an 11-K filer. The staff observed one SEC filing containing supplemental information for which an auditor expressed an opinion. Based on the nature of the supplemental information filed, it appears that the issuer included the supplemental information voluntarily rather than pursuant to a requirement specified by rule.

As noted previously, to the Board's knowledge, the only entities that are required to file supplemental information to which Auditing Standard No. 17 will apply are (1) brokers and dealers pursuant to SEC Rule 17a-5 and (2) covered 11-K filers. PCAOB staff has discussed the applicability of the JOBS Act to this rulemaking with the SEC staff. The reporting regimes for registered brokers and dealers under SEC Rule 17a-5 and the reporting regime for employee benefit plans that must comply with financial reporting requirements under both ERISA and the SEC are separate and distinct from those for companies subject to reporting requirements pursuant to Section 13 and 15 of the Exchange Act or for a

⁴⁹ Public Law 112-106, 126 Stat. 306 (2012).

⁵⁰ Section 3(a)(80) of the Exchange Act defines the term "emerging growth company." An issuer generally qualifies as an EGC if it has total annual gross revenue of less than \$1 billion during its most recently completed fiscal year (and its first sale of common equity securities pursuant to an effective Securities Act registration statement did not occur on or before December 8, 2011.) See JOBS Act Section 101(a), (b), and (d). Once an issuer is an EGC, it retains its EGC status until the earliest of: (i) The first year after it has total annual gross revenue of \$1 billion or more (as indexed for inflation every five years by the SEC); (ii) the end of the fiscal year after the fifth anniversary of its first sale of common equity securities under an effective Securities Act registration statement; (iii) the date on which the company issues more than \$1 billion in non-convertible debt during the prior three-year period; or (iv) the date on which it is deemed to be a "large accelerated filer" under the Exchange Act (generally, an entity that has been public for at least one year and has an equity float of at least \$700 million).

⁵¹ See Section 103(a)(3)(C) of Sarbanes-Oxley (15 U.S.C. 7213(a)(3)), as added by Section 104 of the JOBS Act, Public Law 112-106 (April 5, 2012).

⁵² See Appendix 7 of *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, Reports on Audited Financial Statements, and The Auditor's Responsibilities Regarding Other Information in Certain Documents Containing Audited Financial Statements and the Related Auditor's Report, and Related Amendments to PCAOB Standards*, PCAOB Release No. 2013-005 (August 13, 2013).

⁴⁷ The auditors whose comments suggested that they did not perform specific procedures on supplemental information did not address in their letters their current practices for complying with GAAS, which requires audit procedures for supplemental information. To the extent that those auditors apply audit procedures to supplemental information in audits under GAAS, the Board anticipates that the costs of transitioning to Auditing Standard No. 17 would not be significant.

⁴⁸ Public Law 107-204, 116 Stat. 745 (2002). Under Section 101 of the Sarbanes-Oxley Act, the mission of the PCAOB is to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 103 of the Sarbanes-Oxley Act authorizes the Board to adopt auditing standards for use by registered public accounting firms in the preparation and issuance of audit reports "as required by [the] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors."

Securities Act registration statement. The Board defers to the SEC on the applicability of the JOBS Act to this rulemaking for these entities and stands ready to assist the SEC with any additional analysis that may become necessary.

In the event that the standard would be applied to an EGC, the Board has no reason to believe that the economic effects on those EGCs would be different from those described previously for brokers, dealers, and covered 11-K filers. Accordingly, and pursuant to the foregoing discussions, the PCAOB requests that the Commission, to the extent necessary, determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply these amendments to audits of EGCs.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to audits of emerging growth companies, as defined in Section 3(a)(80) of the Exchange Act, the Commission has determined to extend to February 13, 2014 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Sarbanes-Oxley 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/pcaob.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number PCAOB-2013-02 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 PCAOB-2013-02. This file number should be included on the subject line if email 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do 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. PCAOB-2013-02 and should be submitted on or before December 6, 2013.

By the Commission.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-27345 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9476; 34-70847, File No. 265-28]

Dodd-Frank Investor Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of Securities and Exchange Commission Dodd-Frank Investor Advisory Committee.

SUMMARY: The Securities and Exchange Commission Investor Advisory Committee, established pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, is providing notice that it will hold a public meeting on Friday, November 22, 2013, in Multi-Purpose Room LL-006 at the Commission's headquarters, 100 F Street NE., Washington, DC 20549. The meeting

will begin at 10:00 a.m. (EDT) and end at 4:30 p.m. and will be open to the public, except during portions of the meeting reserved for meetings of the Committee's subcommittees. The meeting will be webcast on the Commission's Web site at www.sec.gov. Persons needing special accommodations to take part because of a disability should notify the contact person listed below. The public is invited to submit written statements to the Committee. The agenda for the meeting includes remarks from Commissioners, a recommendation of the Investor as Purchaser Subcommittee regarding a fiduciary duty standard for broker-dealers, a recommendation of the Investor as Purchaser Subcommittee regarding legislation to fund investment adviser examinations, selection of dates for future IAC meetings, and nonpublic subcommittee meetings.

DATES: Written statements should be received on or before November 22, 2013.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email message to rules-comments@sec.gov. Please include File No. 265-28 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. 265-28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without charge; 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: M. Owen Donley III, Chief Counsel, at (202) 551-6322, Office of Investor Education and Advocacy, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

Dated: November 12, 2013.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2013-27383 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70838; File No. SR-OCC-2013-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning an Amendment to the Amended and Restated Clearing and Services Agreement Between The Options Clearing Corporation and NYSE Liffe US LLC in Connection With NYSE Liffe US LLC's Transition to Electronic Vault Receipts

November 8, 2013.

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 October 29, 2013, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii)³ of the Act and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC is proposing to execute an amendment ("Amendment") to the Amended and Restated Clearing and Services Agreement ("Clearing Agreement") between OCC and NYSE Liffe US LLC ("NYSE Liffe US") to make changes to the Clearing Agreement in connection with NYSE Liffe US' transition to electronic vault receipts, from physical vault receipts, to represent metals underlying physically-settled precious metal futures contracts ("Precious Metals Futures"). The Amendment makes certain clarifying and non-material technical changes to the Clearing Agreement.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose of the Proposed Rule Change

OCC provides clearance and settlement services to NYSE Liffe US pursuant to the Clearing Agreement. OCC and NYSE Liffe US have been working together on an initiative that will transition the vault receipts that represent metals underlying Precious Metals Futures to electronic vault receipts, instead of physical vault receipts ("Initiative").⁵ The purpose of this rule filing is to amend the Clearing Agreement so that OCC and NYSE Liffe US may complete the Initiative and begin using electronic vault receipts.

In connection with the Initiative, NYSE Liffe US has entered into bailment agreements with five vaults that will provide depository and transfer services (each such agreement is hereinafter referred to as a "Bailment Agreement") for the electronic vault receipts of NYSE Liffe US members that trade Precious Metals Futures (who are also OCC clearing members). Each Bailment Agreement began as a "form" agreement, which was drafted collectively by NYSE Liffe US and OCC. NYSE Liffe US subsequently negotiated various terms of the form agreement with the five vaults and entered into executed Bailment Agreements with each vault. OCC has reviewed each Bailment Agreement and has determined that certain terms of the Bailment Agreement between NYSE Liffe US and Brink's, Incorporated and Brink's Global Services U.S.A., Inc. (collectively, "Brinks") differ from the form agreement (i.e., Default Cures, Transfer of Metals and Audits) more than the other Bailment Agreements and, therefore, the parties have agreed to limit the amount of electronic vault receipts held at Brinks to no more than \$5 million at this time. Accordingly,

OCC proposes to amend Section 6(c)(iv)(F) of the Clearing Agreement to reflect such limitation.

The Amendment will also make several other non-material technical changes to the Clearing Agreement, which include:

- An amendment to Section 6(c)(ii) of the Clearing Agreement that will clarify NYSE Liffe US' right to pursue disciplinary action against sellers of Precious Metals Futures that do not adhere to time frames set forth by NYSE Liffe US regarding the issuance of vault receipts;

- An amendment to Section 6(c)(v) of the Clearing Agreement to clarify that vault receipts with a registration date of the first day of the Transition period or later must be in electronic form, and vault receipts with a registration date before the first day of the Transition Period must be in paper form;

- A technical amendment to replace the reference to "Bailment Arrangement" in Section 26(a)(ii) of the Clearing Agreement with "Bailment Agreement;"

- Technical amendments to Schedules D and F of the Clearing Agreement to reflect an updated and current checklist and list of executed bailment arrangements; and

- A technical amendment to add a Schedule G to the Clearing Agreement, titled "Form of Declaration of Regularity (referred to as "Bailment Agreements" in the Clearing Agreement)."

2. Statutory Basis for the Proposed Rule Change

OCC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and the rules and regulations thereunder, including Rule 17Ad-22,⁷ because it is designed to permit OCC to perform clearance and settlement services for derivative products that are subject to the jurisdiction of the Commodity Futures Trading Commission (the "CFTC") without adversely affecting OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. The proposed rule change will permit OCC to make certain clarifying and technical amendments to its Clearing Agreement with NYSE Liffe US, a futures market. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

⁵ See Securities Exchange Act Release No. 34-69595 (May 16, 2013), 78 FR 30364 (May 22, 2013) (SR-OCC-2013-06).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the Act because it relates solely to a commodity futures product subject to the exclusive jurisdiction of the CFTC and therefore will not have any impact, or impose any burden, on competition in securities markets or any other market governed by the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(4)(ii)⁹ thereunder. Pursuant to Rule 19b-4(f)(4)(ii),¹⁰ a rule change may take effect upon filing if it primarily affects the clearing operations of the clearing agency with respect to products that are not securities and does not significantly affect any securities clearing operations of the clearing agency or any rights or obligations of the clearing agency with respect to securities clearing or persons using such securities-clearing service. As described above, this rule proposed rule change concerns futures products that are subject to the exclusive jurisdiction of the CFTC and does not adversely affect OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions or the protection of securities investors and the public interest. Notwithstanding the foregoing, OCC will delay its implementation of this rule change until it is deemed certified under Regulation § 40.6 of the CFTC.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 email to rule-comments@sec.gov. Please include File Number SR-OCC-2013-19 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-OCC-2013-19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_13_19.pdf.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-OCC-2013-19 and should be submitted on or before December 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated Authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-27289 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

¹² 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70837; File No. SR-EDGA-2013-32]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 3.5 (Advertising Practices) and To Repeal Rule 3.20 (Initial or Partial Payments) To Conform With the Rules of the Financial Industry Regulatory Authority, Inc.

November 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2013, EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Exchange Act Rule 19b-4(f)(6), which renders the proposal effective upon receipt of this filing by the Commission.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 3.5 (Advertising Practices) and repeal EDGA Rule 3.20 (Initial or Partial Payments) to conform with the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") for purposes of an agreement between the Exchange and FINRA pursuant to Exchange Act Rule 17d-2.⁴ The text of the proposed rule change is available on the Exchange's Web site at <http://www.directedge.com>, at the Exchange's principal office, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ 17 CFR 240.17d-2.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(4)(ii).

¹⁰ *Id.*

¹¹ 17 CFR Part 40.6.

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

Pursuant to Exchange Act Rule 17d-2,⁵ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules ("17d-2 Agreement"). The 17d-2 Agreement covers common members of the Exchange and FINRA ("Common Members") and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) Examination of Common Members for compliance with federal securities laws, rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially identical to FINRA rules; and (iii) enforcement of compliance by Common Members with the federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes to: (i) amend EDGA Rule 3.5 (Advertising Practices) and (ii) repeal EDGA Rule 3.20 (Initial or Partial Payments).

EDGA Rule 3.5 (Advertising Practices)

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Exchange members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's rules and to rename the rule "Communications with the Public."⁶

The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC ("Nasdaq"), which was approved by the Commission.⁷

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d-2 Agreement because they are not identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and imposes different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) contain different content requirements for testimonials. Exchange Rule 3.5(d) and (f) were, therefore, excluded from the 17d-2 Agreement because their requirements were not identical or substantially similar to those required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require its members to comply with FINRA Rule 2210 as if it was part of the Exchange's rules so that Rule 3.5 can be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes would help to avoid confusion among its members that are also FINRA members by further aligning the Exchange Rule 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d-2 Agreement, further reducing duplicative regulation of Exchange members that are also FINRA members.

Summary of FINRA Rule 2210

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention for FINRA members' communications with the public. A summary of FINRA Rule 2210 is below. A complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12-29.⁸

requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require its members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

⁷ See Exchange Act Release No. 58069 (Jun. 30, 2008), 73 FR 39360 (Jul. 9, 2008) (Notice of Filing and Immediate Effectiveness).

⁸ See FINRA Regulatory Notice 12-29 (June 2012) available at http://finra.complinet.com/net_file_store/new_rulebooks/ff/i/FINRANotice12_29.pdf.

FINRA Rule 2210 divides a member's communications with the public into the following three categories:

- *Institutional communication.* FINRA Rule 2210(a)(3) defines "institutional communication" as "any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications."

- *Retail communication.* FINRA Rule 2210(a)(5) defines "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period." "Retail investor" includes any person other than an institutional investor, regardless of whether the person has an account with the firm. Communications that are considered advertisements and sales literature fall under the definition of "retail communication."

- *Correspondence.* FINRA Rule 2210(a)(2) defines "correspondence" as "any written (including electronic) communication that is distributed or made available to fewer than 25 retail investors within any 30-day calendar period."

Supervisory Review. To comply with FINRA Rules 2210(b)'s supervisory requirements, Common Members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must be approved by a supervisor prior to their first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) Another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d): (i) Any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule 2711(a)(9)(A), unless the

⁵ *Id.*

⁶ The Exchange does not propose to require that its members comply with subparagraph (c) of FINRA Rule 2210. FINRA Rule 2210(c) generally

communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

For institutional communications, FINRA Rule 2210(b)(3) requires a member to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to their first use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing institutional communications; (ii) the documentation of such education and training; and (iii) surveillance and follow-up to ensure that such procedures are implemented and adhered to. A member must maintain and make available to FINRA upon request evidence that these supervisory procedures have been implemented and carried out.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of NASD Rule 3010(d). Under NASD Rule 3010(d)(2), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to its investment banking or securities business. These written procedures should include procedures: (i) To review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business; (ii) to properly identify and handle customer complaints; and (iii) to ensure that customer funds and securities are handled in accordance with firm procedures. When such procedures do not require review of all correspondence prior to their first use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing correspondence; (ii) the documentation of such education and

training; and (iii) surveillance and follow-up to ensure that such procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Exchange Act Rule 17a-4(b) and in a format and media that comply with Exchange Act Rule 17a-4. The records must include:

- a copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- for any retail communication for which principal approval is not required pursuant to FINRA Rule 2210(b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Exchange members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail communications with FINRA prior to their first use. Exchange members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets forth general content standards for all communications. More specifically, all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading. No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the

member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, communications may include: (i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. FINRA Rule 2210(d)(6) requires that: (i) If a testimonial in a communication includes a technical aspect of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must also prominently disclose that the testimonial: (a) May not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, if more than \$100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if

applicable, the following: (i) That at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

Rule 3.20 (Initial or Partial Payments)

The Exchange also proposes to delete Exchange Rule 3.20. In January 2010, FINRA repealed NASD Rule 2450 (Initial or Partial Payments) and does not currently include a comparable rule

in its rulebook.⁹ Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of an Exchange member submits partial or installment payments for the purchase of a security with the following exceptions: (i) If a member is acting as agent or broker in such transaction, it must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; (ii) if a member is acting as principal in such transaction, it must, at the time of the transaction, own such security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; and (iii) if applicable to the member, the provisions of Regulation T¹⁰ of the Federal Reserve Board are satisfied. Rule 3.20 also prohibits a member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with a customer whereby the member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such member.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. Specifically, Section 220.8 of Regulation T permits the purchase of a security in the cash account predicated on either: (i) there being sufficient funds in the account; or (ii) the member accepts in good faith the customer's agreement that full cash payment will be made.¹¹ The rule further stipulates that payment must be made within a specified payment period.¹² Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange also believes the hypothecation prohibition in Exchange

⁹ See Exchange Act Release No. 61542 (Feb. 18, 2010), 75 FR 8768 (Feb. 25, 2010) (Order approving proposal to repeal NASD Rule 2450).

¹⁰ Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 et seq.

¹¹ See Section 220.8(a)(1) of Regulation T.

¹² According to Section 220.2 of Regulation T, payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in Exchange Act Rule 15c6-1(a) (17 CFR 240.15c6-1(a)), plus two business days.

Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Rule 3.20, members would still be required to comply with all applicable federal securities laws, including Regulation T.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Exchange Act Section 6(b)(5),¹³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more efficient and effective Exchange rulebook. The Exchange believes that the proposed rule change would provide greater harmonization between the Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among similar Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for Common Members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

¹³ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

The Exchange filed the proposed rule change pursuant to Exchange Act Section 19(b)(3)(A)¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder. 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. Pursuant to Rule 19b-4(f)(6)(iii), however, the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁷ The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately conform its rules to corresponding FINRA rules. This will ensure that such EDGA rules will continue to be covered by the existing 17d-2 Agreement between the Exchange and FINRA. As noted by the Exchange, amending EDGA Rule 3.5 would harmonize Exchange and FINRA rules of similar purpose reducing duplicative regulation of Common Members. In addition, the Commission believes that the repeal of Rule 3.20 would eliminate

an unnecessary rule from the Exchange's rulebook. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.¹⁸

At any time within sixty (60) days of the filing of such 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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EDGA-2013-32 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-EDGA-2013-32. This file number should be included on the subject line if email 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 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 10:00 a.m. and 3:00 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-EDGA-2013-32 and should be submitted on or before December 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-27321 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70839; File No. SR-FINRA-2013-049]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Tier Size Pilot of FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)

November 8, 2013.

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 November 5, 2013, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) to extend the tier size pilot, which currently is scheduled to expire on November 12, 2013.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ See *supra* note 3.

¹⁶ Exchange Act Rule 19b-4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities) (the "Rule") to extend the amendments set forth in File No. SR-FINRA-2011-058 (the "tier size pilot"), which currently are scheduled to expire on November 12, 2013, through November 14, 2014.³

On October 6, 2011, FINRA filed with the SEC a proposed rule change to amend the minimum quotation sizes (or "tier sizes") for OTC equity securities⁴ to, among other things, simplify the tier structure, facilitate the display of customer limit orders, and expand the scope of the Rule to apply to additional quoting participants.⁵ During the proposal process, the SEC received a number of comments and, in response, FINRA proposed that the new tier sizes operate on a pilot basis for one year to allow FINRA and the SEC to better analyze the impact of the revised tier sizes.

To effectively assess the impact of the tier size pilot on quoted OTC equity securities, FINRA has collected and provided to the Commission certain pre- and post-pilot data, including:

- The price of the first trade of each trading day executed at or after 9:30:00 a.m., based on execution time.
- The price of the last trade of each trading day executed at or before 4:00:00 p.m., based on execution time.

³ See Securities Exchange Act Release No. 67208 (June 15, 2012), 77 FR 37458 (June 21, 2012) (Order Approving File No. SR-FINRA-2011-058).

⁴ "OTC Equity Security" means any equity security that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. See FINRA Rule 6420(f).

⁵ See Securities Exchange Act Release No. 65568 (October 14, 2011), 76 FR 65307 (October 20, 2011) (Notice of Filing of File No. SR-FINRA-2011-058).

- Daily share volume.
- Daily dollar volume.
- Number of limit orders from customers and in total.
 - Percentage of the day that the size of the BBO equals the minimum quote size.
 - Number of market makers actively quoting.
 - Number of executions from a limit order and number of limit orders at the BBO or better by tier size from a customer and in total.
 - Liquidity/BBO metrics
 - Time-weighted quoted spread.
 - Effective spread.
 - Time-weighted quoted depth (number of shares) at the inside.
 - Time-weighted quoted depth (dollar value of shares) at the inside.

Amendment No. 2 specified, among other things, that: (1) FINRA would begin submitting the above data for the period of one year by no later than 90 days after the start of the tier size pilot, and (2) the data for each month would be submitted within 20 business days of the beginning of the following month.⁶ In Amendment No. 2, FINRA also stated that, at least 60 days before the conclusion of the tier size pilot, FINRA would provide the SEC with an assessment that addressed the impact of the pilot, the concerns raised by commenters during the rule filing process, and whether the pilot has resulted in the desired effects. FINRA submitted this assessment to the Commission on September 13, 2013. The purpose of this filing is to extend the operation of the tier size pilot for an additional year to provide the SEC with data over a longer time period so that the effects of the tier size pilot can be more thoroughly reviewed.⁷ Consequently, FINRA will continue to provide the Commission with the data noted above, as requested.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date of the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to

⁶ See Amendment No. 2 to File No. SR-FINRA-2011-058, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p126817.pdf> ("Amendment No. 2").

⁷ The Tier Size Pilot Assessment is part of the SEC's comment file for SR-FINRA-2011-058 and also is available on FINRA's Web site at: <http://www.finra.org/Industry/Regulation/RuleFilings/2011/P124615>.

⁸ 15 U.S.C. 78o-3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(11) of the Act.⁹ Section 15A(b)(11) requires that FINRA rules include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied.

FINRA believes that the extension of the tier size pilot for an additional year is consistent with the Act in that it would provide the Commission with additional data and more time to undertake a thorough review of the submitted data and assessment. FINRA believes this additional data and time will enhance the Commission's ability to assess the appropriateness of making the tier size pilot permanent.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

⁹ 15 U.S.C. 78o-3(b)(11).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow the pilot program to continue without interruption. Therefore, the Commission designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2013-049 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2013-049. This file

Commission. The Exchange has satisfied this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

number should be included on the subject line if email 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 St. NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2013-049, and should be submitted on or before December 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-27322 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70840; File No. SR-Phlx-2013-110]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Customer Rebate Program

November 8, 2013.

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 October 31, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the

Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Customer Rebate Program in Section B of the Pricing Schedule.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on November 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to lower certain rebate tier percentage thresholds in the "Customer Rebate Program," in Section B of the Pricing Schedule to provide members a greater opportunity to receive Customer rebates.

Currently, the Exchange has a Customer Rebate Program consisting of four tiers which pays Customer rebates

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

on two Categories, A³ and B,⁴ of transactions.⁵ A Phlx member qualifies for a certain rebate tier based on the percentage of total national customer volume in multiply-listed options

which it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options by totaling electronically-delivered and executed volume, except volume associated with

electronic Qualified Contingent Cross (“QCC”) Orders,⁶ as defined in Exchange Rule 1080(o).⁷ The Exchange pays the following rebates:⁸

Customer Rebate Tiers	Percentage thresholds of national customer volume in Multiply-Listed Equity and ETF Options Classes, excluding SPY Options (Monthly)	Category A	Category B
Tier 1	0.00%–0.75%	0.00	0.00
Tier 2	Above 0.75%–1.60%	0.12	0.17
Tier 3	Above 1.60%–2.60%	0.14	0.17
Tier 4	Above 2.60%	0.15	0.17

The Exchange is proposing to amend the percentage threshold of national customer volume in multiply-listed options in Tier 3 from “Above 1.60%—2.60%” to “Above 1.60%—2.50%.” The Exchange also proposes to amend the Tier 4 percentage threshold from “Above 2.60%” to “Above 2.50%.” The Exchange believes that by lowering the percentage threshold in Tier 4 to 2.50%, as well as shortening the Tier 3 rebate at 2.50%, a greater number of market participants may qualify for Tier 4 Customer rebates and this will encourage market participants to direct a greater number of Customer orders to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Section 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal to lower the Tier 4 percentage threshold is reasonable because a greater number of market participants may qualify for the Tier 4 rebates. Tier 4 pays

higher Category A rebates as compared to Tier 3 Category A rebates. Today, a Phlx member that qualified for a Tier 3 rebate would receive a Customer rebate of \$0.14 per contract in Category A. That same member would receive a \$0.15 per contract Category A rebate with this proposal if the member were to transact volume greater than 2.50% of total national customer volume in multiply-listed options in a month. The Exchange believes that lowering the Tier 4 rebate, thereby shortening the Tier 3 rebate at 2.50%, would cause members to direct an even greater number of Customer orders to the Exchange to qualify for the higher Tier 4 Category A rebate. The proposal would not impact a market participant that currently qualifies for a Tier 3 Category B rebate because both Tiers 3 and 4 pay a Category B Customer rebate of \$0.17 per contract.

The Exchange believes that its proposal to lower the Tier 4 percentage threshold, thereby shortening the Tier 3 rebate at 2.50%, is equitable and not unfairly discriminatory because it will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of electronic Customer volume.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose an undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the Customer Rebate Program will continue to encourage Customer order flow to be directed to the Exchange. By incentivizing members to route Customer orders, the Exchange desires to attract liquidity to the Exchange, which in turn benefits all market participants. All market participants are eligible to qualify for a Customer Rebate.

The Exchange believes the proposed amendment would allow a greater number of market participants to qualify for Tier 4 Customer rebates. The Exchange believes this pricing amendment does not impose a burden on competition but rather that the proposed rule change will continue to promote competition on the Exchange.

The Exchange operates in a highly competitive market, comprised of twelve options exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these

³ Category A rebates are paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II of the Pricing Schedule. Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Orders that are greater than 999 contracts. All Customer PIXL Orders that are greater than 999 contracts are paid a rebate regardless of the contra party to the transaction.

⁴ Category B rebates are paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II. Rebates are paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest, except in the case of Customer PIXL Complex Orders that are greater than 999 contracts.

All Customer PIXL Complex Orders that are greater than 999 contracts are paid a rebate regardless of the contra-party to the transaction.

⁵ See Section B of the Pricing Schedule.

⁶ A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. See Rule 1080(o). See also Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR-Phlx-2011-47) (a rule change to establish a QCC Order to facilitate the execution of stock/

option Qualified Contingent Trades (“QCTs”) that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

⁷ Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control.

⁸ SPY is included in the calculation of Customer volume in Multiply Listed Options that are electronically-delivered and executed for purposes of the Customer Rebate Program, however, the rebates do not apply to electronic executions in SPY.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-Phlx-2013-110 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-2013-110. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 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-2013-110 and should be submitted on or before December 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-27323 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70836; File No. SR-EDGX-2013-40]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 3.5 (Advertising Practices) and To Repeal Rule 3.20 (Initial or Partial Payments) To Conform with the Rules of the Financial Industry Regulatory Authority, Inc.

November 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 2013, EDGX Exchange, Inc. ("Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

Items I and II below, which items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Exchange Act Rule 19b-4(f)(6), which renders the proposal effective upon receipt of this filing by the Commission.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 3.5 (Advertising Practices) and repeal EDGX Rule 3.20 (Initial or Partial Payments) to conform with the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") for purposes of an agreement between the Exchange and FINRA pursuant to Exchange Act Rule 17d-2.⁴ The text of the proposed rule change is available on the Exchange's Web site at <http://www.directedge.com>, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Exchange Act Rule 17d-2,⁵ the Exchange and FINRA entered into an agreement to allocate regulatory responsibility for common rules ("17d-2 Agreement"). The 17d-2 Agreement covers common members of the Exchange and FINRA ("Common Members") and allocates to FINRA regulatory responsibility, with respect to Common Members, for the following: (i) Examination of Common Members for compliance with federal securities laws,

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁴ 17 CFR 240.17d-2.

⁵ *Id.*

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

rules and regulations and rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; (ii) investigation of Common Members for violations of federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules; and (iii) enforcement of compliance by Common Members with the federal securities laws, rules and regulations, and the rules of the Exchange that the Exchange has certified as identical or substantially similar to FINRA rules.

The 17d-2 Agreement included a certification by the Exchange that states that the requirements contained in certain Exchange rules are identical to, or substantially similar to, certain FINRA rules that have been identified as comparable. To conform with comparable FINRA rules for purposes of the 17d-2 Agreement, the Exchange proposes to: (i) amend EDGX Rule 3.5 (Advertising Practices) and (ii) repeal EDGX Rule 3.20 (Initial or Partial Payments).

EDGX Rule 3.5 (Advertising Practices)

The Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require Exchange members to comply with FINRA Rule 2210 as if such Rule were part of the Exchange's rules and to rename the rule "Communications with the Public."⁶ The proposed rule text is substantially the same as Rule 2210(a) of the Nasdaq Stock Market LLC ("Nasdaq"), which was approved by the Commission.⁷

Currently, Exchange Rule 3.5(d) and (f) are excluded from the 17d-2 Agreement because they are not identical to, or substantially similar to, certain FINRA rules. First, Exchange Rule 3.5(d) requires that advertising and sales literature be pre-approved and signed or initialed by a supervisor while FINRA Rule 2210(b) only requires supervisory pre-approval for retail communication, and imposes different supervisory review standards for institutional communication, and correspondence. Second, Rule 3.5(f) and FINRA Rule 2210(d)(6) contain different content requirements for testimonials.

⁶ The Exchange does not propose to require that its members comply with subparagraph (c) of FINRA Rule 2210. FINRA Rule 2210(c) generally requires that FINRA members file certain communications with FINRA. The Exchange believes that it is inappropriate for its rules to require its members to file certain communications with FINRA as such filing requirements under FINRA rules are between FINRA and its members.

⁷ See Exchange Act Release No. 58069 (Jun. 30, 2008), 73 FR 39360 (Jul. 9, 2008) (Notice of Filing and Immediate Effectiveness).

Exchange Rule 3.5(d) and (f) were, therefore, excluded from the 17d-2 Agreement because their requirements were not identical or substantially similar to those required under FINRA Rule 2210(b) and (d)(6) respectively. To harmonize its rules with FINRA, the Exchange proposes to delete the current text of Rule 3.5 and adopt text that would require its members to comply with FINRA Rule 2210 as if it was part of the Exchange's rules so that Rule 3.5 can be incorporated into the 17d-2 Agreement in its entirety.

The Exchange believes that these changes would help to avoid confusion among its members that are also FINRA members by further aligning the Exchange Rule 3.5 with FINRA Rule 2210. The proposed changes to Rule 3.5 are designed to enable the Exchange to incorporate Rule 3.5 into the 17d-2 Agreement, further reducing duplicative regulation of Exchange members that are also FINRA members.

Summary of FINRA Rule 2210

FINRA Rule 2210 generally sets forth the content, filing, supervisory review, and record retention for FINRA members' communications with the public. A summary of FINRA Rule 2210 is below. A complete description of FINRA Rule 2210 is provided in FINRA's Regulatory Notice 12-29.⁸

FINRA Rule 2210 divides a member's communications with the public into the following three categories:

- *Institutional communication.* FINRA Rule 2210(a)(3) defines "institutional communication" as "any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications."

- *Retail communication.* FINRA Rule 2210(a)(5) defines "retail communication" as "any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30-day calendar period." "Retail investor" includes any person other than an institutional investor, regardless of whether the person has an account with the firm. Communications that are considered advertisements and sales literature fall under the definition of "retail communication."

- *Correspondence.* FINRA Rule 2210(a)(2) defines "correspondence" as "any written (including electronic) communication that is distributed or made available to fewer than 25 retail

investors within any 30-day calendar period."

Supervisory Review. To comply with FINRA Rules 2210(b)'s supervisory requirements, Common Members must obtain supervisory pre-approval of all retail communications, while institutional communications and correspondence would be subject to supervisory review, but not pre-approval.

Under FINRA Rule 2210(b)(1), all retail communications must be approved by a supervisor prior to their first use or filing with FINRA under FINRA Rule 2210(c). FINRA's Rule 2210(b)(1)'s supervisory requirements do not apply to a retail communication if, at the time that a member intends to publish or distribute it: (i) Another member has filed it with FINRA and has received a letter from FINRA stating that it appears to be consistent with applicable standards; and (ii) the member has not materially altered it and will not use it in a manner that is inconsistent with the conditions of FINRA's letter. The rule's supervisory review requirements also do not apply to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to NASD Rule 3010(d): (i) Any retail communication that is excepted from the definition of "research report" pursuant to NASD Rule 2711(a)(9)(A), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

For institutional communications, FINRA Rule 2210(b)(3) requires a member to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to their first use or distribution, they must include provisions for: (i) The education and training of associated persons as to the firm's procedures governing institutional communications; (ii) the documentation of such education and

⁸ See FINRA Regulatory Notice 12-29 (June 2012) available at http://finra.complinet.com/net_file_store/new_rulebooks/ff/FINRANotice12_29.pdf.

training; and (iii) surveillance and follow-up to ensure that such procedures are implemented and adhered to. A member must maintain and make available to FINRA upon request evidence that these supervisory procedures have been implemented and carried out.

FINRA Rule 2210(b)(2) states that correspondence is subject to the supervision and review requirements of NASD Rule 3010(d). Under NASD Rule 3010(d)(2), each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to its investment banking or securities business. These written procedures should include procedures: (i) To review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business; (ii) to properly identify and handle customer complaints; and (iii) to ensure that customer funds and securities are handled in accordance with firm procedures. When such procedures do not require review of all correspondence prior to their first use or distribution, they must include provisions for: (i) the education and training of associated persons as to the firm's procedures governing correspondence; (ii) the documentation of such education and training; and (iii) surveillance and follow-up to ensure that such procedures are implemented and adhered to.

Record Retention. Under FINRA Rule 2210(b)(4)(A), members must maintain all retail communications and institutional communications for the retention period required by Exchange Act Rule 17a-4(b) and in a format and media that comply with Exchange Act Rule 17a-4. The records must include:

- A copy of the communication and the dates of first and (if applicable) last use of such communication;
- the name of any registered principal who approved the communication and the date that approval was given;
- in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;
- information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and

- for any retail communication for which principal approval is not required pursuant to FINRA Rule 2210(b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department.

Filing Requirements. Like Nasdaq Rule 2210(a), Exchange Rule 3.5 would expressly state that Exchange members would not be required to comply with FINRA Rule 2210(c). FINRA Rule 2210(c) generally requires FINRA members to file certain retail communications with FINRA prior to their first use. Exchange members who are also FINRA members would continue to be subject to FINRA Rule 2210(c).

Content Standards. FINRA Rule 2210(d) sets forth general content standards for all communications. More specifically, all member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading. No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading. Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

Communications may also not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, communications may include: (i) A hypothetical illustration of

mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; (ii) an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214; and (iii) a price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

Testimonials. FINRA Rule 2210(d)(6) requires that: (i) If a testimonial in a communication includes a technical aspect of investing, the person making the testimonial must have the knowledge and expertise to form a valid opinion; and (ii) retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must also prominently disclose that the testimonial: (a) may not be representative of the experience of other customers; (b) is no guarantee of future performance or success; and (c) is a paid testimonial, if more than \$100 in value has been paid.

Recommendations. FINRA Rule 2210(d)(7)(A) requires that retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) That at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis; (ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months. Members must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member

recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

Retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list: (i) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and (ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

Rule 3.20 (Initial or Partial Payments)

The Exchange also proposes to delete Exchange Rule 3.20. In January 2010, FINRA repealed NASD Rule 2450 (Initial or Partial Payments) and does not currently include a comparable rule in its rulebook.⁹ Like NASD Rule 2450, Exchange Rule 3.20 prohibits any arrangement whereby the customer of an Exchange member submits partial or installment payments for the purchase of a security with the following exceptions: (i) If a member is acting as agent or broker in such transaction, it must immediately make an actual purchase of the security for the account of the customer, and immediately take possession or control of the security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; (ii) if a member is acting as principal in such transaction, it must, at the time of the transaction, own such security and maintain possession or control of the security as long as the member is under the obligation to deliver the security to the customer; and (iii) if applicable to the member, the provisions of Regulation T¹⁰ of the Federal Reserve Board are satisfied.

⁹ See Exchange Act Release No. 61542 (Feb. 18, 2010), 75 FR 8768 (Feb. 25, 2010) (Order approving proposal to repeal NASD Rule 2450).

¹⁰ Federal Reserve Board, Regulation T (Credit by Brokers and Dealers), 12 CFR 220 et seq.

Rule 3.20 also prohibits a member, whether acting as principal or agent, in connection with any installment or partial sales transaction, from making any agreement with a customer whereby the member would be allowed to pledge or hypothecate any security involved in such transaction for any amount in excess of the indebtedness of the customer to such member.

The Exchange proposes to repeal Exchange Rule 3.20 in light of the explicit provisions in Regulation T requiring the deposit of sufficient funds within the specified payment period. Specifically, Section 220.8 of Regulation T permits the purchase of a security in the cash account predicated on either: (i) There being sufficient funds in the account; or (ii) the member accepts in good faith the customer's agreement that full cash payment will be made.¹¹ The rule further stipulates that payment must be made within a specified payment period.¹² Regulation T also allows the purchase of a security in a margin account, whereby a customer must deposit an initial requirement, based upon the amount of the transaction, within the specified payment period.

The Exchange also believes the hypothecation prohibition in Exchange Rule 3.20 would no longer be relevant because it is predicated on a partial or installment payment under the rule. The Exchange notes that, notwithstanding the repeal of Rule 3.20, members would still be required to comply with all applicable federal securities laws, including Regulation T.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Exchange Act Section 6(b)(5),¹³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would further these requirements by eliminating duplicative and unnecessary rules and advancing the development of a more

¹¹ See Section 220.8(a)(1) of Regulation T.

¹² According to Section 220.2 of Regulation T, payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in Exchange Act Rule 15c6-1(a) (17 CFR 240.15c6-1(a)), plus two business days.

¹³ 15 U.S.C. 78f(b)(5).

efficient and effective Exchange rulebook. The Exchange believes that the proposed rule change would provide greater harmonization between the Exchange and FINRA rules of similar purpose, resulting in greater uniformity and less burdensome and more efficient regulatory compliance. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed rule change is not designed to address any competitive issues but rather to provide greater harmonization among similar Exchange and FINRA rules, resulting in less burdensome and more efficient regulatory compliance for Common Members and facilitating FINRA's performance of its regulatory functions under the 17d-2 Agreement.

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

The Exchange filed the proposed rule change pursuant to Exchange Act Section 19(b)(3)(A)¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder. 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Exchange Act Section 19(b)(3)(A) and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ See *supra* note 3.

¹⁶ Exchange Act Rule 19b-4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. Pursuant to Rule 19b-4(f)(6)(iii), however, the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.¹⁷ The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately conform its rules to corresponding FINRA rules. This will ensure that such EDGX rules will continue to be covered by the existing 17d-2 Agreement between the Exchange and FINRA. As noted by the Exchange, amending EDGX Rule 3.5 would harmonize Exchange and FINRA rules of similar purpose reducing duplicative regulation of Common Members. In addition, the Commission believes that the repeal of Rule 3.20 would eliminate an unnecessary rule from the Exchange's rulebook. Accordingly, the Commission hereby grants the Exchange's request and waives the 30-day operative delay.¹⁸

At any time within sixty (60) days of the filing of such 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 Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EDGX-2013-40 on the subject line.

date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

Paper Comments

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

All submissions should refer to File Number SR-EDGX-2013-40. This file number should be included on the subject line if email 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 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-EDGX-2013-40 and should be submitted on or before December 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-27320 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the City of Marianna and the Federal Aviation Administration for the Marianna Municipal Airport, Marianna, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 28.18 acres at the Marianna Municipal Airport, Marianna, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the the City of Marianna, dated August 2, 1947. The release of property will allow the City of Marianna to dispose of the property for other than aeronautical purposes. The property is located at 3595 Industrial Park Drive, Marianna, Florida 32446, in the southeastern quadrant of airport property. The parcel is currently designated nonaeronautical land. The property will be released of its federal obligations to allow for a swap of other property needed for aeronautical purposes. The parcel to be received by the Airport is 57.81 acres and is located in the Runway Protection Zone of Runway 36. The fair market value of the parcel to be released has been determined to be \$200,000. The fair market value of the parcel to be received has been determined to be \$159,000. The Airport will also receive a benefit of enhanced safety by acquiring Runway Protection Zone lands.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Marianna Municipal Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before *December 16, 2013*.

ADDRESSES: Documents are available for review at Marianna Municipal Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written

¹⁹ 17 CFR 200.30-3(a)(12).

comments on the Sponsor's request must be delivered or mailed to: Bill Farris, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

FOR FURTHER INFORMATION CONTACT: Bill Farris, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

Bart Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2013-27332 Filed 11-14-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA-2013-0112]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before January 14, 2014.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA-2013-0112 using any of the following methods:

Electronic submissions: Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Fax: 1-(202) 493-2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to <http://www.regulations.gov> including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Sifrit, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI-132), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46-472, Washington, DC 20590. Dr. Sifrit's phone number is (202) 366-0868 and her email address is kathy.sifrit@dot.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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; (ii) 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; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Physical Fitness and Driving Performance

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—NHTSA Form 1227.

Requested Expiration Date of Approval—3 years from date of approval.

Summary of the Collection of Information—The National Highway Traffic Safety Administration (NHTSA)

proposes to collect information from licensed drivers about their driving habits, and levels of physical activity in order to determine whether they are eligible to participate in a study of the effects of physical activity on driving performance. Study participation will be voluntary and solicited among residents of one or more planned communities in the vicinity of Chapel Hill, North Carolina. Solicitations will be in the form of flyers posted at a community center, and/or announcements in newsletters and on community listserves, and/or sign-ups at a weekly farmer's market and other local events. Interested residents will contact a designated staff member through a toll-free number to enroll. During a brief telephone pre-screening, a project assistant will explain inclusion and exclusion criteria for study participation. Candidate participants who meet inclusion criteria will respond to a telephone questionnaire to allow researchers to gauge activity and fitness level.

A project assistant will make appointments to visit each enrollee to obtain his/her signature on the informed consent agreement, answer questions about study participation and provide the subject with a physical activity monitoring device. The remaining data necessary for this study will be collected by the physical activity monitoring device, a driving performance assessment conducted by a driving rehabilitation specialist, and an in-vehicle data collection system. The in-vehicle system will include a device to collect the vehicle's Global Positioning System coordinates and a companion device to capture an image of the driver to confirm that the driver for each trip is the study participant.

Description of the Need for the Information and Proposed Use of the Information—NHTSA was established to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs.

Previous research indicates that gains in physical fitness improve a number of functional abilities important for safe driving. NHTSA needs to learn more about these relationships between fitness/activity and driving performance to support the development of recommendations and educational/outreach materials aimed at older driver safety. The proposed screening questions and questions about fitness and activity level will allow research

staff to ensure that prospective participants meet study inclusion criteria and facilitate their study participation.

The purpose of the study is to assess the effect(s) of physical activity and physical fitness training on the driving performance of adults 70 and older. Analyses of these data will provide information about whether people age 70 and older who participate in regular physical activity perform better in a driving evaluation and/or drive more than do healthy, sedentary drivers of a similar age; whether particular physical training activities relate to improved functioning in specific driving tasks; and the extent to which driving performance and/or exposure of sedentary older adults will improve, following participation in physical activity. NHTSA will use the information to inform recommendations to the public regarding how improved physical fitness can result in better driving performance for the purpose of reducing injuries and loss of life on the highway.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)— Respondents will include community dwelling, independently living licensed drivers, age 70 and older, from Chapel Hill, North Carolina and surrounding areas. It is estimated that 270 telephone conversations will be conducted with respondents to descriptive solicitations to yield 180 study participants. This assumes that up to one-third of interested older drivers will not meet inclusion/exclusion criteria for study participation.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—The 270 telephone conversations will average 15 minutes in length including introduction, qualifying questions, potential participant questions, logistical questions, and conclusion. The total estimated annual burden will be 67.5 hours. Participants will incur no costs from the data collection and participants will incur no record keeping burden and no record keeping cost from the information collection.

Authority: 44 U.S.C. 3506(c)(2)(A).

Issued on November 12, 2013.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2013-27400 Filed 11-14-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35780]

Dynegy Inc., Illinois Power Holdings, LLC and Illinois Power Holdings II, LLC—Acquisition of Control Exemption—Coffeen and Western Railroad Company and Joppa & Eastern Railroad Company

Dynegy Inc. (Dynegy), Illinois Power Holdings, LLC (IPH) and Illinois Power Holdings II, LLC (IPH II)¹ (collectively, Applicants), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to acquire control of the Coffeen and Western Railroad Company (CWRC) and the Joppa & Eastern Railroad (JERR), both Class III rail carriers that operate within the State of Illinois.

According to Applicants, Dynegy, a noncarrier holding company, and Ameren Corporation (Ameren) have entered into an agreement dated March 14, 2013, in which Dynegy's wholly owned subsidiary, IPH, will acquire Ameren's subsidiary, Ameren Energy Resources Company, LLC (AER) and AER's subsidiaries, Ameren Energy Generating Company (AEGC), Ameren Energy Resources Generating Company, Ameren Energy Fuels and Services Company, and Ameren Energy Marketing Company, including several electric generating plants, and other properties of AER. As part of that agreement, Dynegy, through IPH and IPH II, also will acquire control through stock ownership of CWRC and JERR.² The stock of CWRC is currently owned by AEGC, a wholly owned subsidiary of AER. The stock of JERR is currently owned by Electric Energy, Inc., in which AEGC holds an 80% ownership interest. The remaining 20% ownership interest is held by Kentucky Utilities Company. Applicants state that, following consummation of the transaction, AER will be wholly owned by IPH and AER's name will be changed to Illinois Power Resources Company, LLC, and AEGC will be wholly owned by Illinois Power Resources Company, LLC and its named will be changed to Illinois Power Generating Company.

Applicants intend to consummate the transaction on or about December 2, 2013.

¹ Both IPH and IPH II are wholly owned subsidiaries of Dynegy.

² A redacted version of the agreement was filed with the notice of exemption. The Applicants concurrently filed a motion for protective order pursuant to 49 CFR 1104.14(b) to allow the filing under seal of the unredacted agreement. That motion will be addressed in a separate decision.

Applicants state that: (1) The rail lines operated by CWRC and JERR do not connect with each other or with any rail lines operated by rail carriers in the Dynegy corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the rail lines operated by CWRC and JERR with each other or with any railroad in the Dynegy corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323 pursuant to 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 22, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35780, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy must be served on Andrew B. Kolesar III, Slover & Loftus LLP, 1224 Seventeenth Street NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at www.stb.dot.gov.

Decided: November 12, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2013-27370 Filed 11-14-13; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879-EX

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8879-EX, IRS e-file Signature Authorization for Forms 720, 2290, and 8849.

DATES: Written comments should be received on or before January 14, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the form and instructions should be directed to Katherine Dean, Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at katherine.b.dean@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: IRS e-file Signature Authorization for Forms 720, 2290, and 8849.

OMB Number: 1545-2081.

Form Number: 8879-EX.

Abstract: The Form 8879-EX, IRS e-file Signature Authorization for Forms 720, 2290, and 8849, will be used in the Modernized e-File program. Form 8879-EX authorizes an a taxpayer and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign an electronic excise tax return and, if applicable, authorize an electronic funds withdrawal.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,000.

Estimated Time per Respondent: 3 hours, 7 minutes.

Estimated Total Annual Burden Hours: 46,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013-27330 Filed 11-14-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2004-59

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2004-59, plan amendments following election of alternative deficit reduction contribution.

DATES: Written comments should be received on or before January 14, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Katherine Dean at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at Katherine.b.dean@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

OMB Number: 1545-1889.

Notice Number: Notice 2004-59.

Abstract: Notice 2004-59 sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Public Law 108-218. This notice requires what are designed as restricted amendments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Average Time per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 30, 2013.

Yvette Lawrence,

OMB Reports Clearance Officer.

[FR Doc. 2013-27329 Filed 11-14-13; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection (Annual Certification of Veteran Status and Veteran-Relatives) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify and properly protect VA benefit records.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0654" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632-8924 or FAX (202) 632-8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Annual Certification of Veteran Status and Veteran-Relatives, VA Form 20-0344.

OMB Control Number: 2900-0654.

Type of Review: Revision of a currently approved collection.

Abstract: VBA employees, non-VBA employees in VBA space and Veteran Service Organization employees who have access to VA's benefit records complete VA Form 20-0344. These individuals are required to provide personal identifying information on themselves and any veteran relatives, in order for VA to identify and protect benefit records. VA uses the information collected to determine which benefit records require special handling to guard against fraud, conflict of interest, improper influence etc., by VA and non-VA employees.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,834 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 14,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013-27411 Filed 11-14-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-NEW]

Agency Information Collection (Wrist Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to "OMB Control No. 2900-NEW (Wrist Conditions Disability Benefits Questionnaire)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-NEW (Wrist Conditions Disability Benefits Questionnaire)".

SUPPLEMENTARY INFORMATION: *Title:* Wrist Conditions Disability Benefits Questionnaire, VA Form 21-0960M-16.

OMB Control Number: 2900-NEW (Wrist Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The VA Form 21-0960M-16, *Wrist Conditions Disability Benefits Questionnaire* will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes. The form will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related

to the claimant that is necessary to adjudicate the claim for VA disability benefits. Lastly, this form will gather information related to the claimant's diagnosis of a wrist condition.

Affected Public: Individuals or Households.

Estimated Annual Burden: 20,000.

Estimated Average Burden per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-27395 Filed 11-14-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-NEW]

Agency Information Collection (Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to "OMB Control No. 2900-NEW (Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue

NW., Washington, DC 20420, (202) 632-7492 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-NEW (Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire)".

SUPPLEMENTARY INFORMATION:

Title: (Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire), VA Form 21-0960M-14. *OMB Control Number:* 2900-NEW (Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The VA Form 21-0960M-14, *Back (Thoracolumbar Spine) Conditions Disability Benefits Questionnaire*, will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes. The form will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations and related to the claimant's diagnosis of a Thoracolumbar spine condition. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits.

Affected Public: Individuals or Households.

Estimated Annual Burden: 37,500.

Estimated Average Burden per

Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-27356 Filed 11-14-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-NEW]

Agency Information Collection (Hip and Thigh Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3521), this notice announces that the Veterans Benefits

Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to "OMB Control No. 2900-NEW (Hip and Thigh Conditions Disability Benefits Questionnaire)" in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email crystal.rennie@va.gov. Please refer to "OMB Control No. 2900-NEW (Hip and Thigh Conditions Disability Benefits Questionnaire)".

SUPPLEMENTARY INFORMATION:

Title: Hip and Thigh Conditions Disability Benefits Questionnaire, VA Form 21-0960M-8.

OMB Control Number: 2900-NEW (Hip and Thigh Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The form will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. VA Form 21-0960M-8, *Hip and Thigh Conditions Disability Benefits Questionnaire*, will gather information related to the claimant's diagnosis of a hand or finger condition.

Affected Public: Individuals or Households.

Estimated Annual Burden: 25,000.

Estimated Average Burden per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-27393 Filed 11-14-13; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Hand and Finger Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–NEW (Hand and Finger Conditions Disability Benefits Questionnaire)” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–NEW (Hand and Finger Conditions Disability Benefits Questionnaire)”.

SUPPLEMENTARY INFORMATION:

Title: Hand and Finger Conditions Disability Benefits Questionnaire, VA Form 21–0960M–7.

OMB Control Number: 2900–NEW (Hand and Finger Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.
Abstract: VA Form 21–0960M–7 will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes.

Affected Public: Individuals or Households.

Estimated Annual Burden: 15,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.
Estimated Number of Respondents: 30,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–27407 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Elbow and Forearm Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–NEW (Elbow and Forearm Conditions Disability Benefits Questionnaire)” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–NEW (Elbow and Forearm Conditions Disability Benefits Questionnaire)”.

SUPPLEMENTARY INFORMATION:

Title: Elbow and Forearm Conditions Disability Benefits Questionnaire, VA Form 21–0960M–4.

OMB Control Number: 2900–NEW (Elbow and Forearm Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The VA Form 21–0960M–4, *Elbow and Forearm Conditions Disability Benefits Questionnaire*, will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes. The form will be used to gather necessary information from a claimant’s treating physician regarding the results of medical examinations and related to the claimant’s diagnosis of an elbow or forearm condition. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits.

Affected Public: Individuals or Households.

Estimated Annual Burden: 10,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–27408 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Foot (Including Flatfeet (pes planus)) Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through

www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–NEW (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire)” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–NEW (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire)”.

SUPPLEMENTARY INFORMATION:

Title: Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire, VA Form 21–0960M–5 and 21–0960M–6.

OMB Control Number: 2900–NEW (Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The VA Form 21–0960M–6, *Foot (including flatfeet (pes planus)) Conditions Disability Benefits Questionnaire*, will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes.

Affected Public: Individuals or Households.

Estimated Annual Burden: 40,000.

Estimated Average Burden per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–27396 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Ankle Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900–NEW (Ankle Conditions Disability Benefits Questionnaire)” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email crystal.rennie@va.gov. Please refer to “OMB Control No. 2900–NEW (Ankle Conditions Disability Benefits Questionnaire)”.

SUPPLEMENTARY INFORMATION:

Title: Ankle Conditions Disability Benefits Questionnaire, VA Form 21–0960M–2.

OMB Control Number: 2900–NEW (Ankle Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: VA Form 21–0960M–2 will be used to gather necessary information from a claimant’s treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits. This form will gather information related to the claimants’ diagnosis of an ankle condition.

Affected Public: Individuals or Households.

Estimated Annual Burden: 15,000.

Estimated Average Burden per

Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–27401 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection (Veterans Transportation Service Data Collection); Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate the Veterans Transportation Service Data Collection program to ensure Veterans, Servicemembers, beneficiaries, caregivers and other persons receive timely and reliable transportation for the purpose of examination, treatment and care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov; or to Audrey Revere, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: audrey.revere@va.gov. Please refer to “OMB Control No. 2900–NEW (Veterans Transportation Service Data Collection)” in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Audrey Revere at (202) 461–5604 or FAX (202) 495–5397.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C.

3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Veterans Transportation Service Data Collection.

OMB Control Number: 2900–NEW (Veterans Transportation Service Data Collection).

Type of Review: New collection.

Abstract: The information collection is to ensure Veterans, Servicemembers, beneficiaries, caregivers and other persons receive timely and reliable transportation for the purpose of examination, treatment and care. VHA must identify the beneficiary, the dates and location required to plan a trip for scheduled or unscheduled appointments, and ensure reimbursement of beneficiary travel mileage is not paid for transportation provided through VTS. Information is also collected to facilitate overall evaluation of the effectiveness of the allocation of resources for VTS.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,908 burden hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: 3.32 (On Occasion).

Estimated Number of Respondents: 100,872.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–27392 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Proposed Information Collection (Gravesite Reservation Survey (2 Year)) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine reserved gravesite availability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at www.Regulations.gov; or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: mechelle.powell@va.gov. Please refer to “OMB Control No. 2900–0546” in any correspondence. During the comment period, comments may be viewed online through www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of

information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Gravesite Reservation Survey (2 Year), VA Form 40–40.

OMB Control Number: 2900–0546.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 40–40 is sent biennially to individuals holding gravesite set-asides to ascertain their wish to retain the set-aside, or relinquish it. Gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside. The survey is conducted to assure gravesite set-asides do not go unused.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 2,750.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents: 16,500.

Dated: November 12, 2013.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–27412 Filed 11–14–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection (Knee and Lower Leg Conditions Disability Benefits Questionnaire) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 16, 2013.

ADDRESSES: Submit written comments on the collection of information through www.Regulations.gov, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to oir_submission@omb.eop.gov. Please refer to “OMB Control No. 2900—NEW (Knee and Lower Leg Conditions Disability Benefits Questionnaire)” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-7492 or email crystal.rennie@va.gov.

Please refer to “OMB Control No. 2900—NEW (Knee and Lower Leg Conditions Disability Benefits Questionnaire)”.

SUPPLEMENTARY INFORMATION:

Title: Knee and Lower Leg Conditions Disability Benefits Questionnaire, VA Form 21-0960M-9.

OMB Control Number: 2900—NEW (Knee and Lower Leg Conditions Disability Benefits Questionnaire).

Type of Review: New data collection.

Abstract: The VA Form 21-0960M-9, *Knee and Lower Leg Conditions Disability Benefits Questionnaire*, will be used for disability compensation or pension claims which require an examination and/or receiving private medical evidence that may potentially be sufficient for rating purposes. The form will be used to gather necessary information from a claimant’s treating physician regarding the results of

medical examinations and related to the claimant’s diagnosis of a knee or lower leg condition. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits.

Affected Public: Individuals or Households.

Estimated Annual Burden: 25,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: November 12, 2013.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013-27409 Filed 11-14-13; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 78

Friday,

No. 221

November 15, 2013

Part II

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Attestation Standard No. 1, Examination Engagements Regarding Compliance Reports of Brokers and Dealers, Attestation Standard No. 2, Review Engagements Regarding Exemption Reports of Brokers and Dealers, and Related Amendments to PCAOB Standards; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70842; File No. PCAOB-2013-01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Attestation Standard No. 1, Examination Engagements Regarding Compliance Reports of Brokers and Dealers, Attestation Standard No. 2, Review Engagements Regarding Exemption Reports of Brokers and Dealers, and Related Amendments to PCAOB Standards

November 8, 2013.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), notice is hereby given that on October 30, 2013, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On October 10, 2013, the Board adopted Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, and related amendments to PCAOB standards (collectively, the "proposed rules"). The text of the proposed rules is set out below.

Attestation Standard No. 1

Examination Engagements Regarding Compliance Reports of Brokers and Dealers

Introduction

1. This standard establishes requirements that apply when an auditor is engaged to perform an examination¹ of certain statements

¹ See paragraphs (d)(1)(i)(C) and (g)(2)(i) of SEC Rule 17a-5, which require that certain brokers or dealers file with the SEC a report prepared by an independent accountant based on an examination of the compliance report, if the broker or dealer is required to file a compliance report with the SEC.

made by a broker² or dealer³ in a compliance report ("compliance report") prepared pursuant to Securities and Exchange Act of 1934 ("Exchange Act") Rule 17a-5, 17 CFR 240.17a-5 ("SEC Rule 17a-5") of the U.S. Securities and Exchange Commission ("SEC").⁴

2. SEC Rule 17a-5 requires a broker's or dealer's compliance report to include the following statements (hereinafter referred to as "assertions") by the broker or dealer as to whether:⁵

a. The *Internal Control Over Compliance*⁶ of the broker or dealer was effective during the most recent fiscal year;

b. The *Internal Control Over Compliance* of the broker or dealer was effective as of the end of the most recent fiscal year;⁷

c. The broker or dealer was in compliance with 17 CFR 240.15c3-1 (the "net capital rule") and 240.15c3-3(e) (the "reserve requirements rule") as of the end of the most recent fiscal year; and

d. The information the broker or dealer used to state whether it was in compliance with the net capital rule and the reserve requirements rule was derived from the books and records of the broker or dealer.

² According to PCAOB Rule 1001(b)(iii), the term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

³ According to PCAOB Rule 1001(d)(iii), the term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

⁴ See paragraph (g)(2)(i) of SEC Rule 17a-5.

⁵ The scope of the auditor's examination does not encompass the statement required by paragraph (d)(3)(i)(A)(1) of SEC Rule 17a-5, which is a statement as to whether the broker or dealer has established and maintained *Internal Control Over Compliance* as that term is defined in paragraph (d)(3)(ii) of SEC Rule 17a-5. See paragraphs (d)(3) and (g)(2)(i) of SEC Rule 17a-5.

⁶ Terms defined in Appendix A, *Definitions*, are set in *boldface type* the first time they appear. The definitions of the terms in Appendix A are consistent with paragraphs (d)(3)(ii) and (iii) of SEC Rule 17a-5.

⁷ See paragraph (d)(3)(iii) of SEC Rule 17a-5, which provides that "a broker or dealer is not permitted to conclude that its *Internal Control Over Compliance* was effective during the most recent fiscal year if there were one or more material weaknesses in its *Internal Control Over Compliance* during the most recent fiscal year. The broker or dealer is not permitted to conclude that its *Internal Control Over Compliance* was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its *Internal Control Over Compliance* as of the end of the most recent fiscal year."

Objective

3. When performing an examination of the assertions made by a broker or dealer in a compliance report (an "examination engagement"), the auditor's objective is to express an opinion regarding whether the assertions made by the broker or dealer in its compliance report are fairly stated, in all material respects.

4. To express an opinion on the assertions made by a broker or dealer in a compliance report, the auditor must plan and perform the examination engagement to obtain appropriate evidence that is sufficient⁸ to obtain reasonable assurance⁹ about whether (1) one or more *Material Weaknesses* existed during the most recent fiscal year specified in the broker's or dealer's assertion; (2) one or more *Material Weaknesses* existed as of the end of the most recent fiscal year specified in the broker's or dealer's assertion; and (3) one or more instances of non-compliance with the net capital rule or the reserve requirements rule existed as of the end of the most recent fiscal year specified in the broker's or dealer's assertion.

Note: Because the broker's or dealer's assertions include assertions regarding *Internal Control Over Compliance* and its compliance with both the net capital rule and the reserve requirements rule, the auditor's examination should evaluate (a) the effectiveness of *Internal Control Over Compliance* with each financial responsibility rule¹⁰ during, and as of the end of, the most recent fiscal year, and (b) compliance with the net capital rule and with the reserve requirements rule as of the end of the most recent fiscal year.

Note: The auditor is not required to express an opinion on the process the broker or dealer used to arrive at the conclusions stated in the broker's or dealer's assertions.

5. The auditor also must plan and perform the examination engagement to obtain appropriate evidence that is sufficient to obtain reasonable assurance to support the auditor's opinion regarding whether the assertion by the broker or dealer that the information used to assert compliance with the net

⁸ See the description of "sufficiency" and "appropriateness" in Auditing Standard No. 15, *Audit Evidence*.

⁹ Although not absolute assurance, reasonable assurance is a high level of assurance.

¹⁰ The term "financial responsibility rules" refers to: 17 CFR 240.15c3-1 ("SEC Rule 15c3-1" or the "net capital rule"); 17 CFR 240.15c3-3 ("SEC Rule 15c3-3"); 17 CFR 240.17a-13 ("SEC Rule 17a-13"); and any rule of the designated examining authority ("DEA") of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer. The financial responsibility rules are the same as the rules cited in paragraph (d)(3)(ii) of SEC Rule 17a-5.

capital rule and the reserve requirements rule was derived from the books and records of the broker or dealer, is fairly stated, in all material respects.

Performing the Examination Engagement

General Requirements

6. An auditor who performs an examination engagement pursuant to this standard must:

- Have adequate technical proficiency in attestation engagements;
- Obtain an understanding of the financial responsibility rules and other rules and regulations that are relevant to the broker's or dealer's assertions;
- Determine the auditor's compliance with independence and ethics requirements; and
- Exercise due professional care, which includes application of professional skepticism, in planning and performing the examination and the preparation of the report.

Note: Due professional care imposes a responsibility on each engagement team member to comply with this standard. The exercise of due professional care requires critical review at every level of supervision of the work done and the judgment exercised by those assisting in the engagement, including preparing the report.¹¹

Note: Auditing Standard No. 3, *Audit Documentation*, establishes the documentation requirements for examination engagements performed pursuant to this standard.

7. The engagement partner is responsible for the examination engagement and performance of the examination procedures. Accordingly, the engagement partner is responsible for proper planning of the examination engagement, proper supervision of the work of engagement team members, and compliance with the requirements of this standard. The engagement partner may seek assistance from appropriate engagement team members in fulfilling these responsibilities.

Note: For purposes of this standard, the term "engagement partner" means the member of the engagement team with primary responsibility for the examination engagement.

Note: Proper planning includes establishing an overall strategy for the examination engagement and developing a plan for the engagement, which includes, in particular, the nature, timing, and extent of procedures necessary to obtain reasonable assurance. Proper supervision includes

supervising the work of engagement team members so that the work is performed as directed and supports the conclusions reached.

Relationship Between the Examination Engagement and the Audit of the Financial Statements and the Audit Procedures Performed on Supplemental Information

8. The examination engagement should be coordinated with the audit of the financial statements and the audit procedures performed on supplemental information of the broker or dealer.¹² In planning and performing procedures for, and evaluating the results of the procedures performed in, the examination engagement, the auditor should take into account relevant evidence from the audit of the financial statements and the audit procedures performed on the supplemental information. However, the objectives of the financial statement audit and the examination engagement are not the same, so the auditor must plan and perform the work to meet the objectives of both engagements.

Planning the Examination Engagement

9. The auditor should plan the examination engagement to perform procedures that are sufficient to provide a reasonable basis for determining whether the broker's or dealer's assertions are fairly stated, in all material respects. In planning the examination engagement, the auditor should:

- Evaluate the nature of instances of non-compliance with the financial responsibility rules and *Deficiencies in Internal Control Over Compliance* identified during previous examination engagements;
- Obtain an understanding of the broker's or dealer's processes, including relevant controls, regarding compliance with the financial responsibility rule;¹³

Note: The nature, timing, and extent of procedures that are necessary to obtain an understanding of the broker's or dealer's

¹² Under the definition of supplemental information included in Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, supplemental information includes the supporting schedules described in paragraph (d)(2) of SEC Rule 17a-5, which are required to be filed with the SEC, DEA, and the Securities Investor Protection Corporation ("SIPC") by brokers and dealers. Such supporting schedules include a Computation of Net Capital Under SEC Rule 15c3-1, a Computation for Determination of the Reserve Requirements Under Exhibit A of SEC Rule 15c3-3, and Information Relating to Possession or Control Requirements Under SEC Rule 15c3-3.

¹³ Appendix B of this standard discusses considerations for brokers and dealers with multiple divisions or branches.

processes, including relevant controls, regarding compliance with the financial responsibility rules depend on the size and complexity of the broker or dealer; the auditor's existing knowledge of the broker's or dealer's processes and controls; the degree to which the broker's or dealer's compliance depends on the completeness and accuracy of the broker's or dealer's internally generated data; the nature and extent of changes in systems and operations, if any; and the nature of the broker's or dealer's documentation of its processes and controls.

Note: Obtaining an understanding of the broker's or dealer's processes, including relevant controls, includes evaluating the design of controls that are relevant to the examination and determining whether the controls have been implemented.

- Obtain an understanding of instances of non-compliance with the financial responsibility rules and *Deficiencies in Internal Control Over Compliance* identified by management during the most recent fiscal year;
- Assess the risks associated with related parties,¹⁴ including related parties that are investment advisors or entities with which the broker or dealer has a custodial or clearing relationship, that are relevant to compliance and controls over compliance;
- Obtain an understanding of management's competence regarding the relevant rules and regulations;
- Read the Financial and Operational Combined Uniform Single Reports ("FOCUS Reports")¹⁵ filed by the broker or dealer and obtain an understanding of the reasons for resubmissions, if any;
- Read reports of internal auditors, others who perform an equivalent function, compliance functions, and other auditors that are relevant to the broker's or dealer's assertions;
- Inquire of management, and, if applicable, other individuals at the broker or dealer who have relevant knowledge regarding regulatory examinations and correspondence between the SEC or the broker's or dealer's DEA and the broker or dealer that are relevant to the broker's or dealer's assertions;
- Read correspondence and notifications regarding non-compliance that the broker or dealer has sent to or received from the SEC or the broker's or dealer's DEA that are relevant to the broker's or dealer's assertions, and, when necessary in the circumstances,

¹⁴ The auditor should look to the definition in the applicable financial reporting framework with respect to the term "related parties."

¹⁵ The FOCUS Reports are: Form X-17A-5 Schedule I; Form X-17A-5 Part II; Form X-17A-5 Part IIa; Form X-17A-5 Part IIb; and Form X-17A-5 Part III.

¹¹ The auditor's responsibility to exercise due professional care is consistent with the description in paragraphs .40-.41 of AT sec. 101, *Attest Engagements*.

make inquiries of the regulatory agencies; and

j. Obtain an understanding of the nature and frequency of customer complaints that are relevant to compliance with the financial responsibility rules.

10. In addition, in planning the examination engagement, the auditor should assess the risk of fraud, including the risk of misappropriation of customer assets, relevant to compliance with the net capital rule and the reserve requirements rule and the effectiveness of the broker's or dealer's Internal Control Over Compliance.

Testing Controls Over Compliance

11. The auditor must test those controls that are important to the auditor's conclusion about whether the broker or dealer maintained effective Internal Control Over Compliance for each financial responsibility rule during the fiscal year and as of the end of the fiscal year. The auditor must obtain evidence that the controls over compliance selected for testing are designed effectively and operated effectively during the fiscal year and as of the fiscal year end.

12. For each control selected for testing, the evidence necessary to persuade the auditor that the control is effective depends upon the risk associated with the control. The risk associated with a control consists of the risk that the control might not be effective and, if not effective, the risk that a Material Weakness would result. As the risk associated with the control being tested increases, the persuasiveness of the evidence that the auditor should obtain also increases.

Note: Although the auditor must obtain evidence about the effectiveness of the selected controls for each financial responsibility rule, the auditor is not responsible for obtaining sufficient evidence to support an opinion about the effectiveness of each individual control.

13. Factors that affect the risk associated with a control include:

- The nature of the financial responsibility rule;
- The risk associated with non-compliance with the financial responsibility rule and the significance of potential non-compliance;
- Changes in the broker's or dealer's policies or procedures or personnel that might adversely affect control design or operating effectiveness;
- The broker's or dealer's history of instances of non-compliance with the financial responsibility rule that the control is intended to prevent or detect;
- The existence and effectiveness of controls that monitor other controls;

- The risk of management override of controls over compliance;

- The nature of the control and the frequency with which it operates;

- The degree to which the control relies on the effectiveness of other controls (e.g., the control environment or information technology general controls);

- The competence of the personnel who perform the control or monitor its performance and whether there have been changes in key personnel who perform the control or monitor its performance;

- The extent of use of part-time personnel to perform controls over compliance;

- Whether the control relies on performance by an individual or is automated (i.e., an automated control would generally be expected to be lower risk if relevant information technology general controls are effective); and

- The complexity of the control and the significance of the judgments made in connection with its operation.

Testing Design Effectiveness

14. The auditor should test the design effectiveness of the selected controls by determining whether the broker's or dealer's controls, if they are operating as prescribed by persons possessing the necessary authority and competence to perform the control effectively, can effectively prevent or detect instances of non-compliance with the financial responsibility rules on a timely basis.

Note: If a broker or dealer makes changes to its policies and procedures or key personnel during the fiscal year, the auditor should obtain evidence regarding the design effectiveness of the selected controls before and after the change.

15. Procedures the auditor performs to obtain evidence about design effectiveness include inquiry of appropriate personnel, observation of the broker's or dealer's operations, and inspection of relevant documentation. Walkthroughs that include these procedures ordinarily are sufficient to evaluate design effectiveness.

Testing Operating Effectiveness

16. The auditor should test the operating effectiveness of the selected controls by determining whether each selected control is operating as designed and whether the person performing the control possesses the necessary authority and competence to perform the control effectively.

Note: The auditor should obtain evidence regarding the operating effectiveness of the selected controls throughout the entire year and as of the end of the fiscal year.

17. Procedures the auditor performs to test operating effectiveness include a mix of inquiry of appropriate personnel, observation of the broker's or dealer's operations, inspection of relevant documentation, and re-performance of the control.

18. The evidence provided by the auditor's tests of the effectiveness of controls depends upon the mix of the nature, timing, and extent of the auditor's procedures. Further, for an individual control, different combinations of the nature, timing, and extent of testing might provide sufficient evidence in relation to the risk associated with the control.

Note: Generally, a conclusion that a control is not operating effectively can be supported by less evidence than is necessary to support a conclusion that a control is operating effectively.

Using Evidence Obtained in Past Examination Engagements

19. The auditor should obtain evidence during the current fiscal year about the design and operating effectiveness of controls selected for testing. If controls selected for testing in the current year were tested in past examination engagements, and if the auditor plans to use evidence about the effectiveness of those controls that was obtained in prior years, the auditor should take into account the factors discussed in paragraph 13 and the following factors to determine the evidence needed during the current fiscal year examination:

- The nature, timing, and extent of procedures performed in previous examination engagements;
- The results of the previous years' testing of the control; and
- Changes in the control or the process in which the control operates since the previous examination engagement.

Using Tests of Controls That Are Modified During the Year

20. A broker or dealer might implement changes to controls over compliance to make them more effective or efficient or to address control deficiencies. The auditor should obtain an understanding of the reason for the change and obtain evidence regarding the design and operating effectiveness of the new and superseded controls. The nature, timing, and extent of the testing of new and superseded controls depend on the evidence needed to support the auditor's conclusions about the effectiveness of Internal Control Over Compliance during and as of the end of the fiscal year.

Performing Compliance Tests

21. The auditor must perform procedures (“compliance tests”) that are sufficient to support the auditor’s conclusions regarding whether the broker or dealer was in compliance with the net capital rule and reserve requirements rule as of the end of its most recent fiscal year. This includes performing the following procedures on the schedules¹⁶ the broker or dealer used to determine compliance with the net capital rule and the reserve requirements rule as of its fiscal year end:

a. Evaluate whether the amounts in the schedules were determined in accordance with the net capital rule or reserve requirements rule, as applicable;

b. Test the accuracy and completeness of the information in the schedules;

c. Determine whether the broker or dealer maintained the required level of net capital in accordance with the net capital rule;

d. Determine whether the broker or dealer maintained a special reserve bank account for the exclusive benefit of customers and deposited funds in at least the required amount in accordance with the reserve requirements rule;

e. Determine whether the information in the schedules was derived from the books and records of the broker or dealer; and

f. Determine whether the broker or dealer made the notifications, if any, required by the net capital rule and reserve requirements rule as of the end of the most recent fiscal year.

Note: Procedures performed as part of the audit of the financial statements and audit procedures performed on supplemental information also might provide evidence regarding the broker’s or dealer’s compliance with the net capital rule and the reserve requirements rule.

22. The auditor should plan and perform compliance tests that are responsive to the risks, including fraud risks, associated with non-compliance with the net capital rule and the reserve requirements rule. As the risk associated with non-compliance with the net capital rule or the reserve requirements rule increases, the persuasiveness of the evidence that the auditor should obtain from compliance tests also increases. The evidence provided by the auditor’s compliance tests depends upon the mix of the nature, timing, and extent of those procedures. Inquiry alone does not provide sufficient appropriate evidence to support the auditor’s conclusions

¹⁶ The term “schedules” used in this paragraph refers to the computations of the broker or dealer, in whatever form, that are performed to determine the broker’s or dealer’s compliance with the net capital rule and the reserve requirements rule.

about the broker’s or dealer’s compliance with the net capital rule or the reserve requirements rule.

23. In conjunction with performing the compliance tests pursuant to paragraphs 21 and 22, the auditor must perform procedures to obtain evidence about the existence of customer funds or securities held for customers.

Note: Examples of procedures that provide evidence about the existence of customer assets include: (1) Counting customer securities or observing and testing the broker’s or dealer’s procedures for physical inspection and (2) confirming customer security positions directly with depositories and clearing organizations. Procedures performed in the audit of the financial statements and the audit procedures performed on supplemental information to test the existence of assets held for customers also may provide evidence that is relevant to the requirement in this paragraph.

Effect of Tests of Internal Controls on Compliance Tests

24. The auditor should take into account the results of the auditor’s tests of controls over compliance with the net capital rule and the reserve requirements rule in determining the necessary nature, timing, and extent of compliance tests. If the test results indicate that the controls are effective, less evidence is needed from compliance tests. If the test results indicate that the controls are ineffective, the auditor should revise the planned compliance tests as necessary to obtain more persuasive evidence regarding compliance.

Evaluating the Results of the Examination Procedures

25. In forming an opinion on whether the assertions made by the broker or dealer in the compliance report are fairly stated, in all material respects, the auditor should evaluate all evidence obtained, regardless of whether the evidence corroborates or contradicts the broker’s or dealer’s assertions.

26. The auditor should evaluate:

a. Identified instances of non-compliance with the net capital rule and the reserve requirements rule to determine whether any instance of non-compliance existed as of the end of the most recent fiscal year;

b. Identified instances in which the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived from the broker’s or dealer’s books and records to determine whether they are material, individually or in combination; and

c. Identified Deficiencies in Internal Control Over Compliance to determine

whether the deficiencies, individually or in combination, are Material Weaknesses.

Note: A Material Weakness can exist even when no instances of non-compliance exist. However, instances of non-compliance might indicate the existence of one or more Deficiencies in Internal Control Over Compliance.

Note: The auditor cannot assume that an identified instance of non-compliance or an identified Deficiency in Internal Control Over Compliance is an isolated occurrence. The auditor should evaluate the effect of any instance of non-compliance or identified control deficiency on the auditor’s assessment of the risks associated with controls and non-compliance.

Note: The auditor also should evaluate the effect on the audit of the financial statements and audit procedures performed on supplemental information of any non-compliance, Material Weaknesses, or instances in which the information used to assert compliance with the net capital rule or reserve requirements rule was not derived, in all material respects, from the broker’s or dealer’s books and records.

27. The auditor should evaluate whether he or she has obtained sufficient appropriate evidence to support the conclusions to be presented in the examination report taking into account the risks associated with controls and non-compliance, the results of the examination procedures performed, and the appropriateness (*i.e.*, the relevance and reliability) of the evidence obtained.

28. If the auditor has not obtained sufficient appropriate evidence about an assertion or has substantial doubt about an assertion, the auditor should perform procedures to obtain further evidence to address the matter.

29. If the auditor is unable to obtain sufficient appropriate evidence about an assertion, the auditor should express a disclaimer of opinion.¹⁷

Subsequent Events

30. For the period from the end of the period specified in the broker’s or dealer’s assertions to the date of the auditor’s examination report (the “subsequent period”), the auditor should perform procedures to identify subsequent events relevant to the auditor’s conclusions about the assertions made by the broker or dealer in the compliance report. Such

¹⁷ See Appendix C of this standard, “*Examination Report Modifications*,” which describes the situations in which the auditor should modify his or her examination report and the specific modifications to be made to the auditor’s examination report. The requirement in paragraph 29 does not preclude the auditor from withdrawing from the examination engagement.

procedures should include, but are not limited to:

a. Reading relevant reports of internal auditors, others who perform an equivalent function, compliance functions, and other auditors, and correspondence that the broker or dealer has sent to or received from the SEC or the broker's or dealer's DEA during the subsequent period that is relevant to the broker's or dealer's assertions; and

b. Evaluating information obtained through other engagements performed by the auditor for the broker or dealer, including subsequent events procedures performed in the audit of the financial statements and the audit procedures performed on supplemental information.

31. The auditor should evaluate the results of the procedures described in the previous paragraph to determine whether the results corroborate or contradict the broker's or dealer's assertions.

Obtaining a Representation Letter

32. The auditor should obtain written representations from management of the broker or dealer:

a. Acknowledging management's responsibility for establishing and maintaining a system of internal control with the objective of providing the broker or dealer with reasonable assurance that any instances of non-compliance with the financial responsibility rules will be prevented or detected on a timely basis;

b. Stating the broker's or dealer's assertions included in the compliance report are the responsibility of management;

c. Stating that management has made available to the auditor all records and other information relevant to the broker's or dealer's assertions, including all known matters contradicting the assertions, and all communications from regulatory agencies, internal auditors, others who perform an equivalent function, compliance functions, and other auditors, that are relevant to the broker's or dealer's assertions, received through the date of the auditor's report; and

d. Stating whether there were, subsequent to the period addressed in the broker's or dealer's assertions, any known events or other factors that might significantly affect the broker's or dealer's assertions.

33. The failure to obtain written representations from management, including management's refusal to furnish them, constitutes a limitation on the scope of the engagement, as described in Appendix C of this standard.

Communication Requirements

34. The auditor should communicate to management all identified Deficiencies in Internal Control Over Compliance.

35. The auditor should communicate to management and the audit committee¹⁸ identified instances of non-compliance with the financial responsibility rules, identified Material Weaknesses, and identified instances in which information used to determine compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the broker's or dealer's books and records.

Note: The auditor also must comply with the requirements of paragraph (h) of SEC Rule 17a-5, which contains notification requirements that apply to auditors of brokers and dealers.

Reporting on the Examination Engagement

36. The auditor's examination report must include the following elements, modified as necessary in the circumstances and manner discussed in Appendix C:

a. A title that includes the word *independent*;

b. An identification of the compliance report and the broker's or dealer's assertions regarding the effectiveness of Internal Control Over Compliance during the fiscal year and as of the fiscal year end, compliance with the net capital rule and the reserve requirements rule as of the fiscal year end, and whether the information used to assert compliance with those rules was derived from the broker's or dealer's books and records;

c. A statement that management of the broker or dealer is responsible for establishing and maintaining a system of internal control that has the objective of providing the broker or dealer with reasonable assurance that any instances of non-compliance with the financial responsibility rules will be prevented or detected on a timely basis;

d. A statement that the auditor's responsibility is to express an opinion on the broker's or dealer's assertions based on his or her examination;

e. A statement that the examination was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States);

f. A statement that the standards of the Public Company Accounting

¹⁸ For purposes of this standard, the term "audit committee" has the same definition as that in Auditing Standard No. 16, *Communications with Audit Committees*.

Oversight Board require that the auditor plan and perform the examination engagement to obtain reasonable assurance about whether the broker's or dealer's Internal Control Over Compliance was effective during and as of the end of the most recent fiscal year, whether the broker or dealer complied with the net capital rule and the reserve requirements rule as of the end of the most recent fiscal year, and whether the information used to assert compliance with the net capital rule and the reserve requirements rule was derived from the books and records of the broker or dealer;

g. A statement that an examination engagement includes evaluating the design and operating effectiveness of Internal Control Over Compliance; testing and evaluating the broker's or dealer's compliance with the net capital rule and the reserve requirements rule; determining whether the information used to assert compliance with the net capital rule and reserve requirements rule was derived from the broker's or dealer's books and records; and performing such other procedures as the auditor considered necessary in the circumstances;

h. A statement that the auditor believes the examination provides a reasonable basis for his or her opinion;¹⁹

i. The auditor's opinion on whether the assertions made by the broker or dealer in the compliance report are fairly stated, in all material respects;

j. The manual signature of the auditor's firm;

k. The city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's examination report has been issued; and

l. The date of the examination report.

37. The following example examination report expressing an unqualified opinion on the assertions made by a broker or dealer in a compliance report illustrates the report elements described in this section.

Report of Independent Registered Public Accounting Firm

[Introductory Paragraph]

We have examined W Broker's statements, included in the accompanying [*title of the compliance report*], that (1) W Broker's internal control over compliance was effective during the most recent fiscal year ended [date]; (2) W Broker's internal control over compliance was effective as of [date]; (3) W Broker was in compliance with 17 CFR

¹⁹ When management has made an interpretation of the financial responsibility rules and the auditor has determined that it is necessary to emphasize this interpretation in the auditor's report, the auditor may include a paragraph stating the description and the source of the interpretation made directly following the scope paragraph.

240.15c3-1 and 240.15c3-3(e) as of [date]; and (4) the information used to state that W Broker was in compliance with 17 CFR 240.15c3-1 and 240.15c3-3(e) was derived from W Broker's books and records. W Broker's management is responsible for establishing and maintaining a system of internal control over compliance that has the objective of providing W Broker with reasonable assurance that non-compliance with 17 CFR 240.15c3-1, 17 CFR 240.15c3-3, 17 CFR 240.17a-13, or Rule [fill in name/number] of [fill in DEA] that requires account statements to be sent to the customers of W Broker will be prevented or detected on a timely basis. Our responsibility is to express an opinion on W Broker's statements based on our examination.

[Scope Paragraph]

We conducted our examination in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the examination to obtain reasonable assurance about whether W Broker's internal control over compliance was effective as of and during the most recent fiscal year ended [date]; W Broker complied with 17 CFR 240.15c3-1 and 240.15c3-3(e) as of [date]; and the information used to assert compliance with 17 CFR 240.15c3-1 and 240.15c3-3(e) as of [date] was derived from W Broker's books and records. Our examination includes testing and evaluating the design and operating effectiveness of internal control over compliance, testing and evaluating W Broker's compliance with 17 CFR 240.15c3-1 and 240.15c3-3(e), determining whether the information used to assert compliance with 240.15c3-1 and 240.15c3-3(e) was derived from W Broker's books and records, and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

[Opinion Paragraph]

In our opinion, W Broker's statements referred to above are fairly stated, in all material respects.

[Signature]

[City and State or Country]

[Date]

Examination Report Date

38. The auditor should date the examination report no earlier than the date on which the auditor obtains sufficient appropriate evidence to support his or her opinion.

Note: Because of the coordination between the examination engagement, the audit of the financial statements and the audit procedures performed on supplemental information, the date of the examination report should not be earlier than the date of the auditor's report on the financial statements and supplemental information.

Appendix A—Definitions

A1. For purposes of this standard, the terms listed below are defined as follows:

A2. **Deficiency in Internal Control Over Compliance**—A Deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with 17 CFR 240.15c3-1, 240.15c3-3, 240.17a-13 or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer.²⁰

A3. **Internal Control Over Compliance**—Internal controls that have the objective of providing the broker or dealer with reasonable assurance that non-compliance with 17 CFR 240.15c3-1, 240.15c3-3, 240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer, will be prevented or detected on a timely basis.²¹

A4. **Material Weakness**—A Material Weakness is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with 17 CFR 240.15c3-1 or 17 CFR 240.15c3-3(e) will not be prevented or detected on a timely basis or that non-compliance to a material extent with 17 CFR 240.15c3-3, except for paragraph (e), 17 CFR 240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer will not be prevented or detected on a timely basis.²²

Appendix B—Considerations for Brokers and Dealers With Multiple Divisions or Branches

B1. When the broker or dealer has multiple divisions or branches, the auditor should determine the extent to which he or she should perform examination procedures at selected divisions or branches to obtain sufficient appropriate evidence to

²⁰ The definition of "Deficiencies in Internal Control Over Compliance" is consistent with the same term in paragraph (d)(3)(iii) of SEC Rule 17a-5.

²¹ The definition of "Internal Control Over Compliance" is consistent with the same term in paragraph (d)(3)(ii) of SEC Rule 17a-5.

²² The definition of a "Material Weakness" is consistent with the same term in paragraph (d)(3)(iii) of SEC Rule 17a-5.

support the conclusions expressed in the auditor's examination report. This includes determining the divisions or branches at which to perform examination procedures, as well as the nature, timing, and extent of the procedures to be performed at those individual divisions or branches. In determining the extent of the examination procedures to be performed, the auditor should take into account:

a. The degree to which the financial responsibility rules relate to activities at the division or branch level;

b. The nature and significance of the related assets, transactions, or activities at the division or branch to the financial responsibility rules;

c. The degree of centralization of records or information processing relevant to the financial responsibility rules; and

d. The degree and effectiveness of management supervision and monitoring of the relevant activities of the division or branch.

Appendix C—Examination Report Modifications

C1. The auditor should modify his or her examination report if any of the following conditions exist:

a. There is non-compliance with the net capital rule or the reserve requirements rule as of the end of the most recent fiscal year, one or more Material Weaknesses in Internal Control Over Compliance during or as of the end of the most recent fiscal year, or the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the books and records of the broker or dealer (paragraphs C2-C3).

b. There is a restriction on the scope of the examination engagement (paragraphs C4-C8).

c. There is information other than the assertions and descriptions required under paragraph (d)(3)(i) of SEC Rule 17a-5 contained in the compliance report (paragraphs C9-C10).

Non-Compliance, Material Weakness, or Instance in Which Information Used To Assert Compliance Was Not Derived From the Broker's or Dealer's Books and Records

C2. If (1) one or more instances of non-compliance with the net capital rule or the reserve requirements rule exist as of the end of the fiscal year; (2) one or more Material Weaknesses in Internal Control Over Compliance exist during or as of the end of the fiscal year; or (3) the information used to assert compliance with the net capital rule or

the reserve requirements rule was not derived, in all material respects, from the books and records of the broker or dealer, the auditor must express an adverse opinion directly on the subject matter of the respective assertions, rather than on the assertions themselves, unless there is a restriction on the scope of the examination engagement.

Note: The requirement in this paragraph to express an adverse opinion applies regardless of whether the non-compliance, Material Weakness, or other matters preventing the unqualified opinion were identified by management or by the auditor.

C3. When expressing such an adverse opinion, the auditor's examination report should include, as applicable:

a. A statement that non-compliance with the net capital rule or the reserve requirements rule has been identified and an identification of each instance of non-compliance described in the broker's or dealer's compliance report as of the end of the most recent fiscal year.

b. A statement that one or more Material Weaknesses in Internal Control Over Compliance have been identified during the fiscal year and an identification of each Material Weakness described in the compliance report.

c. A statement that one or more Material Weaknesses in Internal Control Over Compliance have been identified as of the end of the fiscal year and an identification of each Material Weakness described in the compliance report.

d. A statement that one or more instances in which the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the broker's or dealer's books and records have been identified.

Note: If a description of all identified instances of non-compliance with the net capital rule or the reserve requirements rule and all identified Material Weaknesses has not been included in the broker's or dealer's compliance report, the examination report must be modified to describe those instances of non-compliance or Material Weaknesses that the auditor has identified but that are not described in the broker's or dealer's compliance report.²³

Scope Limitations

C4. The auditor can express an opinion on whether the assertions made

²³ Paragraphs (d)(3)(i)(B) and (C) of SEC Rule 17a-5 require the broker's or dealer's compliance report to contain a description of each material weakness in Internal Control Over Compliance during the most recent fiscal year and any instance of non-compliance with the net capital rule or the reserve requirements rule as of the end of the most recent fiscal year.

by a broker or dealer in a compliance report are fairly stated, in all material respects, only if the auditor has been able to apply the procedures necessary in the circumstances. If there are restrictions on the scope of the examination engagement, the auditor should withdraw from the engagement or disclaim an opinion. A disclaimer of opinion should state that the auditor does not express an opinion on the assertions made by the broker or dealer in the compliance report.

C5. When disclaiming an opinion because of a scope limitation, the auditor should state that the scope of the examination engagement was not sufficient for the auditor to express an opinion and, in a separate paragraph or paragraphs, the substantive reasons for the disclaimer, including the procedures that were deemed necessary by the auditor that have been omitted and the reason for their omission. The auditor should not identify the procedures that were performed nor include the statements describing the characteristics of an examination engagement.

C6. When the auditor plans to disclaim an opinion and the limited procedures performed by the auditor caused the auditor to conclude that: (1) One or more instances of non-compliance with the net capital rule or the reserve requirements rule existed as of the end of the fiscal year; (2) one or more Material Weaknesses in Internal Control Over Compliance existed during or as of the end of the most recent fiscal year; or (3) the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the books and records of the broker or dealer, the auditor's report also must include the matters described in paragraph C3, as applicable.

C7. The auditor may issue a report disclaiming an opinion on the assertions made by a broker or dealer in a compliance report as soon as the auditor concludes that a scope limitation will prevent the auditor from obtaining the reasonable assurance necessary to express an opinion. The auditor is not required to perform any additional work before issuing a disclaimer when the auditor concludes that he or she will not be able to obtain sufficient evidence to express an opinion.

Note: In this case, in following the direction in paragraph 38 of this standard regarding dating the auditor's examination report, the report date is the date on which the auditor concludes that he or she will not be able to obtain sufficient evidence to express an opinion.

C8. If the auditor concludes that he or she cannot express an opinion because

of a limitation on the scope of the examination engagement, the auditor should communicate on a timely basis, in writing, to management and the audit committee that the examination engagement cannot be satisfactorily completed.

Other Information in the Compliance Report

C9. If the compliance report contains other information besides the statements and descriptions required by SEC Rule 17a-5,²⁴ the auditor should disclaim an opinion on the other information.

C10. If the auditor believes that the other information in the compliance report contains a material misstatement of fact, he or she should discuss the matter with management of the broker or dealer. If, after discussing the matter with management, the auditor concludes that a material misstatement of fact remains, the auditor should notify management and the audit committee of the auditor's views concerning the information.²⁵

Attestation Standard No. 2

Review Engagements Regarding Exemption Reports of Brokers and Dealers

Introduction

1. This standard establishes requirements that apply when an auditor is engaged to perform a review²⁶ of the statements made by a broker²⁷ or dealer²⁸ in an exemption report ("exemption report") prepared pursuant to Securities and Exchange Act of 1934 ("Exchange Act") Rule 17a-5, 17 CFR 240.17a-5 ("SEC Rule 17a-5") of the U.S. Securities and Exchange Commission ("SEC").²⁹

²⁴ See paragraph (d)(3)(i) of SEC Rule 17a-5.

²⁵ See also AU sec. 317, *Illegal Acts by Clients*, which describes the auditor's responsibilities in a financial statement audit regarding illegal acts.

²⁶ See paragraphs (d)(1)(i)(C) and (g)(2)(ii) of SEC Rule 17a-5, which require that certain brokers or dealers file with the SEC a report prepared by an independent accountant based on a review of the statements in the exemption report, if the broker or dealer is required to file an exemption report with the SEC.

²⁷ According to PCAOB Rule 1001(b)(iii), the term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

²⁸ According to PCAOB Rule 1001(d)(iii), the term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

²⁹ See paragraph (g)(2)(ii) of SEC Rule 17a-5.

2. SEC Rule 17a-5 requires a broker's or dealer's exemption report to contain the following statements by the broker or dealer:

a. A statement that identifies the provisions in paragraph (k) of SEC Rule 15c3-3³⁰ (the "exemption provisions") under which the broker or dealer claimed an exemption from SEC Rule 15c3-3 (the "identified exemption provisions");

b. A statement that the broker or dealer (1) met the identified exemption provisions throughout the most recent fiscal year without exception or (2) met the identified exemption provisions throughout the most recent fiscal year except as described in the exemption report; and

c. If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the identified exemption provisions (an "exception") and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.³¹

Objective

3. When performing a review of the statements (hereinafter referred to as "assertions") made by a broker or dealer in an exemption report (a "review engagement"), the auditor's objective is to state whether, based upon the results of the review procedures, the auditor is aware of any material modifications that should be made to the broker's or dealer's assertions for the assertions to be fairly stated, in all material respects.

4. The auditor must plan and perform the review engagement to obtain appropriate evidence that is sufficient to obtain moderate assurance³² about whether one or more conditions exist that would cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects. Such conditions include:

a. The broker's or dealer's assertion that identifies the provisions in paragraph (k) of SEC Rule 15c3-3 under which the broker or dealer claimed an exemption for SEC Rule 15c3-3 is inaccurate;

b. The broker or dealer asserts that it met the identified exemption provisions in paragraph (k) of SEC Rule 15c3-3

without exception when the auditor is aware of exceptions in meeting the exemption provisions; or

c. The broker's or dealer's assertion that identifies and describes each exception during the most recent fiscal year in meeting the identified exemption provisions in paragraph (k) of SEC Rule 15c3-3 is inaccurate or incomplete.

Performing the Review Engagement General Requirements

5. An auditor who performs a review engagement must:

a. Have adequate technical proficiency in attestation engagements;

b. Obtain an understanding of the exemption conditions and other rules and regulations that are relevant to the broker's or dealer's assertions;

c. Determine the auditor's compliance with independence and ethics requirements; and

d. Exercise due professional care, which includes application of professional skepticism, in planning and performing the review and preparation of the report.

Note: Due professional care imposes a responsibility on each engagement team member to comply with this standard. The exercise of due professional care requires critical review at every level of supervision of the work done and the judgment exercised by those assisting in the engagement, including preparing the report.³³

Note: Auditing Standard No. 3, *Audit Documentation*, establishes the documentation requirements for review engagements performed pursuant to this standard.

6. The engagement partner is responsible for the review engagement and performance of the review procedures. Accordingly, the engagement partner is responsible for proper planning of the review engagement, proper supervision of the work of engagement team members, and compliance with the requirements of this standard. The engagement partner may seek assistance from appropriate engagement team members in fulfilling these responsibilities.

Note: For purposes of this standard, the term "engagement partner" means the member of the engagement team with primary responsibility for the review engagement.

Note: Proper planning includes determining the nature, timing, and extent of procedures necessary to obtain moderate assurance. Proper supervision includes supervising the work of engagement team

members so that the work is performed as directed and supports the conclusions reached.

Relationship Between the Review Engagement and the Audit of Financial Statements and the Audit Procedures Performed on Supplemental Information

7. The review engagement should be coordinated with the audit of the financial statements and the audit procedures performed on supplemental information of the broker or dealer.³⁴ In planning and performing procedures for, and evaluating the results of the procedures performed in, the review engagement, the auditor should take into account relevant evidence from the audit of the financial statements and the procedures performed on the supplemental information. However, the objectives of the financial statement audit and the review engagement are not the same, so the auditor must plan and perform the work to meet the objectives of both engagements.

Review Procedures

8. A review engagement includes the following procedures:

a. Reading the exemption report to determine the exemption provisions under which the broker or dealer asserts its exemption and the identified exceptions to the exemption provisions;

b. Performing inquiries and other review procedures set forth in this standard; and

c. Evaluating whether the evidence indicates that there should be modifications to the broker's or dealer's assertions based on the results of the procedures performed.

9. The nature, timing, and extent of the necessary inquiries and other review procedures depend on:

- a. The following risk factors:
- (1) The broker's or dealer's history of instances of non-compliance with the exemption provisions;
 - (2) Changes in the broker's or dealer's procedures, controls, or the environment in which the controls operate since the prior year;
 - (3) Changes in the broker's or dealer's operations that are relevant to

³⁴ Under the definition of supplemental information included in Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, supplemental information includes the supporting schedules described in paragraph (d)(2) of SEC Rule 17a-5, which are required to be filed by brokers and dealers with the SEC and the broker's and dealer's designated examining authority ("DEA") and the Securities Investor Protection Corporation ("SIPC"). Such supporting schedules consist of, as applicable, a Computation of Net Capital Under Rule 15c3-1, a Computation for Determination of the Reserve Requirements under Exhibit A of SEC Rule 15c3-3, and Information Relating to Possession or Control Requirements Under SEC Rule 15c3-3.

³⁰ See 17 CFR 240.15c3-3 ("SEC Rule 15c3-3").

³¹ See paragraph (d)(4) of SEC Rule 17a-5.

³² Moderate assurance is obtained by performing with due professional care the inquiries and other procedures required by this standard in order to reach a conclusion about whether there is a need to modify the broker's or dealer's assertions regarding the exemption provisions for the assertions to be fairly stated, in all material respects. Further, this standard is consistent with the concept of moderate assurance as described in paragraph .55 of AT sec. 101, *Attest Engagements*.

³³ The auditor's responsibility to exercise due professional care is consistent with the description in paragraphs .40-.41 of AT sec. 101.

compliance with the exemption provisions;

(4) Competence of the personnel who are responsible for compliance with the exemption provisions or who perform important controls over compliance, and whether there have been changes in those personnel during the period of the review;

(5) The risk of fraud, including the risk of misappropriation of customer assets, relevant to the exemption provisions;

(6) Potential non-compliance associated with related parties,³⁵ including related parties that are investment advisors or entities with which the broker or dealer has a custodial or clearing relationship;

(7) The degree to which the broker's or dealer's processes that relate to the exemption provisions are performed, monitored, or controlled in a centralized or decentralized environment; and

b. Evidence about the broker's or dealer's compliance with the exemption provisions or about the effectiveness of controls over compliance with the exemption provisions obtained from the audit of the financial statements and the audit procedures performed on supplemental information.

10. The auditor should perform procedures to identify exceptions to the exemption provisions, including the following:

a. If the broker or dealer identified exceptions to the exemption provisions during the year under review, the auditor should read the broker's or dealer's documentation regarding the exceptions to the exemption provisions and compare it to the information included in the exemption report.

b. Inquire of management, and, if applicable, other individuals at the broker or dealer who have relevant knowledge regarding:

(1) Whether the broker or dealer was in compliance with the exemption provisions throughout the year under review or whether exceptions have been identified.

(2) Regulatory examinations and correspondence between the SEC or the broker's or dealer's DEA and the broker or dealer that are relevant to compliance with the exemption provisions.

Note: If the broker or dealer has sent or received correspondence with the SEC or the broker's or dealer's DEA that is relevant to compliance with the exemption provisions, the auditor should read such correspondence and, when necessary in the circumstances, make inquiries of the regulatory agencies.

³⁵ The auditor should look to the definition in the applicable financial reporting framework with respect to the term "related parties."

(3) Subsequent events through the date of the auditor's review report that might have a material effect on the broker's or dealer's assertions.

c. Inquire of individuals at the broker or dealer who have relevant knowledge of controls relevant to the broker's or dealer's compliance with the exemption provisions regarding:

(1) The controls that are in place to maintain compliance with the exemption provisions, including the nature of the controls and their frequency of operation.

Note: The auditor should take into account procedures performed during the audit of the financial statements and the audit procedures performed on supplemental information in obtaining an understanding of controls or other activities relevant to the broker's or dealer's compliance with the exemption provisions.

(2) Whether the individual is aware of:

i. Any exceptions to the exemption provisions and, if so, the nature, frequency, timing, and cause (if known) of the exceptions to the exemption provisions, during the year under review.

ii. Any deficiencies in controls over compliance with the exemption provisions and, if so, the nature, frequency, and cause (if known) of the control deficiencies during the year under review.

d. Inquire of individuals who are responsible for monitoring compliance with the exemption provisions or the controls over compliance regarding:

(1) The nature and frequency of the monitoring activities.

(2) The results of those monitoring activities, including the nature, frequency, timing, and cause (if known) of any exceptions to the exemption provisions or deficiencies in controls over compliance.

(3) The nature and frequency of customer complaints that are relevant to the broker's or dealer's compliance with the exemption provisions.

e. Read reports of internal auditors, others who perform an equivalent function, compliance functions, and other auditors that are relevant to the broker's or dealer's compliance with the exemption provisions.

f. Read regulatory filings of the broker or dealer that are relevant to the broker's or dealer's compliance with the exemption provisions.

g. Evaluate whether the evidence obtained and the results of the procedures performed in the audit of the financial statements and the audit procedures performed on supplemental information corroborate or contradict the broker's or dealer's assertions

regarding compliance with the exemption provisions.

Note: Examples of procedures performed during the audit of the financial statements that might provide evidence relevant to the broker's or dealer's compliance with the exemption provisions include: (i) Testing related to customer trades; (ii) testing of specially designated cash accounts; (iii) testing investment inventory or transactions related to the broker's or dealer's trading for its own account; and (iv) reading the clearing agreement in connection with testing trade fee or commission revenue or expenses.

h. Perform other procedures as necessary in the circumstances to obtain moderate assurance regarding whether a material modification should be made to the broker's or dealer's assertions for the assertions to be fairly stated, in all material respects.

Evaluating the Results of the Review Procedures

11. The auditor should evaluate whether information has come to the auditor's attention that causes the auditor to believe that one or more of the broker's or dealer's assertions are not fairly stated, in all material respects.³⁶ If a broker's or dealer's assertion is not fairly stated, in all material respects, the auditor should:

a. Modify the review report, as discussed in paragraph 19 of this standard; and

b. Evaluate the effect of the matter on the audit of the financial statements and the audit procedures performed on supplemental information.

12. If information coming to the auditor's attention indicates that one or more exceptions to the exemption provisions occurred during the year under review or might exist at year-end, other than exceptions disclosed in the exemption report, that might cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects, or if the auditor has substantial doubt about one or more of the broker's or dealer's assertions, the auditor should perform additional procedures as necessary to address the matter.

Obtaining a Representation Letter

13. The auditor should obtain written representations from management of the broker or dealer:

a. Acknowledging management's responsibility for compliance with the identified exemption provisions throughout the fiscal year;

³⁶ See paragraph 4 of this standard, which provides examples of conditions that would cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects.

b. Stating the broker's or dealer's assertions and that they are the responsibility of management;

c. Stating that management has made available to the auditor all records and other information relevant to the broker's or dealer's assertions, including all communications from regulatory agencies, internal auditors, others who perform an equivalent function, compliance functions, and other auditors concerning possible exceptions to the exemption provisions, received through the date of the auditor's review report; and

d. Stating whether there were, subsequent to the period addressed in the broker's or dealer's assertions, any known events or other factors that might significantly affect the broker's or dealer's compliance with the identified exemption provisions.

14. The failure to obtain written representations from management, including management's refusal to furnish them, constitutes a limitation on the scope of the review engagement as described in paragraph 20 of this standard.

Communication Requirements

15. The auditor should communicate to management and to the audit committee³⁷ any exceptions to the exemption provisions identified by the auditor and information that causes the broker's or dealer's assertions about the exemption provisions not to be fairly stated, in all material respects.

Note: The auditor must also comply with the requirements of paragraph (h) of SEC Rule 17a-5, which contains notification requirements that apply to auditors of brokers and dealers.

Reporting on the Review Engagement

16. The auditor's review report must include the following elements, modified as necessary in the circumstances and manner discussed in paragraphs 19-20:

a. A title that includes the word *independent*;

b. An identification of the exemption report and the broker's or dealer's assertions;

c. A statement that management of the broker or dealer is responsible for compliance with the identified exemption provisions throughout the fiscal year and for its assertions;

d. A statement that the review was conducted in accordance with the standards of the Public Company

Accounting Oversight Board (United States) and, accordingly, included inquiries and other required procedures to obtain evidence about the broker's or dealer's compliance with the exemption provisions;

e. A statement that a review is substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assertions, and accordingly, no such opinion is expressed;

f. A statement about whether the auditor is aware of any material modifications that should be made to the assertions for them to be fairly stated, in all material respects;

g. The manual signature of the auditor's firm;

h. The city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's review report has been issued; and

i. The date of the review report.

17. The following example report illustrates the report elements described in this section.

Report of Independent Registered Public Accounting Firm

[Introductory paragraph—no exceptions to the exemption provisions included in the broker's or dealer's assertion]

We have reviewed management's statements, included in the accompanying [title of the exemption report], in which (1) Z Broker identified the following provisions of 17 CFR 15c3-3(k) under which Z Broker claimed an exemption from 17 CFR 240.15c3-3: ([fill in which exemption provision—(1), (2)(i), (2)(ii), or (3)]) (the "exemption provisions") and (2) Z Broker stated that Z Broker met the identified exemption provisions throughout the most recent fiscal year without exception. Z Broker's management is responsible for compliance with the exemption provisions and its statements.

[Introductory paragraph—exceptions to the exemption provisions included in the broker's or dealer's assertion]

We have reviewed management's statements, included in the accompanying [title of the exemption report], in which (1) Z Broker identified the following provisions of 17 CFR 15c3-3(k) under which Z Broker claimed an exemption from 17 CFR 240.15c3-3: ([fill in which exemption provision—(1), (2)(i), (2)(ii), or (3)]) (the "exemption provisions") and (2) Z Broker stated that Z Broker met the identified exemption provisions throughout the most recent fiscal year except as described in its exemption report. Z Broker's management is responsible for compliance with the exemption provisions and its statements.

[Scope paragraph]

Our review was conducted in accordance with the standards of the Public Company Accounting Oversight Board (United States) and, accordingly, included inquiries and

other required procedures to obtain evidence about Z Broker's compliance with the exemption provisions. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on management's statements. Accordingly, we do not express such an opinion.

[Review results paragraph]

Based on our review, we are not aware of any material modifications that should be made to management's statements referred to above for them to be fairly stated, in all material respects, based on the provisions set forth in paragraph (k)([fill-in which exemption provision—(1), (2)(i), (2)(ii), or (3)]) of Rule 15c3-3 under the Securities Exchange Act of 1934.

[Signature]

[City and State or Country]

[Date]

Review Report Date

18. The auditor should date the review report no earlier than the date on which the auditor has completed his or her review procedures.

Note: Because of the coordination between the review engagement and the audit of the financial statements and the audit procedures performed on supplemental information, the date of the review report should not be earlier than the date of the auditor's report on the financial statements and supplemental information.

Modifications of the Report

19. If one or more of the broker's or dealer's assertions are not fairly stated, in all material respects, the auditor must modify the review report to describe the reasons the assertions are not fairly stated, in all material respects. If a broker's or dealer's assertion is not fairly stated, in all material respects, because of one or more omitted exceptions, the auditor's review report should disclose each omitted exception.

20. *Scope Limitations.* If the auditor cannot perform the procedures required by this standard or other procedures that the auditor deems necessary in the circumstances, the review is incomplete because of the scope limitation. An incomplete review is not a sufficient basis for stating a conclusion regarding the broker's or dealer's assertions. In those circumstances, the auditor should withdraw from the engagement or should modify the review report to:

a. Describe the scope limitation and any review procedures deemed necessary by the auditor that have been omitted and the reason for their omission;

b. State that the auditor does not express any form of assurance on the broker's or dealer's assertions; and, if applicable,

³⁷ For purposes of this standard, the term "audit committee" has the same definition as that in Auditing Standard No. 16, *Communications with Audit Committees*.

c. Describe any circumstances that cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects.

Amendments to PCAOB Standards

Auditing Standards

Auditing Standard No. 3, "Audit Documentation"

Auditing Standard No. 3, "Audit Documentation," as amended, is amended as follows:

a. The following is added at the end of footnote 2 in paragraph 6: In an engagement conducted pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, the relevant assertions are the assertions expressed by management or the responsible party regarding the subject matter of the attestation engagement. The documentation requirements in this standard regarding assertions apply to the aspects of the subject matter to which the assertions relate.

b. The following note is added at the end of paragraph 12:

Note: In an engagement conducted pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, significant findings or issues include, when applicable: (a) The assessment of, and the responses to, risks requiring special consideration by the auditor; (b) significant matters involving systems, processes, and controls to ensure the appropriateness of the subject matter and management's related assertions; and (c) the evaluation of identified instances of nonconformity with the evaluation criteria (e.g., errors, instances of non-compliance, or control deficiencies).

c. The following note is added as the second note to paragraph 13:

Note: When conducting an attestation engagement pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, the auditor may include the documentation of significant findings or issues related to the attestation engagement in the engagement completion document prepared in connection with the audit of the financial statements.

Auditing Standard No. 7, "Engagement Quality Review"

Auditing Standard No. 7, "Engagement Quality Review," is amended as follows:

a. Paragraph 1 is replaced with:

An engagement quality review and concurring approval of issuance are required for the following engagements conducted pursuant to the standards of the Public Company Accounting Oversight Board ("PCAOB"): (a) An audit engagement; (b) a review interim financial information; and (c) an attestation engagement performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*.

b. Paragraph 18A. is added:

Engagement Quality Review for an Attestation Engagement Performed Pursuant to Attestation Standard No. 1, Examination Engagements Regarding Compliance Reports of Brokers and Dealers, or Attestation Standard No. 2, Review Engagements Regarding Exemption Reports of Brokers and Dealers

In an attestation engagement performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, the engagement quality reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the attestation engagement and in preparing the engagement report. To evaluate such judgments and conclusions, the engagement quality reviewer should, taking into account the procedures performed in the engagement quality review of the financial statement audit, (1) hold discussions with the engagement partner and other members of the engagement team, (2) read the engagement report and the document containing management's assertions, and (3) review the engagement completion document and other relevant documentation.

c. Paragraph 18B. is added:

In an attestation engagement performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, the engagement quality reviewer may provide concurring approval of issuance only if, after performing with due professional care the review required by

this standard, he or she is not aware of a significant engagement deficiency.

d. The following note is added after paragraph 18B.:

Note: A significant engagement deficiency in an attestation engagement performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, exists when (1) the engagement team failed to perform attestation procedures necessary in the circumstances of the engagement, (2) the engagement team reached an inappropriate overall conclusion on the subject matter of the engagement, (3) the engagement report is not appropriate in the circumstances, or (4) the firm is not independent of its client.

e. Paragraph 18C. is added:

In an attestation engagement performed pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, or Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, the firm may grant permission to the client to use the engagement report only after the engagement quality reviewer provides concurring approval of issuance.

Auditing Standard No. 16, "Communications With Audit Committees"

Auditing Standard No. 16, "Communications with Audit Committees," is amended as follows:

a. The following bullets are inserted after the third bullet in Appendix B:

- Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, paragraphs 34 and 35.
- Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*, paragraph 15.

Attestation Standards

AT Sec. 101, "Attestation Engagements"

AT sec. 101, "Attestation Engagements," as amended, is amended as follows:

a. The following is added at the end of paragraph .04:

g. Engagements in which a practitioner is engaged to perform an examination of certain statements of a broker or dealer in a compliance report that is prepared pursuant to SEC Rule 17a-5. Such engagements must be conducted pursuant to Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*.

h. Engagements in which a practitioner is engaged to perform a

review of statements of a broker or dealer in an exemption report that is prepared pursuant to SEC Rule 17a-5. Such engagements must be conducted pursuant to Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*.

AT Sec. 601, "Compliance Attestation"

AT sec. 601, "Compliance Attestation," is amended as follows:

a. Within paragraph .02, subparagraph e. is replaced with:

Apply to examination engagements of brokers and dealers covered by Attestation Standard No. 1, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*.

b. Footnote 2 to paragraph .02.e. is deleted.

c. The last sentence of paragraph .06 is deleted.

d. Paragraph .07 is replaced with:

When a practitioner is engaged to perform a review of statements made by a broker or dealer in an exemption report that is prepared pursuant to SEC Rule 17a-5, the practitioner must conduct the review engagement pursuant to Attestation Standard No. 2, *Review Engagements Regarding Exemption Reports of Brokers and Dealers*.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, since the attestation standards will apply solely in connection with audits of registered brokers and dealers pursuant to the Rule 17a-5 under the Securities Exchange Act of 1934, the Board defers to the SEC, pursuant to Section 103(a)(3)(c) of the Sarbanes-Oxley Act, on the applicability of Attestation Standards No. 1 and No. 2 to audits of emerging growth companies ("EGCs"), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934. The Board's economic analysis is set forth in section C.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Section 103 of the Sarbanes-Oxley Act directs the Board, by rule, to establish, among other things, "auditing and related attestation standards . . . to be used by registered public accounting firm in the preparation and issuance of audit reports, as required by th[e] [Sarbanes-Oxley] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors." In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Sarbanes-Oxley Act to give the Board oversight authority with respect to audits of brokers and dealers that are registered with the Commission. On July 30, 2013, the SEC adopted amendments to Rule 17a-5³⁸ under the Securities Exchange Act of 1934 ("Exchange Act") to strengthen and clarify broker and dealer annual financial reporting requirements and also facilitate the ability of the PCAOB to implement the oversight of independent public accountants of brokers³⁹ and dealers⁴⁰ provided by Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").⁴¹

The Board is adopting two attestation standards, *Examination Engagements Regarding Compliance Reports of Brokers and Dealers* (the "examination standard") and *Review Engagements Regarding Exemption Reports of Brokers and Dealers* (the "review standard") (collectively, the "attestation standards"). These attestation standards will apply to examination engagements regarding compliance reports of brokers and dealers ("examination engagements") and review engagements regarding exemption reports of brokers

³⁸ See Rule 17a-5, 17 CFR 240.17a-5 ("SEC Rule 17a-5") and SEC Exchange Act Release No. 34-70073, *Broker-Dealer Reports* (July 30, 2013), 78 *Federal Register* 51910 (August 21, 2013) ("SEC Release"), available at <http://www.sec.gov/rules/final/2013/34-70073.pdf>.

³⁹ According to PCAOB Rule 1001(b)(iii), the term "broker" means a broker (as defined in Section 3(a)(4) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

⁴⁰ According to PCAOB Rule 1001(d)(iii), the term "dealer" means a dealer (as defined in Section 3(a)(5) of the Exchange Act) that is required to file a balance sheet, income statement, or other financial statement under Section 17(e)(1)(A) of that Act, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

⁴¹ Public Law 111-203, 124 Stat. 1376 (2010).

and dealers ("review engagements"), pursuant to requirements contained in SEC Rule 17a-5.⁴² Pursuant to SEC Rule 17a-5, the audits of brokers and dealers, including the attestation engagements, are required to be performed under PCAOB standards.⁴³ Before these amendments to SEC Rule 17a-5, audits of brokers and dealers were required to be performed under generally accepted auditing standards ("GAAS") established by the American Institute of Certified Public Accountants ("AICPA"). The attestation standards will be effective, subject to approval by the SEC, for examination engagements and review engagements for fiscal years ending on or after June 1, 2014. This effective date would coincide with the effective date for the corresponding amendments to SEC Rule 17a-5.

Background

Sections 17(a) and (e) of the Exchange Act and SEC Rule 17a-5 together generally require a broker or dealer to, among other things, file an annual report⁴⁴ with the SEC and the broker's or dealer's designated examining authority ("DEA").⁴⁵ SEC Rule 17a-5 requires the annual report to contain, among other things:

a. A financial report consisting of audited financial statements and supporting schedules;⁴⁶ and

b. A compliance report or an exemption report.⁴⁷

The requirements for the compliance report and the exemption report are new requirements that are the result of the Commission's amendments to SEC Rule

⁴² See paragraphs (g)(2)(i) and (ii) of SEC Rule 17a-5.

⁴³ See paragraph (g) of SEC Rule 17a-5.

⁴⁴ Paragraph (d) of SEC Rule 17a-5 contains general requirements for annual reports to be filed by SEC-registered brokers and dealers. Paragraphs (d)(1)(iii) and (iv) of SEC Rule 17a-5 provide certain limited exceptions to the requirement to file an annual report.

⁴⁵ Under SEC Rule 17d-1, 17 CFR 240.17d-1, a registered broker or dealer that is a member of more than one securities self-regulatory organization may be assigned a "designated examining authority" or "DEA" that is responsible for examining the broker or dealer for compliance with SEC financial responsibility rules. An example of a securities self-regulatory organization that is a designated examining authority is the Financial Industry Regulatory Authority.

⁴⁶ See paragraph (d)(2) of SEC Rule 17a-5. Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements* (PCAOB Release No. 2013-008) (October 10, 2013), applies to the audit procedures performed and the audit report on supporting schedules.

⁴⁷ See paragraphs (d)(3) and (4) of SEC Rule 17a-5. Attestation Standard No. 1 applies to an examination of certain statements made by the broker or dealer in the compliance report. Attestation Standard No. 2 applies to a review of the statements made by the broker or dealer in the exemption report.

17a-5. According to the SEC, these reports contain information regarding broker and dealer compliance with key SEC financial responsibility rules⁴⁸ that enhance the ability of the SEC to oversee the financial responsibility practices of registered brokers and dealers and, in particular, the safekeeping of customer assets.

Generally, SEC Rule 17a-5 provides that brokers or dealers that did not claim an exemption from SEC Rule 15c3-3 throughout the most recent fiscal year must prepare and file the compliance report. A broker or dealer must prepare and file the exemption report if the broker or dealer did claim that it was exempt from SEC Rule 15c3-3 throughout the most recent fiscal year.

Brokers and dealers also must generally file reports prepared by a PCAOB-registered independent public accountant covering the financial report and the compliance report or exemption report, as applicable.⁴⁹

The auditor's examination report or review report would replace the prior requirement in SEC Rule 17a-5 that the auditor report on material inadequacies identified in the broker's or dealer's accounting system, internal accounting controls, procedures of the broker or dealer for safeguarding securities, and certain practices and procedures related to customer protection and securities.

Considerations in Adopting the Attestation Standards

The Board is adopting the attestation standards to establish requirements aligned with the auditor's responsibilities under SEC Rule 17a-5.⁵⁰ Specifically, the attestation standards establish requirements for examining certain statements in a broker's or dealer's compliance report and reviewing a broker's or dealer's statements in an exemption report. The Board is also adopting related amendments to certain PCAOB standards, including amendments regarding documentation and amendments to require engagement quality reviews of the examination and the review engagements.⁵¹

⁴⁸ The SEC Release used the term "financial responsibility rules" to refer to: 17 CFR 240.15c3-1 ("SEC Rule 15c3-1" or the "net capital rule"); 17 CFR 240.15c3-3 ("SEC Rule 15c3-3"); 17 CFR 240.17a-13 ("SEC Rule 17a-13"); and any rule of the DEA of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (an "account statement rule"). See the SEC Release at 8-9. The terms "financial responsibility rules" and "account statement rule" have the same meaning in these standards as they have in the SEC Release.

⁴⁹ See paragraph (d)(1)(i)(C) of SEC Rule 17a-5.

⁵⁰ See paragraphs (g) and (h) of SEC Rule 17a-5.

⁵¹ In addition, on February 28, 2012, the Board proposed to update certain of its rules to conform

The attestation standards for the examination and review engagements represent stand-alone standards that are based on existing concepts and principles in the existing attestation standards but are tailored for the specific requirements under SEC Rule 17a-5.⁵²

In general, both standards set forth a framework of specific procedures that are required for auditors to opine or conclude on a broker's or dealer's statements—referred to in the standards as "assertions"⁵³—in compliance reports and exemption reports required by SEC Rule 17a-5, respectively.⁵⁴

Furthermore, both of the attestation standards emphasize coordination between the examination engagement or review engagement, the audit of the broker's or dealer's financial statements and audit procedures performed on the supporting schedules (referred to as "supplemental information"). This emphasis on coordination, when properly executed, can promote overall audit effectiveness and avoid redundancy in the work performed. For example, auditors can take into account, when appropriate, evidence obtained while planning and performing the audit of the financial statements and the audit procedures performed on supplemental information in planning and performing the attestation engagement.

This emphasis on coordination is also a key aspect of Auditing Standard No.

to the Dodd-Frank Act amendments to the Sarbanes-Oxley Act of 2002. See *Proposed Amendments to Conform the Board's Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*, PCAOB Release No. 2012-002 (February 28, 2012). Among other things, these proposed amendments would amend the Board's rules to require that registered firms comply with the Board's interim standards in broker or dealer engagements. See proposed amendments to Rule 1001(a)(v), Rule 1001(a)(vi), Rule 3200T, and Rule 3300T, Rule 3400T, Rule 3500T, and Rule 3600T. The Board expects to act on these proposed amendments in a separate rulemaking in the near future.

⁵² The requirements in the examination standard are generally consistent with the requirements of AT sec. 101, *Attest Engagements*, and AT sec. 601, *Compliance Attestation*. Similarly, the requirements in the review standard are generally consistent with AT sec. 101. However, when an auditor performs an engagement pursuant to the examination standard or a review pursuant to the review standard, AT sec. 101 and AT sec. 601 would not apply.

⁵³ These standards use the term "assertion" to refer to the broker's or dealer's individual statements that are covered by the examination and review. In the examination standard, the term "assertion" also distinguishes the portion of the statements in the broker's or dealer's compliance report that are covered by the examination.

⁵⁴ See paragraphs (j)(3)(iii)(A) and (B) of SEC Rule 17a-5 for the specific requirement for an opinion or conclusion to be expressed in the auditor's report.

17, *Auditing Supplemental Information Accompanying Audited Financial Statements* (the "auditing standard"),⁵⁵ which the Board is separately adopting. Auditing Standard No. 17 will apply when the auditor of the financial statements is engaged to perform audit procedures and report on supplemental information accompanying audited financial statements in accordance with PCAOB standards, including supporting schedules prepared pursuant to SEC Rule 17a-5.⁵⁶ The auditing standard also includes requirements for the procedures on the supplemental information to be planned and performed in conjunction with the audit of the financial statements, and for the audits of brokers and dealers to be coordinated with the attestation engagements related to compliance or exemption reports.⁵⁷

In the Board's view, the attestation standards further the public interest and promote investor protection because they are tailored to the corresponding requirements of SEC Rule 17a-5, which are designed to provide safeguards with respect to broker and dealer custody of customer securities and funds. For example, the specific requirements in the examination standard for evaluating Internal Control Over Compliance⁵⁸ can help auditors to identify deficiencies in a broker's or dealer's internal controls for safeguarding customer securities and funds or maintaining necessary capital or reserves. Similarly, the specific requirements in the review standard should focus auditors on whether the broker or dealer appropriately meets the exemption provisions in paragraph (k) of SEC Rule 15c3-3.

Also, the SEC Release states that SEC enforcement actions alleging fraudulent conduct by brokers and dealers highlight the need for enhancements to the rules governing broker and dealer custody of customer assets, including increased focus on compliance and internal compliance controls by brokers and dealers and their auditors.⁵⁹ The attestation standards include requirements related to the auditor's

⁵⁵ See Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, PCAOB Release No. 2013-008 (October 10, 2013).

⁵⁶ See paragraph (d)(2) of SEC Rule 17a-5.

⁵⁷ See the note to paragraph 3.c. of Auditing Standard No. 17.

⁵⁸ Consistent with SEC Rule 17a-5, the examination standard defines "Internal Control Over Compliance" as "internal controls that have the objective of providing the broker or dealer with reasonable assurance that non-compliance with the [financial responsibility rules], will be prevented or detected on a timely basis." See paragraph (d)(3)(ii) of SEC Rule 17a-5.

⁵⁹ See the SEC Release at 206-207.

consideration of fraud risks, including the risk of misappropriation of customer assets. The new standard includes requirements for testing controls of the broker or dealer for safeguarding customer assets and funds and for performing procedures to obtain evidence about the existence of customer funds and securities held for customers.

Furthermore, PCAOB inspections staff in their inspections of broker and dealer audits have identified auditing deficiencies in 57 of 60 audits that were conducted under GAAS and the prior SEC Rule 17a-5.⁶⁰ The attestation standards—tailored for the new audit and reporting requirements under SEC Rule 17a-5—establish an approach specific to examining compliance reports and reviewing exemption reports that should provide greater clarity as to the procedures that should be used and facilitate consistent compliance for auditors of SEC registered brokers and dealers.

The financial responsibility rules serve an important investor protection function by requiring brokers and dealers to maintain minimum levels of net capital and take steps to safeguard customer securities and cash.⁶¹ As described in the SEC Release, the new requirements for engagement of accountants should result in higher levels of compliance with the financial responsibility rules by increasing the focus of carrying brokers and dealers and their independent public accountants on specific statements made in compliance reports and increasing the focus of non-carrying brokers and dealers and their independent public accountants regarding whether the broker or dealer meets applicable exemption provisions.⁶² Moreover, in the Board's view, the involvement of auditors, under the attestation standards and PCAOB oversight, should enhance the quality of the compliance information provided to the SEC and used in its regulatory oversight, which is important to the protection of investors who entrust their cash and securities with brokers and dealers.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Sarbanes-Oxley Act.

⁶⁰ See Second Report on the Progress of the Interim Inspection Program Related to Audits of Brokers and Dealers, PCAOB Release No. 2013-006 (August 19, 2013) at 6.

⁶¹ See the SEC Release at 255.

⁶² See the SEC Release at 238.

B. Board's Statement on Burden on Competition

Not applicable.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rule amendment for public comment in PCAOB Release 2011-004 (July 12, 2011). The Board received eleven written comment letters. The Board has carefully considered all comments received. The Board's response to the comments it received and the changes made to the rules in response to the comments received are discussed below.

Attestation Standard No. 1, Examination Engagements Regarding Compliance Reports of Brokers and Dealers

As discussed more fully below, the examination standard has been designed specifically for an auditor's examination of certain statements made by a broker or dealer in a compliance report required by SEC Rule 17a-5. As a result of amendments to SEC Rule 17a-5, certain brokers and dealers (e.g., those that maintain custody of customer funds) must file a compliance report with the Commission making statements regarding compliance with and controls over certain financial responsibility rules.⁶³ Specifically, SEC Rule 17a-5 also requires the broker or dealer to engage an independent public accountant registered with the PCAOB to examine, and independently report on, certain statements made by the broker or dealer in the compliance report.⁶⁴

According to the Commission, the amendments to SEC Rule 17a-5 strengthen audit requirements for brokers and dealers as well as provide additional safeguards with respect to brokers' and dealers' custody of customers' assets.⁶⁵ Previously, audits of brokers and dealers were subject to generally accepted auditing standards ("GAAS") established by the American Institute of Certified Public Accountants ("AICPA"). The examination standard the Board is adopting has been designed to align with the requirements of SEC Rule 17a-5. The examination standard includes specific procedures for

⁶³ The examination standard and the SEC Release use the term "financial responsibility rules" to refer to 17 CFR 240.15c3-1 ("SEC Rule 15c3-1" or the "net capital rule"); 17 CFR 240.15c3-3 ("SEC Rule 15c3-3"); and 17 CFR 240.17a-13 ("SEC Rule 17a-13"); and any rule of the designated examining authority ("DEA") of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (an "account statement rule"). See the SEC Release at 8-9.

⁶⁴ See paragraph (g)(2)(i) of SEC Rule 17a-5.

⁶⁵ See generally the SEC Release at 206-209.

auditors performing examinations of certain statements required in a compliance report prepared by brokers and dealers as required under SEC Rule 17a-5. In the Board's view, this approach is consistent with the objectives of SEC oversight and is warranted in view of the importance of brokers' and dealers' compliance with the financial responsibility rules and to the protection of investors. In developing the standard, the Board has emphasized coordination with the financial statement audit and audit procedures performed on supplemental information. This approach should enhance overall audit effectiveness and also help avoid unnecessary duplication of work.

The following discussion provides background regarding the attestation standards, including significant comments received on the proposed standards and changes made to the standards.

SEC Rule 17a-5 and Related Changes

SEC Rule 17a-5 requires a broker's or dealer's compliance report to include the following statements by the broker or dealer as to whether:⁶⁶

- a. The Internal Control Over Compliance of the broker or dealer was effective during the most recent fiscal year;
- b. The Internal Control Over Compliance of the broker or dealer was effective as of the end of the most recent fiscal year;
- c. The broker or dealer was in compliance with the net capital rule and 17 CFR 240.15c3-3(e) (the "reserve requirements rule") as of the end of the most recent fiscal year; and
- d. The information the broker or dealer used to state whether it was in compliance with the net capital rule and the reserve requirements rule was derived from the books and records of the broker or dealer.

As noted above, SEC Rule 17a-5 also requires the broker or dealer to engage an independent public accountant registered with the PCAOB to examine, and independently report on, certain statements made by a broker or dealer in the compliance report. Neither the SEC Rule nor the examination standard require the auditor to opine on the broker's or dealer's process for arriving at the conclusions in the statements

⁶⁶ See paragraph (d)(3)(i)(A) of SEC Rule 17a-5. SEC Rule 17a-5 also requires the compliance report to contain a statement as to whether the broker or dealer has established and maintained Internal Control Over Compliance. However, the auditor is not required by SEC Rule 17a-5 to examine and report on that statement.

made in the compliance report.⁶⁷ Thus, the auditor need not opine on the evaluation procedures that a broker or dealer may have performed in order make the statements in the compliance report.

As amended by the Commission, SEC Rule 17a-5 includes modifications from the SEC's proposed amendments,⁶⁸ including changes that are reflected in the examination standard. Amendments made to SEC Rule 17a-5 included narrowing the scope of the compliance assertion;⁶⁹ eliminating the concepts of "material non-compliance" and "compliance in all material respects;" and requiring the auditor to opine on Internal Control Over Compliance as of the end of the fiscal year, as well as during the fiscal year.⁷⁰

The Commission's narrowing of the scope of the compliance assertion and changes to the evaluation of Internal Control Over Compliance affected the scope of the examination procedures required to be performed by the auditor and the auditor's report, and therefore resulted in conforming changes to the final examination standard. These and other modifications to the examination standard are discussed further below.

Changes to the Examination Standard To Align With SEC Rule 17a-5

The proposed examination standard was designed specifically for the examination of the compliance report required by the proposed amendments to SEC Rule 17a-5. As noted earlier, the examination standard reflects conforming changes based on the Commission's revision of its amendments to SEC Rule 17a-5 in the following areas: Narrowing the scope of the compliance assertion; eliminating the concepts of "material non-compliance" and "compliance in all material respects;" and requiring the auditor to opine on Internal Control

Over Compliance as of the end of the fiscal year, as well as during the fiscal year.

Changes to the Scope of the Compliance Assertion

The SEC's Adopting Release states:

[T]he final rule [SEC Rule 17a-5] requires a statement as to whether the broker-dealer was in compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3 as of the end of the most recent fiscal year and, if applicable, a description of any instances of non-compliance with these rules as of the fiscal year end. This is a modification from the proposed assertion that the broker-dealer is in compliance with the financial responsibility rules in all *material* respects and proposed description of any material non-compliance with the financial responsibility rules. Thus, the final rule reflects two changes from the proposal: (1) Elimination of the concepts of "material non-compliance" and "compliance in all material respects" for the purposes of reporting in the compliance report; and (2) a narrowing of these statements and requirements from compliance with all of the financial responsibility rules to compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3.⁷¹

The narrowing of the scope of the broker's or dealer's assertion to include only compliance with the net capital rule and reserve requirements rule resulted in several changes to the performance and reporting requirements in the examination standard. As the final rule limits the broker's or dealer's assertion regarding compliance to SEC Rule 15c3-1 and paragraph (e) of SEC Rule 15c3-3, the examination standard requires tests of compliance tailored to compliance with the net capital rule and the reserve requirements rule.

Because the broker's or dealer's assertion relates to compliance with the net capital rule rather than compliance "in all material respects," the concept of material non-compliance has been removed from the provisions of the examination standard regarding testing compliance. Also, the auditor cannot opine that a broker's or dealer's assertion that it is in compliance with the net capital rule and reserve requirements rule is fairly stated, in all material respects, if one or more instances of non-compliance with either the net capital rule or reserve requirements rule exist as of the end of the most recent fiscal year.

Materiality Considerations

As discussed previously, the SEC's elimination of the concepts of "material non-compliance" and "compliance in all material respects" from the provisions of SEC Rule 17a-5 related to

asserting compliance has been carried over to the examination standard, which no longer refers to "material non-compliance" or the "risk of material non-compliance." However, most of the procedures set forth in the proposal for assessing the risks of material non-compliance have been retained in paragraph 9 of the examination standard as planning procedures because they remain relevant for determining the necessary nature, timing, and extent of procedures to be performed in the examination.

Also, consistent with SEC Rule 17a-5, the examination standard retains the concept of a Material Weakness in Internal Control Over Compliance, and the requirements regarding performing procedures to determine whether Material Weaknesses exist in Internal Control Over Compliance.

The concept of materiality also remains relevant when evaluating whether the information the broker or dealer used to assert compliance with the net capital rule and reserve requirements rule is derived from the broker's or dealer's books and records, is fairly stated, in all material respects.

The Board received a number of comments on the proposed examination standard that are no longer applicable given the narrowing of the scope of the compliance assertion. These comments included requests for additional guidance related to the determination of material non-compliance and requests for specific examples regarding the consideration of qualitative and quantitative factors in the context of each of the rules included in the compliance assertion, as well as matters within each of those rules that the PCAOB considers to be most significant to compliance.

Evaluating Internal Control Over Compliance During the Fiscal Year and as of the End of the Fiscal Year

The SEC Release states that SEC Rule 17a-5 requires that the compliance report contain, among other things, statements as to whether (1) the broker or dealer has established and maintained Internal Control Over Compliance, (2) the Internal Control Over Compliance of the broker or dealer was effective during the most recent fiscal year, and (3) the Internal Control Over Compliance of the broker or dealer was effective as of the end of the most recent fiscal year.⁷²

To align with SEC Rule 17a-5, the examination standard requires the auditor to express an opinion regarding whether the specified assertions made

⁶⁷ See the SEC Release at 38 and the second note to paragraph 5 of the examination standard.

⁶⁸ See SEC Exchange Act Release No. 34-64676, *Broker-Dealer Reports* (June 15, 2011), 76 **Federal Register** 37572 (June 27, 2011) ("SEC Proposing Release").

⁶⁹ These standards use the term "assertion" to refer to the broker's or dealer's statements that are covered by the examination and review. In the examination standard, the term "assertion" also distinguishes the portion of the statements in the broker's or dealer's compliance report that are covered by the examination.

⁷⁰ See paragraph (d)(3)(ii) of SEC Rule 17a-5, which states that the term "Internal Control Over Compliance" means internal controls that have the objective of providing the broker or dealer with reasonable assurance that non-compliance with §§ 240.15c3-1, 240.15c3-3, 240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer will be prevented or detected on a timely basis.

⁷¹ See the SEC Release at 32.

⁷² See the SEC Release at 29-30.

by the broker or dealer in its compliance report are fairly stated, in all material respects, including whether the broker's or dealer's Internal Control Over Compliance was effective during and as of the end of the most recent fiscal year. This change from the proposed SEC Rule 17a-5 resulted in conforming changes to the examination standard relating to the requirements for testing controls and the scope of the examination report. For example, the examination standard addresses the effect of changes in controls on the auditor's testing.

Further, Appendix A to the examination standard defines certain terms used in the examination standard, including "Internal Control Over Compliance," "Deficiency in Internal Control Over Compliance," and "Material Weakness." The definitions of these terms in the examination standard are consistent with the definitions of these terms in SEC Rule 17a-5.

Performing the Examination Engagement (Paragraphs 6—33 of Attestation Standard No. 1) General Requirements (Paragraphs 6—7 of Attestation Standard No. 1)

The examination standard retains the general requirements as proposed. These requirements are consistent with AT sec. 101, *Attest Engagements*. Briefly, paragraph 6 of the examination standard sets forth general requirements for an auditor performing an engagement pursuant to the examination standard. Paragraph 6 requires that an auditor: Have adequate technical proficiency in attestation engagements; obtain an understanding of the financial responsibility rules and other rules and regulations that are relevant to the broker's or dealer's assertions; determine the auditor's compliance with independence and ethics requirements;⁷³ and exercise due professional care.

Some commenters stated that the general requirements in the examination engagement were sufficiently clear as proposed. One commenter recommended that the examination standard specify the level of understanding of the financial responsibility rules that auditors are expected to have. The commenter also recommended deleting the reference to "other rules and regulations that are relevant to the broker's or dealer's assertions," asserting that the

requirement is too broad to allow auditors to identify suitable criteria and express an opinion on management's assertion. Additionally, that commenter recommended that the examination standard specify how the auditor's understanding of the financial responsibility rules should be documented.

The requirement for the auditor to obtain an understanding of the financial responsibility rules is similar to an existing requirement in AT sec. 101, which includes a requirement for the engagement to be performed by an auditor "having adequate knowledge of the subject matter."⁷⁴ In addition, understanding the requirements in other rules and regulations is important to enable the auditor to form conclusions on the broker's or dealer's assertions, as well as aiding the auditor's own compliance with the requirements in the examination standard and SEC Rule 17a-5. For example, paragraph (h) of SEC Rule 17a-5 requires a broker or dealer to provide notification to the Commission and other securities regulators when the auditor notifies the broker or dealer that the auditor has determined that the broker or dealer is not in compliance with SEC Rule 15c3-1 as required by SEC Rule 17a-11, *Notification Provisions for Brokers and Dealers*. In addition to the financial responsibility rules, it is of course important that the auditor understands the requirements of SEC Rule 17a-5, including the notification requirements when an instance of non-compliance is identified. As such, the requirement was retained substantially as proposed.

With respect to documentation, the attestation engagements are subject to the requirements of Auditing Standard No. 3, *Audit Documentation*, which applies to engagements conducted pursuant to the standards of the PCAOB. Auditing Standard No. 3 states that as audit documentation is the written record that provides the support for the representations in the auditor's report, it should demonstrate that the engagement complied with the standards of the PCAOB.⁷⁵ Further, as there are potentially a variety of ways for the auditor to document their understanding of the financial responsibility rules and other rules and regulations, the examination standard does not prescribe any specific manner to do so. A note has been added to paragraph 6 of the examination standard to remind auditors of their

responsibility to comply with Auditing Standard No. 3.

The proposed examination standard included a footnote which stated that "due professional care" referred to in that paragraph was the same term in paragraph .40 of AT sec. 101. One commenter stated that while the commenter did not disagree with the meaning of "due professional care," referencing AT sec. 101 from the examination standard may be confusing, especially as AT sec. 101 would not be applicable to engagements in which the examination standard is applicable. In the examination standard, a note has been added to state that due professional care imposes a responsibility on each engagement team member to comply with the examination standard and that the exercise of due professional care requires critical review at every level of supervision of the work done and the judgment exercised by those assisting in the engagement, including the preparation of the report. A footnote to that note states that the auditor's responsibility to exercise due professional care is consistent with the description in paragraphs .40-.41 of AT sec. 101.

The Board did not receive other significant comments on the general requirements of the proposed examination standard. As such, the general requirements are being adopted substantially as proposed.

Relationship Between the Examination Engagement and the Audit of the Financial Statements and Audit Procedures Performed on Supplemental Information (Paragraph 8 of Attestation Standard No. 1)

By its terms, SEC Rule 17a-5 requires the financial statement audit and the compliance examination to be performed by the same auditor.⁷⁶ Accordingly, the examination standard includes a requirement for the auditor to coordinate the examination engagement with the audit of the financial statements and the audit procedures performed on supplemental information. The emphasis on appropriately coordinating the examination engagement with the audit of the financial statements and the audit procedures performed on supplemental information should promote overall audit effectiveness and avoid redundancy in the auditor's work.

For example, the examination standard includes a requirement for the auditor to take into account evidence from the audit of the financial

⁷³ Determining the auditor's compliance with independence and ethics requirements includes determining that the auditor complied with relevant requirements of the PCAOB and the SEC. Paragraph (f)(1) of SEC Rule 17a-5 requires the auditor to be independent in accordance with 17 CFR 210.2-01.

⁷⁴ See AT sec. 101.21.

⁷⁵ See paragraph 4 of Auditing Standard No. 3.

⁷⁶ See paragraph (g) of SEC Rule 17a-5.

statements in planning and performing procedures for the examination engagement and in evaluating the results of the procedures performed in the examination. This enables the auditor to plan, perform, and evaluate the results of the examination engagement concurrent with the audit of the financial statements because the examination standard is structured similarly to, and contains many of the same concepts included in, auditing standards related to the auditor's assessment of and response to risk.⁷⁷

The proposing release requested comments on other ways the Board could promote coordination of the examination engagement with the audit of the financial statements and the audit procedures performed on supplemental information. Commenters generally stated that requirements regarding the coordination of the examination engagement with the audit of the financial statements were appropriate.

One commenter stated that the Board should require the auditor of the financial statements to perform the examination engagement and issue the examination report. As noted previously, SEC Rule 17a-5 includes this requirement.⁷⁸ Thus, the attestation standards do not include specific requirements for performing the examination or review if the auditor did not audit the financial statements.

Another commenter stated that it is inappropriate to require that the auditor plan and perform the work to meet the objectives of both the examination engagement and the financial statement audit, and that the auditor's obligation under the examination standard is to meet the objectives of the examination engagement. The language in the standard was retained as proposed. The auditor should plan and perform the work to meet the objectives of both the examination engagement as well as the financial statement audit. Existing auditing standards require the auditor to properly plan and perform the financial statement audit.⁷⁹ Since the objectives are not identical, the auditor must plan and perform the work to achieve the objectives of both engagements. Further, the examination standard does require the auditor to take into account the evidence obtained and the results of procedures performed during the audit of the financial statements and the audit procedures performed on the supplemental information in planning and performing procedures for the examination engagement and in

evaluating the results of the procedures performed in the examination engagement.

Consideration of Fraud (Paragraph 10 of Attestation Standard No. 1)

The auditor's consideration of fraud is an important part of the examination engagement. Fraud risks particularly relevant to a broker's or dealer's non-compliance with the financial responsibility rules include the risk of misappropriation of customer funds or securities held for customers and intentional manipulation of the books and records to conceal material misappropriations or other non-compliance. The SEC Release notes that the amendments to SEC Rule 17a-5, which include requiring the examination and review engagements, are designed to provide additional safeguards with respect to broker and dealer custody of customer securities and funds.⁸⁰

Paragraph 10 of the examination standard includes a requirement for the auditor to assess the risk of fraud, and specifically refers to the risk of misappropriation of customer assets, which is relevant to compliance with the net capital rule and the reserve requirements rule, as well as the broker's or dealer's Internal Control Over Compliance.

The requirement to coordinate the examination engagement with the audit of the financial statements and audit procedures performed on supplemental information is also important for the proper assessment of fraud risk in the examination engagement. The auditor's assessment of fraud risk in the examination engagement will be informed to a substantial degree by the procedures performed and the fraud risk assessments in the audit of the financial statements and audit procedures performed on supplemental information. Many of the fraud risk factors identified in the financial statement audit regarding (1) incentives or pressures to misappropriate assets or commit fraudulent financial reporting, and (2) attitudes and rationalizations that justify such fraudulent actions,⁸¹ are relevant when identifying and assessing risks of misappropriation of customer assets or intentional manipulation of the books and records to conceal misappropriation of customer assets or non-compliance with the financial responsibility rules. Also,

weaknesses in controls regarding safeguarding of assets or stock records can result in opportunities for misappropriation of customer assets or non-compliance. In addition, the evaluation of misstatements for indications of fraud or matters identified during the audit that might affect the assessment of fraud risks in the audit of the financial statements also might affect the assessment of fraud risks in the examination engagement.⁸²

Paragraph 9.d. of the examination standard includes a requirement for the auditor to assess the risks associated with related parties, including related parties that are investment advisors or entities with which the broker or dealer has a custodial or clearing relationship, that are relevant to compliance and controls over compliance. Given the nature of the transactions with related parties that are investment advisors or entities with which the broker or dealer has a custodial or clearing relationship, they are particularly relevant to the auditor's consideration of the risks associated with related parties in the examination engagement and in considering both the broker's or dealer's assertions related to Internal Control Over Compliance, as well as to the broker's or dealer's assertion related to compliance with the net capital rule and the reserve requirements rule.

Likewise, paragraph 9.j. of the examination standard includes a requirement for the auditor to obtain an understanding of the nature and frequency of customer complaints that are relevant to compliance with the financial responsibility rules, which can provide evidence relevant to the assessment of fraud risks, especially if there is a high incidence of customer complaints, thematic issues in the complaints that indicate the potential for misappropriation of customer assets, or specific allegations of fraud or misfeasance by the broker's or dealer's customers.

Other paragraphs in the examination standard address the auditor's responsibilities for responding to fraud risks. For example, paragraph 22 of the examination standard retains an important requirement from the proposed examination standard for the auditor to perform compliance tests that are responsive to risks, including fraud risks. Also, paragraph 23 of the examination standard retains from the proposal the requirement for the auditor to perform procedures to obtain evidence about the existence of

⁸⁰ See the SEC Release at 206.

⁸¹ See paragraphs 65-66 of Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement*, and paragraph 85 of AU sec. 316, *Consideration of Fraud in a Financial Statement Audit*.

⁷⁷ See generally, Auditing Standards Nos. 8-15.

⁷⁸ See paragraph (g) of SEC Rule 17a-5.

⁷⁹ See Auditing Standard No. 9, *Audit Planning*.

⁸² See paragraphs 19-22, 28-29 and Appendix C of Auditing Standard No. 14, *Evaluating Audit Results*.

customer funds or securities held for customers. This is an important responsibility in an audit of a broker or dealer that has access to customer assets. It affects compliance with the net capital rule and the reserve requirements rule, and it has the potential to result in contingent liability to the broker or dealer that requires recognition or disclosure in the financial statements.

Because the examination standard requires the auditor to perform tests that are responsive to fraud risks, the nature, timing, and extent of procedures to obtain evidence about the existence of assets held for customers should be commensurate with the risk of misappropriation of customer assets. Determining the necessary procedures involves considering relevant risk factors, including, but not limited to, the amount of cash and securities held for customers and the results of testing and evaluation of the relevant controls. Examples of procedures that provide evidence about the existence of customer assets include (1) counting customer securities or observing and testing the broker's or dealer's procedures for physical inspection and (2) confirming customer security positions directly with depositories and clearing organizations. Procedures performed in the audit of the financial statements and the audit procedures performed on supplemental information to test the existence of assets held for customers also provide relevant evidence in the examination engagement.

The Board requested comment regarding whether specific requirements should be added to either of the proposed attestation standards to further enhance protection of customer assets. One commenter stated that generally the attestation standards are adequate to enhance protection of customer assets. Another commenter stated that the principles in the examination standard for performing compliance tests are sufficiently clear.

One commenter recommended that the Board clarify the extent and timing of procedures included as examples in paragraph 26 of the proposed examination standard regarding procedures that provide evidence about the existence of customer assets. The examination standard requires the auditor to perform procedures to obtain evidence of customer funds or securities held for customers, but the standard does not prescribe specific procedures for the auditor to perform to obtain such evidence. The procedures included in the note to paragraph 23 of the examination standard are examples of

procedures that the auditor might perform to obtain such evidence. The necessary extent and timing of those procedures depends on, among other things, the complexity of the operations of the broker's or dealer's business, the nature of carrying and clearing arrangements, and the design and effectiveness of controls related to the existence assertion. As such, the examination standard has not been changed to reflect this comment.

Testing Controls Over Compliance (Paragraphs 11–20 of Attestation Standard No. 1)

SEC Rule 17a–5 requires the broker's or dealer's compliance report to include an assertion regarding the effectiveness of Internal Control Over Compliance during the most recent fiscal year and as of the end of the fiscal year.⁸³ Accordingly, the examination standard requires the auditor to obtain evidence about the design and operating effectiveness of relevant controls over compliance throughout the fiscal year and as of the end of the fiscal year.

The examination standard requires the auditor to test those controls that are important to the auditor's conclusion about whether the broker or dealer maintained effective Internal Control Over Compliance for each financial responsibility rule during the fiscal year and as of the end of the fiscal year. The examination standard also requires the auditor to obtain evidence that the controls over compliance selected for testing are designed effectively and operated effectively during the fiscal year and as of the end of the fiscal year.⁸⁴

As the broker's or dealer's assertion regarding Internal Control Over Compliance relates to each financial responsibility rule individually, the auditor should obtain evidence about the effectiveness of the selected controls for each financial responsibility rule. However, when testing controls over compliance, the auditor's objective is not to support an opinion about the effectiveness of each individual control, rather, the objective is to form an

opinion about whether the broker's or dealer's assertions regarding Internal Control Over Compliance are fairly stated, in all material respects. This allows the auditor to focus his or her effort on the controls that are important to each of the financial responsibility rules and to vary the level of evidence obtained regarding the effectiveness of individual controls selected for testing based on the risk associated with the individual control.

One commenter recommended that the examination standard include guidance regarding the identification of controls important to the auditor's conclusion about whether the broker or dealer maintained effective internal controls over compliance for each financial responsibility rule. As the financial responsibility rules outline the requirements necessary to be in compliance, the auditor can identify the controls for testing by understanding the controls the broker or dealer has implemented to assure compliance with the respective requirements.

Additionally, the examination standard identifies certain factors that affect the risk associated with a control. One factor included in paragraph 13 is the broker's or dealer's history of instances of non-compliance with the financial responsibilities rules that the control is intended to prevent or detect. A recent history of non-compliance generally indicates higher risk associated with the control. Factors that affect the risk associated with a control include, but are not limited to, those described in paragraph 13 of the examination standard.

Another factor included in paragraph 13 includes the extent of use of part-time personnel. Some commenters stated that they did not agree that the use of part-time personnel is a factor that affects the risk associated with a control. Those commenters stated that this risk factor is incorporated in another risk factor regarding the competence of the personnel who perform the control or monitor its performance. One commenter stated that, in their opinion, it would be more appropriate to evaluate the competence and objectivity of personnel executing the controls and their knowledge of the financial responsibility rules.

In considering these comments, the Board took into account the SEC's June 2007 compliance alert,⁸⁵ which noted that SEC examinations found that many part-time financial and operational principals did not actually supervise or

⁸³ See paragraphs (d)(3)(i)(A)(2) and (3) of SEC Rule 17a–5, which requires the broker or dealer to assert on the effectiveness of its Internal Control Over Compliance with the financial responsibility rules throughout the fiscal year and as of the end of the most recent fiscal year.

⁸⁴ See paragraphs (d)(3)(i)(A)(2) and (3) of SEC Rule 17a–5, which requires the broker or dealer to assert on the effectiveness of its Internal Control Over Compliance throughout the fiscal year and as of the broker's or dealer's fiscal year end. See also paragraphs (d)(3)(i)(B) and (C) of SEC Rule 17a–5, which require the broker or dealer to describe each material weakness in Internal Control Over Compliance and any instance of non-compliance with the net capital rule or reserve requirements rule.

⁸⁵ See Compliance Alert, June 2007, available at <http://www.sec.gov/about/offices/ocie/complialert.htm>.

create and maintain various books and records. In light of risks illustrated in the SEC compliance alert, the use of part-time personnel has been retained in the examination standard as a risk factor for the auditor to consider when testing internal controls over compliance. The auditor's understanding of the role and responsibilities of the part-time personnel is important to evaluating the associated risks.

Paragraphs 14–18 of the examination standard provide requirements for the auditor to test the design and operating effectiveness of the selected controls over compliance. These requirements for testing design and operating effectiveness of controls over compliance are analogous to the requirements for testing controls in Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement*.

Under the examination standard, the auditor should obtain evidence about the effectiveness of controls each year. Similar to testing controls in a financial statement audit, the examination standard provides factors for the auditor to take into account if the auditor plans to use evidence obtained in prior years in determining the extent of testing in the current year.

One commenter recommended that paragraph 16 of the proposed examination standard, which stated “[a]s the risk associated with the control being tested increases, the evidence that the auditor should obtain also increases,” be replaced with paragraph 18 of Auditing Standard No. 13, which states that [t]he auditor should obtain more persuasive audit evidence. . . .” The suggested revision is consistent with the intent of the requirement, so it has been included in paragraph 12 of the examination standard. This change will focus the auditor on the persuasiveness of audit evidence, rather than quantity, and avoid unnecessary differences between the examination standard and the auditing standards. Similar changes are reflected in paragraphs 22 and 24 of the examination standard.

Paragraphs 19 and 20 of the examination standard describe the auditor's use of evidence obtained in past examination engagements and using tests of controls that are modified during the year. One commenter suggested that as changes to controls occur throughout the period, the examination standard should require the auditor to determine with management what types of changes could materially affect control effectiveness. That commenter stated that the auditor should then test and

evaluate management's documentation of the changes to controls and perform procedures to test the broker's or dealer's implementation of that change. SEC Rule 17a–5 requires that the broker or dealer assert that its controls were effective during the most recent fiscal year. As stated in the examination standard, to evaluate controls over compliance throughout the period, the auditor should obtain evidence regarding the design effectiveness of the selected controls before and after the change. Further, the examination standard also requires that, if a broker or dealer makes changes to its policies and procedures or key personnel during the fiscal year, the auditor should obtain an understanding of the reason for the change and obtain evidence regarding the design and operating effectiveness of the superseded and new controls before and after the change.

One commenter stated that the phrase within paragraph 20 of the proposed examination standard which stated, “whether each control is operating as designed” might be confusing and recommended revising the paragraph to state “each control selected for testing.” The suggested revision is consistent with the intent of the requirement, so it has been included in paragraph 16 of the examination standard.

Performing Compliance Tests (Paragraphs 21–24 of Attestation Standard No. 1)

Paragraphs 21–24 set forth requirements for performing tests of compliance with the net capital rule and reserve requirements rule.

With respect to compliance tests, the auditor's objective is to form a conclusion about whether the broker's or dealer's assertion regarding compliance with the net capital rule and the reserve requirements rule is fairly stated, in all material respects. To satisfy this objective, the examination standard requires the auditor to perform procedures that are sufficient to support the auditor's conclusions regarding whether the broker or dealer was in compliance with the net capital rule and reserve requirements rule as of the end of its most recent fiscal year.

The examination standard requires the auditor to perform specific procedures on the schedules the broker or dealer used to determine compliance with the net capital rule and the reserve requirements rule as of the end of its fiscal year, including:

a. Evaluating whether the amounts in the schedule were determined in accordance with the net capital rule or reserve requirements rule, as applicable;

b. Testing the accuracy and completeness of the information in the schedule;

c. Determining whether the broker or dealer maintained the required level of net capital in accordance with the net capital rule;

d. Determining whether the broker or dealer maintained a special reserve bank account for the exclusive benefit of customers and deposited funds in at least the required amount in accordance with the reserve requirements rule;

e. Determining whether the information in the schedule was derived from the books and records of the broker or dealer; and

f. Determining whether the broker or dealer made the notifications, if any, required by the net capital rule and reserve requirements rule as of the end of the most recent fiscal year.

Paragraph 21.e. of the examination standard requires the auditor to perform procedures to determine whether the information used to assert compliance with the net capital rule and the reserve requirements rule was derived from the broker's or dealer's books and records. Proper coordination of these procedures with the audit of the financial statements and audit procedures performed on supplemental information should allow the auditor to avoid redundancy in the auditor's work and increase the effectiveness of the procedures performed. For example, Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements*, includes a requirement for the auditor to determine that the supplemental information reconciles to the underlying accounting and other records or to the financial statements themselves, as applicable. Such supplemental information includes the supporting schedules that brokers or dealers are required to include in their financial reports pursuant to SEC Rule 17a–5.⁸⁶

To test compliance pursuant to paragraph 21, the auditor will need to design his or her procedures to test the provisions of the net capital rule and reserve requirements rule that have a bearing on the broker's or dealer's compliance with that rule. For example, the current requirements in the net capital rule generally include:

a. The requirement to maintain minimum net capital and tentative net capital, as applicable, at all times.⁸⁷

b. The requirement for certain brokers or dealers not to let a specified amount of certain accounts it carries exceed a

⁸⁶ See paragraph (d)(2) of SEC Rule 17a–5.

⁸⁷ See paragraph (a) of 17 CFR 240.15c3–1.

specified threshold for more than five business days.⁸⁸

c. The requirement for brokers or dealers carrying accounts of listed options specialists not to let the amount of certain deductions required under Appendix A of the net capital rule to exceed a specified threshold for more than three business days.⁸⁹

d. The notification requirement relating to paragraph (c)(2)(x)(C) of the net capital rule.⁹⁰

e. The requirement for brokers or dealers carrying accounts of listed options specialists to liquidate accounts when a liquidating deficit exists which includes a notice requirement.⁹¹

f. The requirement that the total of outstanding principal amounts of satisfactory subordination agreements cannot exceed 70% of the broker's or dealer's debt-equity total for a period in excess of 90 days.⁹²

g. The notification requirements relating to withdrawals of equity capital.⁹³

h. The limitations on withdrawal of equity capital.⁹⁴

i. The requirements regarding temporary restrictions on net capital withdrawals.⁹⁵

Other provisions of the rule also may apply depending on the particular activities or elections of the broker or dealer. Auditors should look to the requirements of the individual rules in order to test compliance.⁹⁶

The requirements for testing compliance with the net capital rule and the reserve requirements rule should facilitate the coordination of the examination engagement and the audit procedures performed on supplemental information. The compliance procedures, if properly planned and performed, should provide substantial evidence to satisfy the requirements of Auditing Standard No. 17.

As discussed earlier, in view of the amendments to SEC Rule 17a-5 adopted by the Commission, the examination standard was revised to more closely align the auditor's performance requirements with the scope of the

compliance assertion in SEC Rule 17a-5. It is appropriate to include specific procedures the auditor should perform on the schedules the broker or dealer used to determine compliance with the net capital rule and the reserve requirements rule as of the end of its fiscal year.

In addition to those procedures that the auditor would perform on the broker's or dealer's schedules when planning and performing compliance tests, the auditor should take into account the evidence obtained from procedures performed as part of the audit of the financial statements and the audit procedures performed on supplemental information. For example, certain audit procedures performed to test the valuation and classification of the broker's or dealer's investments as of the end of the fiscal year may provide relevant evidence regarding the broker's or dealer's compliance with the net capital rule. Further, when testing the broker's or dealer's cash and cash equivalents, certain audit procedures may provide evidence regarding the existence of special reserve bank accounts for the exclusive benefit of customers, as well as evidence about the deposits to, and withdrawals from, those bank accounts. Such evidence may be relevant to the broker's or dealer's compliance with the reserve requirements rule. However, as the objectives of the audit and the examination engagement are not the same, the auditor must plan and perform the work to meet the objectives of both engagements.

Evaluating the Results of the Examination Procedures (Paragraphs 25-29 of Attestation Standard No. 1)

Paragraph 25 of the examination standard states that in forming an opinion on whether the assertions made by the broker or dealer in the compliance report are fairly stated, in all material respects, the auditor should evaluate all evidence obtained, regardless of whether the evidence corroborates or contradicts the broker's or dealer's assertions. Paragraph 26 of the examination standard provides that the auditor should evaluate: (1) Identified instances of non-compliance⁹⁷ with the net capital rule

and reserve requirements rule, to determine whether any instances of non-compliance existed as of the end of the most recent fiscal year; (2) identified instances in which the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived from the broker's or dealer's books and records to determine whether they are material, individually or in combination; and (3) identified Deficiencies in Internal Control Over Compliance to determine whether the deficiencies, individually or in combination, are Material Weaknesses. Identified instances of non-compliance might be an indication of a Deficiency in Internal Control Over Compliance.

The auditor's evaluation of the materiality of instances in which the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived from the broker's or dealer's books and records is based on relevant quantitative and qualitative factors, including, in particular, the importance of the information not derived from the books and records to the broker's or dealer's compliance with the corresponding requirement in the net capital rule or the reserve requirements rule. For example, when a broker or dealer asserts that the information used to state whether it was in compliance with the net capital rule was derived from its books and records, and the auditor identifies an amount not derived from a broker's or dealer's books and records, the broker or dealer may still be able to support its assertion that it maintained the required net capital using information that was derived from the books and records of the broker or dealer. However, such an instance might be an indication of a Deficiency in Internal Control Over Compliance.

Paragraph 28 of the examination standard applies when the auditor has not obtained sufficient appropriate evidence about an assertion or has substantial doubt about an assertion. Pursuant to paragraph 28, the auditor in those situations is required to perform additional procedures to address the matter. Performing the examination with due professional care requires an auditor conducting an examination to take appropriate actions when becoming aware of non-compliance or Material Weaknesses not included in the broker's or dealer's assertions or when substantial doubt remains. This requirement is similar to the requirement in paragraph 35 of Auditing

indication of a Deficiency in Internal Control Over Compliance that requires evaluation pursuant to this standard.

⁸⁸ See paragraph (a)(6)(v) of 17 CFR 240.15c3-1.

⁸⁹ See paragraph (c)(2)(x)(C) of 17 CFR 240.15c3-1.

⁹⁰ See paragraph (c)(2)(x)(C)(1) of 17 CFR 240.15c3-1.

⁹¹ See paragraph (c)(2)(x)(D) of 17 CFR 240.15c3-1.

⁹² See paragraph (d) of 17 CFR 240.15c3-1.

⁹³ See paragraph (e)(1) of 17 CFR 240.15c3-1.

⁹⁴ See paragraph (e)(2) of 17 CFR 240.15c3-1.

⁹⁵ See paragraph (e)(3) of 17 CFR 240.15c3-1.

⁹⁶ See paragraph 6.b. of the examination standard, which requires the auditor to obtain an understanding of the financial responsibility rules and other rules and regulations that are relevant to the broker's or dealer's assertions.

⁹⁷ In evaluating the results of compliance testing, an error in a broker's or dealer's computation used to determine compliance with a provision of the net capital rule or reserve requirements rule is not an instance of non-compliance if, after giving consideration to the effect of the error, the broker or dealer still met the requirements of that provision, e.g., maintained at least the required minimum level or net capital or at least the minimum level on deposit in the special reserve account. However, such an instance might be an

Standard No. 14, which states that if the auditor has not obtained sufficient appropriate audit evidence about a relevant assertion or has substantial doubt about a relevant assertion, the auditor should perform procedures to obtain further audit evidence to address the matter.

Obtaining a Representation Letter (Paragraphs 32–33 of Attestation Standard No. 1)

The examination standard includes a requirement for the auditor to obtain written representations from management of the broker or dealer. The failure to obtain written representations from management, including management's refusal to furnish them, constitutes a limitation on the scope of the examination engagement. See *Reporting on the Examination Engagement* below for further discussion regarding scope limitations.

Overall, commenters were supportive of the requirement for the auditor to obtain representations from management and stated that obtaining representations from management is a necessary part of the auditor's ability to support the auditor's opinion. One commenter recommended that the auditor obtain a written representation from the broker or dealer that acknowledges the broker's or dealer's responsibility for the assertions in the compliance report. This recommendation has been incorporated into paragraph 32.b. of the examination standard.

Commenters suggested additional representations that the auditor should obtain from management during an examination engagement, including representations regarding management's responsibility for compliance with the financial responsibility rules, that management has performed an evaluation of compliance, that management did not use the auditor's procedures performed during the audit of the financial statements or procedures performed on supplemental information as part of the basis for management's assertions and that management has disclosed to the auditor all known instances of non-compliance and fraud. While many of these additional representations might be appropriate based on the facts and circumstances of the examination engagement, the examination standard was not modified to include them as they are either duplicative of management's assertions or not necessary to meet the requirements of the standard. However, the examination standard does not preclude the auditor from obtaining additional

representations from management in situations in which the auditor believes additional representations are appropriate.

Communication Requirements (Paragraphs 34–35 of Attestation Standard No. 1)

The examination standard requires the auditor to communicate certain matters to management and the audit committee. These requirements reflect changes from the proposed communication requirements to conform to SEC Rule 17a–5. In addition, rather than defining the term “audit committee,” the examination standard states that the term “audit committee” has the same definition as that in Auditing Standard No. 16, *Communication with Audit Committees*.

One commenter stated that communication requirements in the proposed examination standard are sufficient. Another commenter requested that the Board clarify the meaning of “identified” as used in paragraph 36 of the proposed examination standard. That commenter questioned whether an “identified” instance of non-compliance referred to the moment the auditor becomes aware of its existence or only after the auditor concludes it represented a significant deficiency. The language in the standard was retained as proposed. In the context of the examination standard, the term “identified instance of non-compliance” is meant to clarify that the communication requirement applies to instances of non-compliance identified by the auditor.⁹⁸ A note has been included to paragraph 35 of the examination standard reminding auditors of their obligation to comply with the requirements of paragraph (h) of SEC Rule 17a–5.

Reporting on the Examination Engagement (Paragraphs 36–38 of Attestation Standard No. 1)

The examination standard requires the auditor to issue a single report that expresses an opinion on whether the assertions made by a broker or dealer in a compliance report are fairly stated, in all material respects, when expressing an unqualified opinion. Paragraph 36 of the standard includes basic report elements, while paragraph 37 includes an illustrative report.

The reporting requirements in the examination standard have been revised to align with the compliance report that is required by SEC Rule 17a–5. This includes reporting on the broker's or

dealer's assertions regarding the effectiveness of Internal Control Over Compliance during and as of the end of the most recent fiscal year, compliance with the net capital rule and the reserve requirements rule, and whether the information used to assert compliance with those rules was derived from the broker's or dealer's books and records.

Legal Determinations, Discussion of Inherent Limitation of the Examination, Discussion of Interpretations of Rules and Regulations, and Restrictions on the Use of the Examination Report

One commenter stated that the report clearly communicates the auditor's responsibilities. Other commenters suggested that the examination standard should address additional reporting matters, such as including a caveat about legal determinations, discussion of inherent limitations of the examination, discussion of interpretations of rules and regulations, and restrictions on the use of the examination report.

Legal Determinations

Some commenters stated that the auditor's examination report should be modified to include language indicating that the auditor's examination does not provide for a legal determination of a broker's or dealer's compliance with financial responsibility rules. When the auditor is engaged to perform an examination, it is necessary for the auditor to read and make judgments regarding the application of the regulatory requirements, as applicable to the engagement. The auditor's report issued pursuant to the examination standard does not provide a legal determination, nor does it purport to provide a legal determination, of a broker's or dealer's compliance with the net capital rule or the reserve requirements rule. However, such a report may be useful to legal counsel or others in making such determinations. In the context of an examination, the auditor expresses an opinion on whether the assertions made by a broker or dealer in a compliance report are fairly stated, in all material respects. Accordingly, the Board did not add the suggested language to the examination standard.

Inherent Limitations of the Examination

Some commenters stated that the examination report should be revised to include language discussing the inherent limitations of the examination, similar to language contained in other PCAOB auditing standards. Those commenters recommended including a statement similar to the statement

⁹⁸ See also the discussion of the notification requirements in the SEC Release at 101–107.

contained in the audit report on internal control over financial reporting, which states that because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements.⁹⁹

The examination standard does not prescribe reporting language regarding the inherent limitations of the examination. Such language might be confusing to users who interpret such a statement as a limitation on the opinion expressed in the auditor's examination report, rather than the nature of internal controls over compliance. Also, an inherent limitation statement about internal control over financial reporting, which is management's responsibility and the subject of the audit, is different from a limitation statement about the auditor's examination itself.

Interpretations of Rules and Regulations

Several commenters stated that evaluating a broker's or dealer's compliance with regulatory requirements may be based upon interpretations of regulations or rules established by the Commission and/or DEAs. Commenters recommended that the examination standard permit the inclusion of a statement within the examination report stating the description and the source of interpretations made by the brokers and dealer's management. After considering these comments, a footnote has been added to paragraph 36.h. of the examination standard. The statement in the footnote is consistent with the existing requirements of paragraph .59 of AT sec. 601, *Compliance Attestation*, which allows the auditor to include a paragraph stating the description and the source of interpretations made by the entity's management immediately after the scope paragraph of the auditor's report. The following is an example of such a paragraph:

We have been informed that, under X Broker's interpretation of [*identify the compliance requirement, e.g. SEC Rule 15c3-1*], [*explain the source and nature of the relevant interpretation*].

One commenter recommended that the auditor's examination report should include a statement that the assertions are the responsibility of the broker or dealer. The examination standard does not include this language because the first sentence in the auditor's examination report clarifies that the assertions are the responsibility of the broker or dealer.

Restriction of Use of the Examination Report

The proposed examination standard did not include provisions for restricting the use of the examination report to specified parties. Some commenters stated that audit firms previously have often restricted the use of reports required by SEC Rule 17a-5 to the board of directors, management, the Commission, and other regulatory agencies that rely on SEC Rule 17a-5. Some commenters stated that a restriction on the use of an auditor's examination or review report is appropriate, given that general users of these reports may not have a sufficient understanding of the subject matter to which they relate, such as the financial responsibility rules.

SEC Rule 17a-5 specifies the required reports, assertions, and the compliance requirements related to these engagements. The reports pursuant to this rule are generally filed only with the Commission, the broker's or dealer's DEA, and the Securities Investor Protection Corporation ("SIPC"). Accordingly, these criteria are suitable and available for purposes of these engagements.

As the reporting criteria have been established by the Commission and those reporting criteria are publicly available, including language restricting the auditor's examination report in the examination standard is unnecessary. As such, no additional language is included in the examination standard.

Examination Report Date (Paragraph 38 of Attestation Standard No. 1)

Under paragraph 38 of the examination standard, the auditor should date the examination report no earlier than the date on which the auditor obtains sufficient appropriate evidence to support his or her opinion. Because of the coordination between the examination engagement, the audit of the financial statements and the audit procedures performed on supplemental information, the date of the examination report should not be earlier than the date of the auditor's report on the financial statements and supplemental information. The Board did not receive comments on the proposed dating of the report. As such, these requirements are adopted as proposed.

Examination Report Modifications (Appendix C of Attestation Standard No. 1)

The examination standard includes an appendix ("Appendix C") that builds on existing concepts described in AT sec. 101 regarding report modifications and

adapts them as appropriate to the requirements of the examination engagement.

Under the examination standard, if one or more instances of non-compliance with the net capital rule or the reserve requirements rule exist as of the end of the most recent fiscal year, one or more Material Weaknesses in Internal Control Over Compliance exist during or as of the end of the most recent fiscal year, or the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the books and records of the broker or dealer, the auditor must express an adverse opinion directly on the subject matter of the respective assertions, rather than on the assertions themselves, unless there is a restriction on the scope of the examination engagement.¹⁰⁰ For example, if the broker or dealer is not in compliance with the net capital rule, the auditor's report would include an adverse opinion on compliance and would identify the instance of non-compliance regardless of whether it was described in the broker's or dealer's compliance report.

This requirement is different from AT sec. 101, which states that "[r]eservations about the subject matter . . . can result in either a qualified or an adverse opinion, depending on the materiality of the departure from the criteria against which the subject matter . . . was evaluated."¹⁰¹ Qualified opinions are not appropriate because any instance of non-compliance as of the end of the fiscal year, any Material Weakness in Internal Control Over Compliance during or as of the end of the fiscal year, or any instance in which the information used to assert compliance with the net capital rule and the reserve requirements rule was not derived, in all material respects, from the broker's or dealer's books and records, is by definition material and, as such, must result in an adverse opinion.

The examination standard describes specific matters that the auditor should include in the examination report when expressing an adverse opinion. For example, when expressing an adverse opinion because one or more Material Weaknesses exist, the auditor's examination report must include a statement that one or more Material Weaknesses have been identified and an identification of the description of the

¹⁰⁰ The requirement to express an adverse opinion applies regardless of whether the instance of non-compliance, material weakness, or other matters preventing an unqualified opinion were identified by management or the auditor.

¹⁰¹ See AT sec. 101.76.

⁹⁹ Paragraph 85.j. of Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated With an Audit of Financial Statements*.

Material Weaknesses in the compliance report.

The requirement to express an adverse opinion applies only to the subject matter for the respective assertion. It does not require an adverse opinion on the subject matter of all assertions in every instance. For example, if a Material Weakness was identified during the year but not at year end, and there were no instances of non-compliance or instances in which the information used to assert compliance with the net capital rule and the reserve requirements rule was not derived, in all material respects, from the broker's or dealer's books and records, the examination report should include an adverse opinion on Internal Control Over Compliance during the year and an unqualified opinion on the other three assertions.

Several commenters recommended that the examination standard include examples of modified examination reports. Appendix C to the examination standard describes examination report modifications. Additional report examples may be considered, if guidance is issued in the future.

Further, paragraph C6 of the examination standard states that, when the auditor plans to disclaim an opinion and the limited procedures performed by the auditor caused the auditor to make certain conclusions, the auditor's report also must include the matters described in paragraph C3 of the examination standard. Those conclusions include that: (1) One or more instances of non-compliance with the net capital rule or the reserve requirements rule existed as of the end of the fiscal year, (2) one or more Material Weaknesses existed during or as of the end of the most recent fiscal year, or (3) the information used to assert compliance with the net capital rule or the reserve requirements rule was not derived, in all material respects, from the books and records of the broker or dealer.

The examination standard states that the auditor may issue a report disclaiming an opinion on the assertions made by a broker or dealer in a compliance report as soon as the auditor concludes that a scope limitation will prevent the auditor from obtaining the reasonable assurance necessary to express an opinion. The auditor is not required to perform any additional work before issuing a disclaimer when the auditor concludes that he or she will not be able to obtain sufficient evidence to express an opinion.

In addition, unlike AT sec. 101, if the auditor concludes that he or she cannot express an opinion because there has

been a limitation on the scope of the examination engagement, under the examination standard, the auditor should communicate on a timely basis, in writing, to management and the audit committee that the examination engagement cannot be satisfactorily completed.

Some commenters stated that when the auditor expresses an adverse opinion, the auditor should report directly on the subject matter for all assertions, rather than the respective assertion necessitating the adverse opinion. As discussed, the examination standard aligns with the requirements of SEC Rule 17a-5, which requires the auditor to report on the respective management assertion.

Under the examination standard, if the broker's or dealer's compliance report contains other information in addition to the statements and descriptions, if applicable, required by SEC Rule 17a-5,¹⁰² the auditor should disclaim an opinion on the other information. For example, if the broker's or dealer's compliance report states that an identified Material Weakness no longer exists because controls have been implemented after the end of the fiscal year that address the Material Weakness, the auditor should disclaim an opinion on this information.

One commenter recommended that the examination standard address instances when there is a misstatement of fact in management's assertion, particularly when management's assertion is improperly presented. SEC Rule 17a-5 establishes the assertions brokers and dealers are required to make regarding compliance with the financial responsibility rules. The auditor's responsibility is to express an opinion on management's assertions. SEC Rule 17a-5 specifically describes the content of the statements to be made by the broker or dealer.¹⁰³ Further, a misstatement of fact by the broker or dealer in its assertion would likely result in an adverse opinion on one or more of the broker's or dealer's assertions. As the examination standard provides requirements relating to adverse opinions, no further changes were made based on this comment. Furthermore, as stated in the proposing release, if the auditor believes that additional information in the compliance report contains a material misstatement of fact, the auditor should discuss the matter with management of the broker or dealer. If, after discussing the matter with management, the

auditor concludes that a material misstatement of fact remains, the auditor should notify management and the audit committee of the auditor's views concerning the information.

Appendix B. Considerations for Brokers and Dealers With Multiple Divisions or Branches

When a broker or dealer conducts its operations through multiple divisions and branch offices, the examination standard includes, in Appendix B, a requirement for the auditor to determine the extent to which examination procedures should be performed at selected divisions or branches to obtain sufficient appropriate evidence to support the conclusions expressed in the auditor's examination report. This includes determining the divisions or branches at which to perform examination procedures, as well as the nature, timing, and extent of the procedures to be performed at those individual divisions or branches. The same requirements were included in the body of the proposed examination standard.

One commenter recommended certain additional factors that should be taken into account when determining the extent of the examination procedures to be performed at divisions or branches, including judgments about materiality of the division or branch and the similarity of operations over compliance for different divisions or branches. These factors were considered during the development of the examination standard. The requirement in the examination standard for the auditor to take into account the degree to which the financial responsibility rules relate to activities at the division or branch level is broader than judgments based solely on the materiality of a specific division. Adding another factor regarding materiality within paragraph 13 of the examination standard might limit an auditor's consideration of the procedures to be performed to only quantitative factors rather than risks related to non-compliance. As such, this factor has not been included in the examination standard.

One commenter recommended including the similarity of operations over compliance for different divisions or branches as a factor within the examination standard. Similar to the discussion in the preceding paragraph, the requirement in the examination standard for the auditor to take into account the degree to which the financial responsibility rules relate to activities at the division or branch level includes considerations regarding the similarity of operations over compliance

¹⁰² See paragraphs (d)(3) and (g)(2) of SEC Rule 17a-5.

¹⁰³ See paragraph (d)(3) of SEC Rule 17a-5.

for different divisions or branches. Including this factor within paragraph 13 of the examination standard might limit the auditor's consideration of the procedures to be performed to identify differences between different divisions or branches, rather than assessing the risk that different divisions or branches with similar operations over compliance might have instances of non-compliance.

Other Comments

Use of the Work of Other Auditors

Some commenters stated that situations could exist in which the auditor that is engaged to perform an examination engagement might use the work of other auditors. Those commenters stated that the examination standard should include a reference to AU sec. 543, *Part of Audit Performed by Other Independent Auditors*. Other commenters stated that references to the Board's auditing standards were inappropriate within the attestation standards. By its terms, AU sec. 543 applies when one auditor uses the work and reports of another auditor of the financial statements of a component. As this situation does not apply to a compliance examination engagement, the standard does not refer to AU sec. 543. Nonetheless, auditors can use the work of other auditors if such work is performed under their supervision.

Interaction With an Audit of Internal Control Over Financial Reporting

Some commenters stated that additional guidance relating to the relationship between internal control over financial reporting and Internal Control Over Compliance would be beneficial. Those commenters stated that while SEC Proposed Rule 17a-5 is clear that the attestation reports do not extend to internal control over financial reporting, there may be certain controls over financial reporting that could overlap with Internal Control Over Compliance with the financial responsibility rules.

Several commenters stated that the Board should coordinate with the SEC to provide further guidance regarding the relationship between the evaluation of Deficiencies in Internal Control Over Compliance and the evaluation of Material Weaknesses and significant deficiencies in internal control over financial reporting. The SEC Release contains relevant discussion regarding the interaction between Internal Control Over Compliance and internal control over financial reporting.¹⁰⁴

¹⁰⁴ See the SEC Release at 38, which notes, among other things, that internal control over financial

Attestation Standard No. 2, Review Engagements Regarding Exemption Reports of Brokers and Dealers

As previously described, the review standard has been designed specifically for an auditor's review of statements made by a broker or dealer in an exemption report required by the Commission's amendments to SEC Rule 17a-5.

Briefly, certain brokers and dealers claim exemption from the Commission's requirements contained in SEC Rule 15c3-3, the SEC rule relating to the custody of customer funds, pursuant to exemption provisions contained in paragraph (k) of SEC Rule 15c3-3 (the "exemption provisions"). In the exemption report, the broker or dealer identifies (i) the exemption provision of paragraph (k) of SEC Rule 15c3-3 under which the broker or dealer claimed exemption from the SEC's custody requirements (the "identified exemption provisions"), and (ii) states that the broker or dealer met the exemption provisions throughout the most recent fiscal year without exception or, if applicable, states that exceptions to the identified exemption provisions were identified, including a description of any such exceptions and the approximate date on which the exception existed. SEC Rule 17a-5 requires the broker or dealer to engage an independent public accountant registered with the PCAOB to review, and independently report on, the statements in the broker's or dealer's exemption report.

Because brokers and dealers claiming an exemption from SEC Rule 15c3-3 requirements under paragraph (k) of that rule might have access to customer funds, a review engagement focusing on the identification of exceptions to the exemption provisions claimed by brokers and dealers is important to the protection of investors. Notably, a recent PCAOB report on the progress of its interim inspection program of broker and dealer audits noted that in a significant number of audits of brokers and dealers that claimed an exemption from SEC Rule 15c3-3, auditors did not perform sufficient procedures to ascertain that the broker or dealer complied with the conditions of the exemption.¹⁰⁵ The review standard

reporting is focused on the reliability of financial reporting and preparation of financial statements in accordance with generally accepted accounting principles, whereas the compliance report should focus on oversight of net capital, custody arrangements, and protection of customer assets, and, therefore should be focused on compliance with the financial responsibility rules.

¹⁰⁵ See *Second Report on the Progress of the Interim Inspection Program Related to Audits of*

includes specific procedures for auditors performing compliance reviews of a broker's or dealer's assertions in an exemption report with an emphasis on coordination with the auditor's work on the financial statement audit and the audit procedures performed relating to supplemental information. This approach should enhance overall audit effectiveness and also help avoid unnecessary duplication of work.

The following discussion provides background regarding the review standard, including significant comments received on the proposed review standard and changes made to the standard.

Overview of SEC Rule 17a-5 and Related Changes

As amended by the Commission, SEC Rule 17a-5 includes modifications from the SEC's proposed amendments, including a number of changes that focus the auditor more directly on the exemption provisions claimed by the broker or dealer and the identification of any exceptions. These modifications resulted in corresponding changes to the review standard. Principally, the changes involve:

- The introduction of certain terms, including "exemption provisions," and "exceptions;"
- Changes to the broker's or dealer's assertions, as set forth in SEC Rule 17a-5, to include more detailed information regarding the exemption provision claimed asserted by the broker or dealer and any exceptions identified; and
- Changes to the auditor's reporting requirements, and the example report, including requirements for auditors to modify their reports in situations in which the broker or dealer fails to disclose an exception in the exemption report.

As noted above, the review standard was designed specifically to implement the auditor's requirements in SEC Rule 17a-5. The review standard establishes requirements that apply when an auditor is engaged to perform an exemption review of the statements made by a broker or dealer in an exemption report prepared pursuant to SEC Rule 17a-5.

Paragraph 2 states that SEC Rule 17a-5 requires a broker's or dealer's exemption report to contain the following statements¹⁰⁶ by the broker or dealer:

- a. A statement that identifies the exemption provisions under which the

Brokers and Dealers, PCAOB Release No. 2013-006 (August 19, 2013), at 9.

¹⁰⁶ See paragraph (d)(4) of SEC Rule 17a-5.

broker or dealer claimed an exemption from SEC Rule 15c3-3;

b. A statement that the broker or dealer (1) met the identified exemption provisions throughout the most recent fiscal year without exception or (2) met the identified exemption provisions throughout the most recent fiscal year except as described in the exemption report; and

c. If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the identified exemption provisions (an "exception") and that briefly describes the nature of each exception and the approximate dates on which the exception existed.

The changes reflected in SEC Rule 17a-5 to include exceptions to the exemption provisions in the exemption report did not result in significant changes to the procedural requirements in the proposed review standard. The review standard, similar to the proposed review standard, requires the auditor to state a conclusion regarding whether, based upon the results of the review procedures, the auditor is aware of any material modifications that should be made to the broker's or dealer's assertions for the assertions to be fairly stated, in all material respects.¹⁰⁷ To state such a conclusion, the auditor must plan and perform the review engagement to obtain appropriate evidence that is sufficient to obtain moderate assurance about whether one or more conditions exist that would cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects.

Moderate Assurance

The requirement that the auditor obtain moderate assurance¹⁰⁸ to support his or her opinion has not been changed from the Board's proposal. The approach taken in the review standard is in contrast to the examination standard, in which the auditor obtains reasonable assurance to support his or her opinion on the broker's or dealer's

¹⁰⁷ The review standard largely carries forward the requirement from prior SEC Rule 17a-5 that the independent public accountant engaged by the broker or dealer "must ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to the independent public accountant's attention to indicate that the exemption had not been complied with during the period since the last examination." See the SEC Release at 72.

¹⁰⁸ Obtaining moderate assurance in a review engagement is consistent with both existing PCAOB standards and the SEC Release. AT sec. 101.55 describes a review as an attest engagement designed to provide a moderate level of assurance. See the SEC Release at 88, which states that a "moderate level of assurance [is] contemplated by the required review."

assertions. In the review engagement contemplated by the review standard, the auditor must obtain moderate assurance regarding the broker's or dealer's assertions.

Review engagements typically involve the performance of inquiries and analytical procedures,¹⁰⁹ and the auditor's conclusions typically are expressed in the report in the form of negative assurance.¹¹⁰

The proposing release noted that, in a review engagement covered by the proposed review standard, analytical procedures are not feasible for evaluating compliance with the exemption conditions, as the conditions are based on activities of the broker or dealer rather than on financial statement amounts. Thus, the review standard establishes specific procedural requirements that are commensurate with the responsibility to obtain moderate assurance. This approach is consistent with AT sec 101.55-.56 which states that ". . . there will be circumstances in which inquiry and analytical procedures . . . cannot be performed. . . . In [this] circumstance, the practitioner should perform other procedures that he or she believes can provide him or her with a level of assurance equivalent to that which inquiries and analytical procedures would have provided."

Commenters generally stated that the requirements in the review standard were appropriate for obtaining moderate assurance. Further, some commenters stated that the term "moderate assurance" as used in the review standard is consistent with how the term "moderate assurance" is presently used in practice and with how auditors are currently performing engagements to obtain moderate assurance.

One commenter stated that the review standard could clarify that the auditor plans and performs the review engagement in the context of obtaining a moderate level of assurance. In considering this comment, the Board noted that the objective of the review standard states ". . . the auditor must plan and perform the review engagement to obtain appropriate evidence that is sufficient to obtain moderate assurance. . . ." As such, additional clarification is not necessary.

¹⁰⁹ AT sec. 101.55 states that "[i]n an attest engagement designed to provide a moderate level of assurance (referred to as a review), the objective is to accumulate sufficient evidence to restrict attestation risk to a moderate level. To accomplish this, the types of procedures performed generally are limited to inquiries and analytical procedures (rather than also including search and verification procedures)."

¹¹⁰ See AT sec. 101.68.

One commenter stated that an "agreed-upon procedures" engagement would be more appropriate than a review engagement for a broker's or dealer's assertion that it is exempt from SEC Rule 15c3-3. SEC Rule 17a-5 requires a broker or dealer that claimed exemption from the requirements of SEC Rule 15c3-3 to file a report from their independent public accountants that includes the results of a review of the broker's or dealer's assertions. As adopted, the review standard establishes requirements that are designed specifically to provide auditors with a standard for performing the review required by SEC Rule 17a-5.

Performing the Review Engagement (Paragraphs 5-14 of Attestation Standard No. 2)

General Requirements (Paragraphs 5-6 of Attestation Standard No. 2)

Paragraphs 5 and 6 of the review standard set forth general requirements for an auditor performing the review standard. The Board did not receive significant comments on the general requirements of the proposed review standard. As such, the general requirements are being adopted largely as proposed.

Paragraph 5 of the review standard requires that an auditor performing a review engagement have adequate technical proficiency in attestation engagements, obtain an understanding of the exemption conditions and other rules and regulations that are relevant to the broker's or dealer's assertion, determine the auditor's compliance with independence and ethics requirements,¹¹¹ and exercise due professional care.

The proposed review standard included a footnote which stated that "due professional care" referred to in that paragraph was the same term in paragraph .40 of AT sec. 101. One commenter stated that while they did not disagree with the meaning of "due professional care," they believe that referencing AT sec. 101 from the review standard may be confusing, especially as AT sec. 101 would not be applicable to engagements in which the review standard is applicable. In response, a note has been added to state that due professional care imposes a responsibility on each engagement team member to comply with the review standard and that the exercise of due

¹¹¹ Determining the auditor's compliance with independence and ethics requirements includes determining whether the auditor complied with relevant requirements of the PCAOB and the SEC. Paragraph (f)(1) of SEC Rule 17a-5 requires the auditor to be independent in accordance with 17 CFR 210.2-01.

professional care requires critical review at every level of supervision of the work done and the judgment exercised by those assisting in the engagement, including the preparation of the report. A footnote to that note states that the auditor's responsibility to exercise due professional care is consistent with the description in paragraphs .40–.41 of AT sec. 101.

With respect to documentation, the review engagement is subject to the requirements of Auditing Standard No. 3, which applies to engagements conducted pursuant to the standards of the PCAOB. Auditing Standard No. 3 states that as audit documentation is the written record that provides the support for the representations in the auditor's report, it should demonstrate that the engagement complied with the standards of the PCAOB.¹¹² A note has been added to paragraph 5 of the review standard to remind auditors of their responsibility to comply with Auditing Standard No. 3.

Review Procedures (Paragraphs 8–10 of Attestation Standard No. 2)

The review standard requires the auditor to perform procedures consistent with a review engagement; however, the procedures have been tailored for the exemption report required by SEC Rule 17a–5.

Nature, Timing, and Extent of Procedures (Paragraph 9 of Attestation Standard No. 2)

Under the proposed review standard, the nature, timing, and extent of the review procedures were dependent on certain risk factors and evidence about the broker's or dealer's compliance with the exemption conditions or about the effectiveness of controls over the exemption conditions obtained from the audit of the financial statements and the audit procedures performed on supplemental information. For example, one risk factor is potential non-compliance associated with related parties. Risks associated with related parties that are investment advisors or with which the broker or dealer has a custodial or clearing relationship may be especially relevant to the exemption provisions.

Evidence about the broker's or dealer's compliance with the exemption provisions or about the effectiveness of controls over the exemption provisions obtained from the audit of the financial statements and the audit procedures performed on supplemental information also affect the nature, timing, and extent of the necessary inquiries and other

review procedures. For example, if the broker or dealer claims an exemption under Rule 15c3–3(k)(1), the auditor, among other things, needs to obtain evidence that the broker's or dealer's transactions are limited to those in redeemable securities of investment companies or of interests or participations in an insurance company separate account.¹¹³ Audit procedures regarding the broker's or dealer's investment inventory or investment transactions related to the broker's or dealer's trading for its own account, including confirmation of investment inventory with the custodian and testing investment transactions, can provide evidence relevant to the broker's or dealer's compliance with these exemption conditions.

As another example, if the broker or dealer claims exemption under section (k)(1) of Rule 15c3–3, the auditor needs to obtain evidence about whether the broker or dealer promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.¹¹⁴ Audit procedures regarding customer trade and transaction activities can provide

¹¹³ Paragraph (k)(1) of SEC Rule 15c3–3, states that “the provisions of [Rule 15c3–3] shall not be applicable to a broker or dealer meeting all of the following conditions:

(i) His dealer transactions (as principal for his own account) are limited to the purchase, sale, and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker or dealer;

(ii) His transactions as broker (agent) are limited to: (a) The sale and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; (b) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (c) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(iii) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(iv) Notwithstanding the foregoing, this section shall not apply to any insurance company which is a registered broker [or] dealer, and which otherwise meets all of the conditions in paragraphs (k)(1)(i), (ii), and (iii) of this section, solely by reason of its participation in transactions that are a part of the business of insurance, including the purchasing, selling, or holding of securities for or on behalf of such company's general and separate accounts.”

¹¹⁴ See paragraph (k)(1)(iii) of SEC Rule 15c3–3.

evidence relevant to these exemption provisions.

Other procedures performed during the audit that are relevant to the broker's or dealer's compliance with the exemption provisions include testing of specially designated cash accounts and reading clearing agreements between the broker or dealer and clearing brokers and dealers in connection with testing trade fee or commission revenues and expenses.¹¹⁵

One commenter recommended incorporating the discussion in the proposing release relating to the risk of fraud into the review standard to provide further guidance. The proposing release stated that in considering the risk of fraud relevant to the exemption conditions, the auditor also considers whether the broker or dealer has misrepresented its activities, for example, the broker or dealer claims to be operating as a non-carrying broker or dealer but, based on other evidence appears to hold customer funds or securities. The Board considered this comment and determined, as it has done in other projects, to include performance requirements in the standard and to provide additional discussion and examples in the release. Therefore, the release discussion regarding the risk of fraud has not been incorporated into the review standard. The request for guidance regarding the risk of fraud may be taken into account if additional guidance is issued.

The Board did not receive extensive comment on these requirements. Two commenters stated that the factors are appropriate. In general, these requirements are being adopted substantially as proposed.

Review Procedures (Paragraph 10 of Attestation Standard No. 2)

Paragraph 10 of the review standard sets forth the required procedures for the review engagement. Specifically, the procedures required by the standard are consistent with a review engagement, including making inquiries of management and relevant personnel of the broker or dealer; reading relevant reports from internal auditors or regulatory correspondence; evaluating evidence from the audit of the financial statements and the audit procedures performed on supplemental information; and performing additional procedures for identified exceptions.

While the review standard requires the auditor to perform procedures

¹¹⁵ Refer to “*Relationship Between the Examination Engagement and the Audit of the Financial Statements and Audit Procedures Performed on Supplemental Information*” for further discussion.

¹¹² See paragraph 4 of Auditing Standard No. 3.

consistent with a review engagement, the procedures in the standard have been modified in a number of ways to reflect changes made to SEC Rule 17a-5, including to reflect terms used in SEC Rule 17a-5. The following discussion highlights some of the key aspects of, comments on, and changes made to, the required review procedures.

Commenters generally supported the requirements as proposed. However, one commenter stated the proposed review standard does not clearly describe the procedures or the extent of evidence necessary to obtain moderate assurance. Another commenter stated that the language in paragraph 10.h. of the proposed review standard, "perform other procedures as necessary in the circumstances to obtain moderate assurance," is an overly broad requirement.

As previously discussed, obtaining moderate assurance in a review engagement is consistent with both existing PCAOB standards and the SEC Release. AT sec. 101.55 describes a review as an attest engagement designed to provide a moderate level of assurance. The SEC Release states that a "moderate level of assurance [is] contemplated by the required review."¹¹⁶ The procedures required by the review standard have been designed to assist the auditor in obtaining moderate assurance in a review engagement. These procedures largely focus on making inquiries and reading information relevant to the broker's or dealer's assertions. In the Board's view, such procedures are consistent with AT sec. 101.56, given that analytical procedures would not provide relevant evidence in light of the broker's or dealer's assertions required by SEC Rule 17a-5. For example, paragraph 10.g. of the review standard states that in performing the review engagement, the auditor should evaluate whether the evidence obtained and the results of the procedures performed in the audit of the financial statements and the audit procedures performed on supplemental information corroborate or contradict information in the broker's or dealer's assertions. Further, paragraph 10.h. of the review standard has been revised to state that in performing the review engagement, the auditor should perform other procedures as necessary in the circumstances to obtain moderate assurance regarding whether a material modification should be made to the broker's or dealer's assertions for the assertions to be fairly stated, in all material respects.

One commenter stated that, while the review procedures and the matters affecting their nature, timing, and extent are, for the most part, appropriate for an engagement to obtain a moderate level of assurance, they did have certain specific recommendations, including clarifying the note in paragraph 10.g. of the review standard to explicitly indicate that the examples of procedures are those that may be performed during the audit of the financial statements. The Board considered this comment and agrees that such a revision would clarify that the note is referring to examples of procedures performed during the audit of the financial statements that might provide relevant evidence to the review engagement. As such, the note to paragraph 10.g. of the review standard has been revised.

In addition, if the broker or dealer has sent to or received correspondence from the SEC or the broker's or dealer's DEA that is relevant to compliance with the exemption conditions, the review standard includes a requirement for the auditor to read such correspondence and, when necessary in the circumstances, make inquiries of the regulatory agencies. These procedures can provide the auditor with relevant information about a broker's or dealer's compliance with the exemption provisions. Under the circumstances when a need arises to make inquiries of the regulatory agencies, the Board acknowledges that auditors may need authorization from the broker or dealer before contacting the regulatory authority.

One commenter suggested that the Board provide guidance related to the interaction between auditors and a company's regulatory examiners consistent with the *AICPA Audit and Accounting Guide for Depository and Lending Institutions: Banks and Savings Institutions, Credit Unions, Finance Companies and Mortgage Companies*. The guidance in that publication is specific to the interaction between the auditor and federal bank examiners, and might differ from the DEAs of the broker or dealer. As such, additional requirements in this area have not been included in the review standard.

Evaluating the Results of the Review Procedures (Paragraphs 11–12 of Attestation Standard No. 2)

Under paragraph 11 of the review standard, the auditor should evaluate whether information has come to the auditor's attention that cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects. For example, a broker's or dealer's failure to disclose an

exception in the exemption report would cause the assertion not to be fairly stated, in all material respects, which would require modification of the review report. This paragraph has been modified to align with the amendments to SEC Rule 17a-5.

Additionally, the proposed standard required the auditor to perform additional procedures if information came to the auditor's attention that indicated that one or more instances of non-compliance might exist that might cause the broker's or dealer's assertion not to be fairly stated or if the auditor had substantial doubt about the assertion. The review standard has been revised to align with the requirements in SEC Rule 17a-5.

One commenter requested clarification of the relationship between paragraphs 10.h. and 12 of the review standard. Those two requirements address different situations, as discussed below.

As previously noted, paragraph 10.h. of the review standard requires auditors to perform other procedures as necessary in the circumstances to obtain moderate assurance. This applies when the auditor determines the nature, timing, and extent of review procedures to be performed, such as in planning the review.

Paragraph 12 of the review standard applies when information comes to the auditor's attention during the engagement indicating that the broker's or dealer's assertions might not be fairly stated or if the auditor has substantial doubt about the assertion. Pursuant to paragraph 12, the auditor in those situations is required to perform additional procedures to address the matter. Performing the review with due professional care requires an auditor conducting a review to take appropriate actions when becoming aware of exceptions to the exemption provisions not included in the broker's or dealer's assertion or when substantial doubt remains. The phrase "substantial doubt" has the same meaning as the phrase "substantial doubt" in paragraph 35 of Auditing Standard No. 14, which states that if the auditor has not obtained sufficient appropriate audit evidence about a relevant assertion or has substantial doubt about a relevant assertion, the auditor should perform procedures to obtain further audit evidence to address the matter. In the context of a review engagement, these additional procedures could include, but are not limited to, making additional inquiries, reading documents, or

¹¹⁶ See the SEC Release at 88.

performing search and verification procedures, as necessary.¹¹⁷

One commenter recommended incorporating the examples in the preceding paragraph, *e.g.*, making additional inquiries, reading documents, or performing search and verification procedures, as necessary, and the discussion in AT sec. 101.56, into the review standard. That discussion and the examples have not been included in the review standard as they are provided to illustrate the nature of procedures that might be appropriate in such circumstances. Including these as examples in the review standard might limit auditors' consideration of additional procedures to only these procedures, when other procedures might be appropriate.

Obtaining a Representation Letter
(Paragraphs 13–14 of Attestation Standard No. 2)

The review standard includes a requirement for the auditor to obtain written representations from management of the broker or dealer that relate to the review engagement. The purpose of such representations is to provide the auditor with necessary information for, and context regarding, the engagement. The auditor should not rely inappropriately on management's representations.

The review standard also provides that the failure to obtain written representations from management, including management's refusal to furnish them, constitutes a limitation on the scope of the review engagement. If a limitation on the scope of the review engagement exists, the auditor should withdraw from the engagement or should modify the review report.¹¹⁸ Additionally, the review standard also includes a list of written representations that the auditor should obtain from management.

Commenters stated that obtaining representations from management is a necessary part of the auditor's ability to express an opinion. One commenter recommended that the list of required written representations include a representation from management that acknowledges its responsibility for the assertions in the exemption report. The suggested additional representation has been included in the review standard.

Further, in the review standard, several of the representations were updated to align with the language in SEC Rule 17a–5.

Communication Requirements
(Paragraph 15 of Attestation Standard No. 2)

The review standard requires the auditor to communicate to management and to the audit committee any exceptions to the exemption provisions identified by the auditor or information that causes the broker's or dealer's assertions about its exemption provisions not to be fairly stated, in all material respects. In addition, rather than defining the term audit committee, the review standard states that the term "audit committee" has the same definition as that in Auditing Standard No. 16.

The Board did not receive significant comments on the communication requirements included in the proposed review standard. However, the communication requirements in the standard have been modified to align closely with SEC Rule 17a–5. Additionally, a note has been added to paragraph 15 of the review standard reminding auditors of their obligation to comply with the requirements of paragraph (h) of SEC Rule 17a–5.¹¹⁹

Reporting on the Review Engagement
(Paragraphs 16–18 of Attestation Standard No. 2)

The review standard includes requirements for the auditor's review report to include certain elements that are important for a reader of the review report to understand regarding the auditor's responsibilities. This includes a statement that the review was conducted in accordance with the standards of the PCAOB and, accordingly, includes inquiries and other required procedures to obtain evidence about the broker's or dealer's compliance with the exemption provisions. These are largely the same elements as in the proposed standard.

The review standard includes an example of the auditor's standard review report when the broker or dealer asserted that it met the identified exemption provisions throughout the most recent fiscal year without exception and an example of the auditor's standard review report when the broker or dealer includes exceptions to the exemption provisions in the exemption report. A change was made to the review results paragraph in the example review report to align the reporting language more closely to the corresponding reporting element, which was not modified from the proposed review standard.

Some commenters stated concerns similar to those for the examination report regarding the use of the review report as a legal determination, interpretation of rules and regulations, restrictions on use of the review report, and limitations of an engagement to obtain moderate assurance. When the auditor is engaged to perform a review engagement, it is necessary for the auditor to read and make judgments regarding the application of regulatory requirements, as applicable to the engagement. The review report issued pursuant to the review standard does not provide a legal determination, nor does it purport to provide a legal determination, of a broker's or dealer's compliance exemption provision. However, such a report may be useful to legal counsel or others in making such determinations.

Modifications of the Report (Paragraphs 19–20 of Attestation Standard No. 2)

The review standard requires that if one or more of the broker's or dealer's assertions are not fairly stated, in all material respects, the auditor must modify the review report to describe the reasons why the assertions are not fairly stated, in all material respects. If the broker's or dealer's assertion is not fairly stated because of one or more omitted exceptions, the auditor's review report should disclose each omitted exception.

Paragraph 20 of the review standard sets forth circumstances involving scope limitations. Under the review standard, if the auditor cannot perform the procedures required by the review standard or other procedures that the auditor deems necessary in the circumstances, the review is incomplete because of the scope limitation. An incomplete review is not a sufficient basis for stating a conclusion regarding the broker's or dealer's assertions. In the case of a scope limitation, the auditor should withdraw from the engagement or should modify the review report to:

- a. Describe the scope limitation and any review procedures deemed necessary by the auditor that have been omitted and the reason for their omission;
- b. State that the auditor does not express any form of assurance on the broker's or dealer's assertions; and, if applicable,
- c. Describe the circumstances which cause one or more of the broker's or dealer's assertions not to be fairly stated, in all material respects.

One commenter stated that auditors should use judgment in drafting an appropriate modification to the review report. Other commenters stated that the attestation standards should contain

¹¹⁷ See, *e.g.*, AT sec. 101.56.

¹¹⁸ See paragraph 20 of the review standard for auditor requirements when a scope limitation exists.

¹¹⁹ See also the discussion of the notification requirements in the SEC Release at 101–107.

examples of report modifications. The standard sets forth the necessary reporting elements for modified reports. Additional report examples may be considered if guidance is issued in the future.

One commenter questioned the appropriateness of the requirement in paragraph 20 of the proposed review standard for the auditor to describe the omitted procedures and the reason for their omission. The commenter stated that as the reason for the omission of the review procedures is required in the description of the scope limitation itself, describing the omitted review procedures might overshadow the scope limitation. The commenter recommended that it would be more appropriate to generally describe the effect of the scope limitation on the engagement, without providing a list of omitted procedures that may have been considered necessary. Including in the review report a description of the scope limitation, the omitted procedures, and the reason for their omission are important elements of a modified review report given the nature of the procedures and the specificity of the exemption provisions. The discussion of the omitted procedures generally would provide the reader with additional information beyond the description of the scope limitation. As such, this recommendation has not been incorporated into the review standard.

The same commenter also recommended that the review standard address the auditor's responsibility as it relates to report modifications when management's assertion is improperly presented or contains additional information. That commenter suggested that, in such circumstances, an explanatory paragraph should be included in the auditor's report. Paragraph 19 of the review standard requires the auditor to modify the review report to describe the reasons the assertions are not fairly stated, in all material respects, if one or more of the broker's or dealer's assertions are not fairly stated. This would include circumstances in which management's assertion is improperly presented, and other PCAOB standards address additional information.¹²⁰

Amendments

Auditing Standard No. 3

The Board is adopting certain amendments to Auditing Standard No. 3, *Audit Documentation*, to clarify that its requirements apply to examination

engagements and review engagements. Auditing Standard No. 3 establishes general requirements for documentation the auditor should prepare and retain in connection with engagements conducted pursuant to standards of the PCAOB, including the attestation standards of the PCAOB. The Board is amending Auditing Standard No. 3 to help auditors properly apply the relevant requirements in Auditing Standard No. 3 to attestation engagements, including the attestation engagements covered by the attestation standards. For example, paragraph 6 of Auditing Standard No. 3 includes a requirement for the auditor to document procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions. An amendment to footnote 2 of paragraph 6 clarifies that, with respect to an engagement conducted pursuant to the attestation standards of the PCAOB, the relevant assertions are the assertions expressed by management or the responsible party regarding the subject matter of the attestation engagement.

In addition, paragraph 12 of Auditing Standard No. 3 includes requirements regarding significant findings or issues and provides certain examples of significant findings or issues. Further, paragraph 13 of Auditing Standard No. 3 requires the auditor to identify all significant findings or issues in an engagement completion document.

The Board did not receive comments requiring revision to the amendments to Auditing Standard No. 3. As such, the amendments are adopted largely as proposed.

Auditing Standard No. 7

The Board is adopting certain amendments to Auditing Standard No. 7, *Engagement Quality Review*, to extend the requirements for an engagement quality review and concurring approval of issuance for the examination engagements and review engagements of brokers and dealers covered by these attestation standards. The proposal also included amendments that set forth certain procedures to be applied in an engagement quality review of the examination and review under these attestation standards.

Commenters expressed a range of views. Some commenters generally supported the engagement quality review requirement for these attestation engagements as well as the required procedures. One commenter did not support requiring an engagement quality review for either an examination engagement or a review. Other

commenters did not support engagement quality reviews for review engagements. Some commenters stated that additional guidance is necessary to implement the proposed amendments.

Other commenters stated that as the audit and attestation standards have been separate bodies of literature, audit and attest standards should be kept separate. Those comments stated that to promote compliance with PCAOB standards, they believe that the Board should continue to maintain this structure. They also believe that the use of an amendment to adopt such significant changes in the literature may not sufficiently take into account a broader consideration of the affected engagements. For those firms that do not audit brokers or dealers, such changes also may go unnoticed.

The Board considered the comments received regarding the amendments to Auditing Standard No. 7 and is adopting the amendments as proposed for both a compliance examination and a compliance review.

Given the importance of the attestation engagements to investor protection and the high level of deficiencies observed by PCAOB inspection staff in areas that would be covered by the attestation engagements,¹²¹ the Board believes that engagement quality reviews can enhance the consistency of compliance with the SEC's rule. An effective engagement quality review can increase the likelihood of identifying significant engagement deficiencies before the examination or review report is issued. Additionally, the Board took note of the fact that, in a February 2011 AICPA Peer Review Alert, the AICPA designated audits of carrying brokers or dealers as a "must select" for peer review, recognizing the significant public interest in audits of such firms.¹²²

Also, the emphasis in the attestation engagements regarding the coordination of the attestation engagement with the financial statement audit should reduce the audit effort required to complete the engagement quality review. To emphasize the coordination of the

¹²¹ See PCAOB Release 2013-006, which reports that PCAOB inspection staff identified auditing deficiencies in 57 of the 60 audits of brokers and dealers selected for inspection and that deficiencies in compliance with audit requirements for brokers and dealers under the Exchange Act that were among the most frequently noted by PCAOB inspection staff included deficiencies in audit procedures related to net capital and customer reserve supporting schedules, compliance with the conditions of the exemption claimed by the broker or dealer, and the accountant's supplemental report on material inadequacies. See PCAOB Release 2013-006, Executive Summary, at ii.

¹²² See AICPA Peer Review Alert 11-01 (February 2011).

¹²⁰ See, e.g., AU sec. 550, *Other Information in Documents Containing Audited Financial Statements*.

attestation engagement with the financial statement audit in performing an engagement quality review, the proposed amendment to paragraph 18A of Auditing Standard No. 7 was modified to reflect that to evaluate significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the attestation engagement and in preparing the engagement report, the engagement quality review should take into account the procedures performed in the engagement quality review of the financial statement audit. The knowledge that the engagement quality reviewer gains from the engagement quality review of the audit and the specific steps in paragraph 18A should enable the engagement quality reviewer to identify whether there are any significant engagement deficiencies, or any indications of potential significant engagement deficiencies that warrant further investigation.

Other Areas of Comment

The Board requested comment from interested parties on all aspects of the proposal. Several commenters included additional recommendations that have not yet been discussed. Those suggestions are discussed below.

Scalability of the Attestation Standards

The Board requested comment regarding whether the proposed attestation standards are tailored appropriately for examinations and reviews related to compliance and exemption reports of brokers and dealers. Commenters who responded to the question generally agreed that the proposed attestation standards are tailored appropriately for examinations and reviews related to compliance and exemption reports of brokers and dealers. One commenter stated that they generally support the proposals and noted that the proposed standards had been clearly aligned with the SEC's proposed rule amendments.

The Board also requested comment regarding whether the proposed attestation standards were appropriately scalable based on the size and complexity of the broker or dealer. Some commenters stated that the standards are proportionate and appropriately scalable based on the size and complexity of the broker or dealer, noting that paragraphs 11 and 12 of Attestation Standard No. 1 are particularly helpful. Some commenters recommended that the Board provide additional guidance, including specific examples, regarding the application of scalability to these examination

engagements. Other commenters expressed concern that without such guidance, application of the audit scalability concept could vary greatly across the audit profession. The requests for guidance may be taken into account if additional staff guidance is issued.

Commodity Futures Trading Commission Rules

One commenter stated that for brokers and dealers that are also registered as a Futures Commission Merchant with the Commodity Futures Trading Commission ("CFTC"), it will be necessary for the PCAOB to recognize and address the requirements related to CFTC Rule 1.16 for the auditor to report on compliance therewith. The Commission stated in the SEC Release that its staff "is in discussions with the CFTC staff concerning ways to align the reporting and audit requirements for dually registered broker-dealers/Futures Commissions Merchants with the goal of coordinating these requirements."¹²³

Independence

Several commenters recommended that the discussion in the proposing release stating that auditors of non-issuer brokers and dealers are not subject to PCAOB Rules 3521 through Rule 3526 be included in the attestation standards. On February 28, 2012, the Board proposed amendments to require that registered firms that audit brokers and dealers comply with certain of the Board's professional practice standards including the Board's Rules relating to independence.¹²⁴ The Board will consider relevant comments applicable to the Board's independence rules in connection with adopting final amendments.

Period of the Examination and Review

Some commenters stated that brokers and dealers should be allowed to assert compliance with the financial responsibility rules if it can identify deficiencies, implement effective controls, and test their operating effectiveness prior to year-end, and if the auditor also can adequately test the operating effectiveness of the remediated controls. SEC Rule 17a-5 requires the broker or dealer to assert that Internal Control Over Compliance was effective during the most recent fiscal year and as of the end of the most recent fiscal year. While this would require a broker or dealer to identify in its report Material Weaknesses in

internal control that occurred during the most recent fiscal year, if those Material Weaknesses are remediated, it would allow the broker or dealer to assert that Internal Control Over Compliance was effective as of the end of the most recent fiscal year.

Some commenters requested clarification about the time period for the assertion regarding exemption from the requirements of SEC Rule 15c3-3 and indicate that they believe a point-in-time assertion would be sufficient. SEC Rule 17a-5 requires the broker or dealer to assert that it met, or met with exception, the identified exemption provisions in paragraph (k) of SEC Rule 15c3-3 throughout the most recent fiscal year end. The review standard has been updated to reflect this time period.

Providing Additional Guidance and Including Examples From the Proposing Release in the Examination Standard

Several commenters recommended incorporating the additional discussion and examples included in the proposing release into the standard. The examples are not included in the attestation standards. Those examples were illustrative and did not impose requirements or define engagement requirements. Additional report examples may be considered, if guidance is issued in the future.

Other Considerations

Agreed-Upon Procedures Engagements

SEC Rule 17a-5 largely carries forward the requirement that the broker or dealer file with SIPC a supplemental report that includes an accountant's report on applying agreed-upon procedures based on the performance of the procedures outlined in SEC Rule 17a-5.¹²⁵

These attestation standards do not affect the requirements for those agreed-upon procedures engagements. Auditors should continue to look to AT sec. 101, AT sec. 201, *Agreed-Upon Procedures*, and AT sec. 601,¹²⁶ for the requirements applicable to those engagements.

Relationship to the Interim Attestation Standards

In general terms, the requirements in the examination standard are consistent with the requirements of AT sec. 101 and AT sec. 601. However, when an auditor performs an engagement pursuant to the examination standard, AT sec. 101 and AT sec. 601 would not apply. For this reason, the examination standard includes, for example, a

¹²³ See the SEC Release at 8.

¹²⁴ See *Proposed Amendments to Conform PCAOB Rules and Forms to the Dodd-Frank Act and Make Certain Updates and Clarifications*, PCAOB Release No. 2012-002 (February 28, 2012).

¹²⁵ See paragraph (e)(4)(ii) of SEC Rule 17a-5.

¹²⁶ See paragraphs .16-29 of AT sec. 601.

section on general requirements that are consistent with those in AT sec. 101.

The examination standard focuses specifically on performing an examination of the statements made by a broker or dealer in a compliance report and allows auditors to perform such engagements without looking to multiple attestation standards. In addition, the emphasis in the examination standard on appropriately coordinating the examination engagement with the audit of the financial statements and supplemental information should avoid unnecessary redundancy in the auditor's work.

Economic Considerations, Including Audits of Emerging Growth Companies Economic Considerations

As noted above, in developing the attestation standards, the Board's objective was to consider the SEC's amendments to SEC Rule 17a-5 and evaluate whether its standards were appropriate for the SEC's requirements for examinations of compliance reports and reviews of exemption reports.

As part of its process, the Board also considered the SEC's economic analysis related to its amendments to SEC Rule 17a-5. The SEC's analysis considers the economic effects, including the benefits and costs, of the new examinations of compliance reports and reviews of exemption reports that are now required by the SEC to be filed by registered brokers and dealers pursuant to SEC Rule 17a-5 and includes considerations relating to efficiency, competition, and capital formation.¹²⁷

The SEC's economic analysis considered the Board's proposed attestation standards. As described in the SEC Release, after considering the views of commenters relating to anticipated costs, including with respect to the Board's proposed attestation standards, the SEC concluded that, while the total costs associated with the new compliance and review requirements would depend on the final PCAOB standards for attestation engagements, "as the PCAOB's proposed standards were tailored to the proposed amendments, nothing in those standards causes the Commission to change its estimates of the costs associated with these requirements, or to question that the benefits will justify the costs."¹²⁸ The Board notes that, as adopted, the new attestation standards are aligned with SEC Rule 17a-5, and

most of the differences between the proposed standards and the attestation standards, as adopted, result from changes to conform to the SEC's final amendments to SEC Rule 17a-5.

In addition to considering the SEC's requirements and economic analysis, the Board also took into account other related economic considerations as discussed below.

Economic Baseline

The SEC made the determination to require brokers and dealers to include in their annual reports either a compliance report that is examined by an auditor or an exemption report that is reviewed by an auditor.

Therefore, the SEC Release contains a discussion of the economic baseline in its economic analysis. Aspects of the SEC's discussion of the baseline that are relevant to the attestation standards include:

- Before the SEC's amendments, Rule 17a-5 required that the audit under GAAS include a "review" of the broker's or dealer's accounting system, internal accounting control, and procedures for safeguarding securities.¹²⁹ The scope of the auditor's work was required to be sufficient to provide reasonable assurance that any material inadequacies¹³⁰ existing as of the date of the examination would be disclosed.

- Before the SEC's amendments, if the broker or dealer was exempt from the reserve requirements rule, the auditor was required to ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to the auditor's attention to indicate that the exemption had not been complied with during the period since the last examination.

Under the SEC's amendments, audits of brokers and dealers are now required to be conducted in accordance with PCAOB standards, the material

inadequacy report has been replaced with an examination of the compliance report, and the requirement to ascertain compliance with the exemption conditions has been replaced with a review of the exemption report.

Consideration of Alternatives and Additional Considerations

In general, the Board sought to evaluate whether its attestation standards were appropriate for performing and reporting on the newly required examinations and reviews. The SEC is a key user of the new reports, which serve to facilitate the SEC's compliance oversight function. Accordingly, the Board's standards for those engagements needed to reflect a compliance focus and needed to be aligned with the requirements in SEC Rule 17a-5.

The Board considered two principal alternatives: (1) Issuing guidance on applying existing PCAOB attestation standards to the new examination and review engagements, or (2) developing standards tailored to the requirements of SEC Rule 17a-5. In considering the first alternative, the Board observed that auditors performing examinations of compliance reports would need to look to a patchwork of requirements in existing attestation standards, including AT sec. 101 and AT sec. 601, and apply them to the new examination of the compliance report and review of the exemption report. This could lead to more inconsistencies in compliance with the SEC's rule as compared to a tailored standard that sets forth the necessary procedures for complying with the SEC's rule.

The Board preliminarily determined that a broker and dealer specific approach to examining compliance reports and reviewing exemption reports that is tailored to the SEC's rule would promote consistent audit practices and compliance with the SEC's rule because auditors could more readily determine the procedures necessary to meet the requirements for reasonable assurance in the examination and moderate assurance in the review. The greater clarity also can help facilitate more efficient use of audit resources, which can help mitigate the associated costs. Since the Board's initial proposal, the high level of auditing deficiencies observed by PCAOB inspections of audits of brokers and dealers under pre-existing standards have underscored the Board's initial concerns about the need for

¹²⁹ See the SEC Release at 70.

¹³⁰ Prior to the SEC's amendments, paragraph (g)(3) of Rule 17a-5 described a "material inadequacy" in a broker's or dealer's accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures to include "any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to: (i) Inhibit a broker-dealer from promptly completing securities transactions or promptly discharging its responsibilities to customers, other broker-dealers or creditors; (ii) result in material financial loss; (iii) result in material misstatements of the broker-dealer's financial statements; or (iv) result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in [(i) through (iii)] above." See the SEC Release at 70, footnote 287.

¹²⁷ See the SEC Release, which discusses costs and benefits of the requirements for examined compliance reports and reviewed exemption reports at 226-245.

¹²⁸ See the SEC Release at 241.

standards that facilitate more consistent compliance with the SEC's rule.¹³¹

In developing the new standards, the Board took into account economic considerations, including taking note of commenters' views on the proposed attestation standards. The Board's approach is intended to focus and streamline the auditor's work in order to promote overall audit effectiveness and avoid duplicative procedures. The Board sought to ease the transition to the new standards and help lessen the effect of associated costs by:

- Building on principles and concepts in existing attestation standards, such as the general requirements in AT sec. 101, and the risk-based principles for testing controls as set forth in Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements*, and Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement*;

- Focusing the auditor's attention on the most important matters related to the objective of the examination or review, as applicable, including addressing the risk of misappropriation of customer assets;

- Requiring coordination of the attestation standards with the audit of the financial statements and audit procedures on the supplemental information, to enhance the effectiveness of the coordinated work and avoid unnecessary duplication of work;¹³² and

- Establishing risk-based approaches for the examination and review that are scalable—that is, the required audit effort is commensurate with the broker's or dealer's size and complexity¹³³—and

that facilitate consistent compliance with SEC Rule 17a-5.

The Board also considered commenters' views. Commenters on the Board's proposed attestation standards generally agreed that the proposed standards were appropriately tailored for the SEC's proposed amendments to Rule 17a-5. Notably, when the attestation standards were proposed, the PCAOB requested comment on whether the standards were appropriately scalable based on the size and complexity of the broker or dealer. Some commenters specifically agreed that the standards are scalable, and no commenters asserted that the standards are not scalable. Additionally, several comments on the proposed standards were no longer relevant because of changes the SEC made when it adopted the amendments.

Some commenters on the proposed standards expressed concerns about costs associated with extending the requirements for engagement quality reviews to encompass the attestation engagements covered by these standards. In light of the importance of the attestation engagements to investor protection and the high level of deficiencies observed by PCAOB inspection staff in areas that would be covered by the attestation engagements, the Board believes that engagement quality reviews can enhance the consistency of compliance with the SEC's rule. An effective engagement quality review can increase the likelihood of identifying significant engagement deficiencies before the examination report or review report is issued. Additionally, the Board took note of the fact that, in a February 2011 AICPA Peer Review Alert, the AICPA designated audits of carrying brokers or dealers as a "must select" for peer review, recognizing the significant public interest in audits of such firms.¹³⁴

Regarding the incremental costs of engagement quality reviews, because engagement quality reviews are required for audits of financial statements under PCAOB standards, the requirements for auditors to coordinate their audits of the financial statements and attestation engagements should facilitate the engagement quality review of the attestation engagement and help mitigate incremental costs. Furthermore, the Board anticipates that incremental

the statements in the compliance report regarding Internal Control Over Compliance. See the SEC Release at 229. Similarly, the necessary audit effort related to test controls should be less for brokers and dealers with limited custodial activities.

¹³⁴ See AICPA Peer Review Alert 11-01 (February 2011).

costs for an engagement quality review of an attest engagement will vary with the nature of the attest engagement. For example, the required effort for an engagement quality review of a review engagement generally would be less than for an examination engagement, and the required effort for an examination of a smaller, less complex broker or dealer generally would be less than for a larger, more complex broker or dealer.

Applicability to Audits of Emerging Growth Companies

The Board is adopting the attestation standards pursuant to its authority under the Sarbanes-Oxley Act.¹³⁵

Before rules adopted by the Board can take effect, they must be approved by the SEC. Pursuant to Section 107(b)(3) of Sarbanes-Oxley Act, the SEC shall approve a proposed rule if it finds that the rule is "consistent with the requirements of [the] Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors."

Additionally, Section 104 of the Jumpstart Our Business Startups Act ("JOBS Act")¹³⁶ amended Sarbanes-Oxley Act to provide that any additional rules adopted by the PCAOB after April 5, 2012 do not apply to audits of emerging growth companies ("EGCs")¹³⁷ unless the SEC "determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation".¹³⁸

As previously discussed, the attestation standards will apply solely in connection with audits of registered brokers and dealers pursuant to SEC Rule 17a-5. PCAOB staff has discussed the applicability of the JOBS Act to this rulemaking with the SEC staff. The PCAOB is not aware of any EGCs that

¹³⁵ Public Law 107-204, 116 Stat. 745 (2002). Under Section 101 of the Sarbanes-Oxley Act, the mission of the PCAOB is to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 103 of the Sarbanes-Oxley Act authorizes the Board to adopt auditing standards for use by registered public accounting firms in the preparation and issuance of audit reports "as required by [the] Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors."

¹³⁶ Public Law 112-106, 126 Stat. 306 (2012).
¹³⁷ Section 3(a)(80) of the Exchange Act defines the term "emerging growth company."

¹³⁸ See Section 103(a)(3)(C) of the Sarbanes-Oxley Act (15 U.S.C. § 7213(a)(3)), as amended by Section 104 of the JOBS Act, Public Law 112-106 (2012).

¹³¹ See PCAOB Release 2013-006, which reports that PCAOB inspection staff identified auditing deficiencies in 57 of the 60 audits of brokers and dealers selected for inspection and that deficiencies in compliance with audit requirements for brokers and dealers under the Exchange Act that were among the most frequently noted by PCAOB inspection staff included deficiencies in audit procedures related to net capital and customer reserve supporting schedules, compliance with the conditions of the exemption claimed by the broker or dealer, and the accountant's supplemental report on material inadequacies. See PCAOB Release 2013-006, Executive Summary, at ii.

¹³² By its terms, SEC Rule 17a-5 requires the financial statement audit and the compliance examination or review to be performed by the same auditor. See paragraph (g) of SEC Rule 17a-5.

¹³³ This view is also analogous to the SEC's view for preparation of the compliance report discussed in the SEC Release. In the SEC Release, the SEC observed that the controls necessary for a carrying broker or dealer that engages in limited custodial activities generally should be less complex than the controls necessary for a carrying broker or dealer that engages in more extensive custodial activities, so a carrying broker or dealer with limited custodial activities should have to expend less effort to make

are also registered brokers or dealers.¹³⁹ Moreover, the reporting regimes for registered brokers and dealers under SEC Rule 17a-5 are separate and distinct from those for companies subject to reporting requirements pursuant to Section 13 and 15 of the Exchange Act or for a Securities Act registration statement. The Board defers to the SEC on the applicability of the JOBS Act to this rulemaking and stands ready to assist the SEC with any additional analysis that may become necessary.

Effective Date

The attestation standards will be effective, subject to approval by the SEC, for examination engagements and review engagements for fiscal years ending on or after June 1, 2014. This effective date coincides with the effective date for the corresponding amendments to SEC Rule 17a-5.¹⁴⁰

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

The proposed rules discussed in this release are related to the proposed rules discussed in SEC Release No. 34-70843 (the "proposed rules relating to Auditing Standard No. 17"). Because

¹³⁹ PCAOB staff has reviewed the reported industry classifications in the most recent filings of those companies and read SEC filings of self-identified EGCs as necessary to ascertain whether any EGCs were brokers or dealers. For those companies for which audited financial statements were available and based on information included in the most recent audited financial statements filed as of May 15, 2013, PCAOB staff has observed that none of the EGCs is a broker or dealer.

¹⁴⁰ See the SEC Release at 2.

the PCAOB has requested that the Commission determine that the proposed rules relating to Auditing Standard No. 17 apply to audits of emerging growth companies, the Commission has determined to extend to February 13, 2014 the date by which the Commission should take action on those proposed rules. Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate, the Commission has also determined to extend to February 13, 2014 the date by which the Commission should take action on the proposed rules discussed in this release.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Sarbanes-Oxley 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/pcaob.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number PCAOB-2013-01 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 PCAOB-2013-01. This file number should be included on the subject line if email 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do 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. PCAOB-2013-01 and should be submitted on or before December 6, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013-27344 Filed 11-14-13; 8:45 am]

BILLING CODE 8011-01-P



FEDERAL REGISTER

Vol. 78

Friday,

No. 221

November 15, 2013

Part III

Commodity Futures Trading Commission

17 CFR Part 150

Aggregation of Positions; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038-AD82

Aggregation of Positions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On May 30, 2012, the Commodity Futures Trading Commission (“Commission” or “CFTC”) published in the **Federal Register** a notice of proposed modifications to part 151 of the Commission’s regulations. The modifications addressed the policy for aggregation under the Commission’s position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. In an Order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission’s regulations. The Commission is now proposing modifications to the aggregation provisions of part 150 of the Commission’s regulations that are substantially similar to the aggregation modifications proposed to part 151, except that the modifications address the policy for aggregation under the Commission’s position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150. Separately, the Commission is also proposing today to establish speculative position limits for the 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. However, the Commission may determine to adopt the modifications proposed here separately from any other amendment to the position limits regime.

DATES: Comments must be received on or before January 14, 2014.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD82, by any of the following methods:

- *Agency Web site:* <http://comments.cftc.gov>;
- *Mail:* Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581;
- *Hand delivery/courier:* Same as mail, above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC regulations at 17 CFR part 145.

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

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Senior Economist, Division of Market Oversight, (202) 418-5452, ssherrod@cftc.gov; Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, (202) 418-5494, radriance@cftc.gov; or Mark Fajfar, Assistant General Counsel, Office of General Counsel, (202) 418-6636, mfajfar@cftc.gov; Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Commission has long established and enforced speculative position limits for futures and options contracts on various agricultural commodities as authorized by the Commodity Exchange

Act (“CEA”).¹ The part 150 position limits regime,² generally includes three components: (1) The level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,³ (2) exemptions for positions that constitute bona fide hedging transactions and certain other types of transactions,⁴ and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.⁵

The Commission’s existing aggregation policy under regulation 150.4 generally requires that unless a particular exemption applies, a person must aggregate all positions for which that person controls the trading decisions with all positions for which that person has a 10 percent or greater ownership interest in an account or position, as well as the positions of two or more persons acting pursuant to an express or implied agreement or understanding.⁶ The scope of exemptions from aggregation include the ownership interests of limited partners in pooled accounts,⁷ discretionary accounts and customer trading programs of futures commission merchants (“FCM”),⁸ and eligible entities with independent account controllers that manage customer positions (“IAC” or “IAC exemption”).⁹ Market participants claiming one of the exemptions from aggregation are subject to a call by the Commission for information demonstrating compliance with the conditions applicable to the claimed exemption.¹⁰

B. Proposed Modifications to the Policy for Aggregation Under Part 151 of the Commission’s Regulations

The Commission adopted part 151 of its regulations in November 2011 under the authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which President Obama signed on July 21, 2010.¹¹ Title VII of the Dodd-Frank

¹ 7 U.S.C. 1 *et seq.*

² See 17 CFR part 150. Part 150 of the Commission’s regulations establishes federal position limits on certain enumerated agricultural contracts; the listed commodities are referred to as enumerated agricultural commodities.

³ See 17 CFR 150.2.

⁴ See 17 CFR 150.3.

⁵ See 17 CFR 150.4.

⁶ See 17 CFR 150.4(a) and (b).

⁷ See 17 CFR 150.4(c).

⁸ See 17 CFR 150.4(d).

⁹ See 17 CFR 150.3(a)(4).

¹⁰ See 17 CFR 150.3(b) and 150.4(e).

¹¹ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124

Act¹² amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

As amended by the Dodd-Frank Act, sections 4a(a)(2) and 4a(a)(5) of the CEA authorize the Commission to establish limits for futures and option contracts traded on a designated contract market ("DCM"), as well as swaps that are economically equivalent to such futures or options contracts traded on a DCM. In response to this new authority, the position limits regime adopted in part 151 would have applied to 28 physical commodity futures and option contracts and physical commodity swaps that are economically equivalent to such contracts.¹³ The regulations in the part

Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>.

¹² Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

¹³ See Position Limits for Futures and Swaps, 76 FR 71626 (Nov. 18, 2011). In an Order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission's regulations, with the exception of the revised position limit levels in amended section 150.2. See *International Swaps and Derivatives Association v. United States Commodity Futures Trading Commission*, 887 F. Supp. 2d 259 (D.D.C. 2012).

In a separate proposal approved on the same date as this proposal, the Commission is proposing to establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are "economically equivalent" to such contracts (as such term is used in section 4a(a)(5) of the CEA). In connection with establishing these limits, the Commission is also proposing to update some relevant definitions; revise the exemptions from speculative position limits, including for bona fide hedging; and extend and update reporting requirements for persons claiming exemption from these limits. See Position Limits for Derivatives (November 5, 2013).

The Commission is proposing these amendments to regulation 150.4 and certain related regulations separately from its proposed amendments to position limits because it believes that these proposed amendments regarding aggregation of provisions could be appropriate regardless of whether the position limit amendments are adopted. The Commission anticipates that it could adopt these amendments related to aggregation

151 position limits regime are in three components that are generally similar to the three components of part 150.¹⁴ With regard to determining which accounts and positions a person must aggregate, regulation 151.7 largely adopted the Commission's existing aggregation policy under regulation 150.4.¹⁵ Regulation 151.7, however, also provided additional exemptions for underwriters of securities, and for where the sharing of information between persons would cause either person to violate federal law or regulations adopted thereunder.¹⁶ With the exception of the exemption for underwriters, regulation 151.7 required market participants to file a notice with the Commission demonstrating compliance with the conditions applicable to each exemption.¹⁷

On May 30, 2012, the Commission proposed, partially in response to a petition for interim relief from part 151's provision for aggregation of positions across accounts,¹⁸ certain modifications to its policy for aggregation under the part 151 position limits regime (the "Part 151 Aggregation Proposal").¹⁹ In brief, the Part 151 Aggregation Proposal included the following five elements.

First, the Commission proposed to amend regulation 151.7(i) to make clear that the exemption from aggregation for situations where the sharing of information was restricted under law would include circumstances in which the sharing of information would create a "reasonable risk" of a violation—in addition to an actual violation—of federal law or regulations adopted thereunder. The Commission also proposed extending the exemption to

separately from the amendments to the position limits.

If both proposals are finalized, the modifications proposed here to the aggregation provisions of part 150 would apply to the position limits regimes for both the futures and option contracts on nine agricultural commodities and the 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.

¹⁴ See notes 2 through 5, above, and accompanying text.

¹⁵ See notes 6 through 9, above, and accompanying text.

¹⁶ See regulations 151.7(g) and (i), respectively.

¹⁷ See regulation 151.7(i).

¹⁸ A copy of the petition (the "aggregation petition") can be found on the Commission's Web site at www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/wgap011912.pdf. The aggregation petition was originally filed by the Working Group of Commercial Energy Firms; certain members of the group later reconstituted as the Commercial Energy Working Group. Both groups (hereinafter, collectively, the "Working Groups") presented one voice with respect to the aggregation petition.

¹⁹ See Aggregation, Position Limits for Futures and Swaps, 77 FR 31767 (May 30, 2012).

situations where the sharing of information would create a "reasonable risk" of a violation of state law or the law of a foreign jurisdiction. But the Commission did not propose to modify the requirement that market participants file an opinion of counsel to rely on the exemption in regulation 151.7(i).

Second, the Commission proposed regulation 151.7(b)(1), which would establish a notice filing procedure to permit a person in specified circumstances to disaggregate the positions of a separately organized entity ("owned entity"), even if such person has a 10 percent or greater interest in the owned entity. The notice filing would need to demonstrate compliance with certain conditions set forth in proposed regulation 151.7(b)(1)(i), and such relief would not be available to persons with a greater than 50 percent ownership or equity interest in the owned entity. Similar to other exemptions from aggregation, the Commission would be able to subsequently call for additional information as well as reject, modify or otherwise condition such relief. Further, such person would be obligated to amend the notice filing in the event of a material change to the circumstances described in the filing. The proposed criteria to claim relief in proposed regulation 151.7(b)(1)(i) would have required a demonstration that the person filing for disaggregation relief and the owned entity do not have knowledge of the trading decisions of the other; that they trade pursuant to separately developed and independent trading systems; that they have, and enforce, written procedures to preclude one entity from having knowledge of, gaining access to, or receiving data about, trades of the other; that they do not share employees that control trading decisions and that employees do not share trading control with respect to both entities; and that they do not have risk management systems that permit the sharing of trades or trading strategies with the other.

Third, the Commission proposed regulation 151.7(j), which would allow higher-tier entities to rely upon a notice for exemption filed by the owned entity, but such reliance would only go to the accounts or positions specifically identified in the notice. The proposed regulation also would require that a higher-tier entity that wishes to rely upon an owned entity's exemption notice must comply with conditions of the applicable aggregation exemption other than the notice filing requirements.

Fourth, the Commission proposed an aggregation exemption in proposed

regulation 151.7(g) for an ownership interest of a broker-dealer registered with the SEC, or similarly registered with a foreign regulatory authority, in an entity based on the ownership of securities acquired as part of reasonable activity in the normal course of business as a dealer. However, the proposed exemption would not have applied where a broker-dealer acquires more than a 50 percent ownership interest in another entity.

Fifth, the Commission proposed to expand the definition of independent account controller to include the managing member of a limited liability company, so that “regulation 4.13 commodity pools” (i.e., a commodity pool, the operator of which is exempt from registration under regulation 4.13) established as limited liability companies would be accorded the same treatment as such pools formed as limited partnerships.

The Commission received approximately 26 written comments on the Part 151 Aggregation Proposal.²⁰

II. Proposed Rules

The Commission is now proposing to amend regulation 150.4, and certain related regulations, to include rules to determine which accounts and positions a person must aggregate that are substantially similar to the corresponding rules in part 151, as it was proposed to be amended in May 2012. In addition, the amendments now being proposed to regulation 150.4 reflect the Commission’s consideration of the comments that were received on the Part 151 Aggregation Proposal. Thus, the discussion below covers the amendments in the Part 151 Aggregation Proposal, the comments on those proposed amendments, and the amendments that the Commission is now proposing.²¹

A. Proposed Rules on the Information Sharing Restriction

B.1. Part 151 Proposed Approach—Amendment to Regulation 151.7(i)

As noted above, regulation 151.7(i) provided exemptions from aggregation under certain conditions where the sharing of information would cause a violation of Federal law or regulation. These exemptions had not previously been available. In the Part 151 Aggregation Proposal, the Commission proposed to amend regulation 151.7(i)

to make clear that the exemption to the aggregation requirement would include circumstances in which the sharing of information would create a “reasonable risk” of a violation—in addition to an actual violation—of federal law or regulations adopted thereunder. The Commission noted that whether a reasonable risk exists would depend on the interconnection of the applicable statute and regulatory guidance, as well as the particular facts and circumstances as applied to the statute and guidance.

The proposed amendments to part 151 retained the requirement that market participants file an opinion of counsel to rely on the exemption in regulation 151.7(i). The Commission explained that requiring an opinion would allow Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information, and would be particularly helpful where the asserted impediment arises from laws or regulations that the Commission does not directly administer. Further, Commission staff would have the ability to consult with other federal regulators as to the accuracy of the opinion, and to coordinate the development of rules surrounding information sharing and aggregation across accounts. The Commission also noted that the proposed clarification regarding a “reasonable risk” of violation should address the concerns that obtaining an opinion of counsel could be difficult if the Commission read the existing standard to include only *per se* violations.

The Commission also noted that, notwithstanding the Commission’s facts and circumstances review of potentially conflicting federal laws or regulations, the exemption in regulation 151.7(i) would be effective upon filing of the notice required in regulation 151.7(h) and opinion of counsel. Further, these provisions authorized the Commission to request additional information beyond that contained in the notice filing, and the Commission may amend, suspend, terminate or otherwise modify a person’s aggregation exemption upon further review. Last, the Commission noted that as it gained further experience with the exemption for federal law information sharing restriction in regulation 151.7(i), it anticipated providing further guidance to market participants.

a. Part 151 Proposed Rules for Information Sharing Restriction—Foreign Law

For the same reasons the Commission adopted the exemption for federal information sharing restrictions, the

Commission proposed extending the exemption to the law of a foreign jurisdiction. In addition, similar to the clarification for the exemption for federal law information sharing restriction, the Commission also proposed an exemption where the sharing of information creates a “reasonable risk” of violating the law of a foreign jurisdiction. However, the Commission remained concerned that certain market participants could potentially use the existing and proposed expansion of the exemption in regulation 151.7(i) to evade the requirements for the aggregation of accounts. In this regard, the proposed amendment to part 151, consistent with the exemption for federal law information sharing restriction, included the requirement to file an opinion of counsel specifically identifying the particular law and facts requiring a market participant to claim the exemption.

The Commission noted that the aggregation petition references information sharing restrictions that arise from “international” law, and the Commission sought comment on the types of “international” law, if any, which could create information sharing restrictions other than the law of a foreign jurisdiction. The Commission asked if the regulation 151.7(i) exemption should include “international” law or whether it was sufficient to refer to the “law of a foreign jurisdiction.”

b. Part 151 Proposed Rules for Information Sharing Restriction—State Law

The Commission also proposed to establish an exemption for situations where information sharing restrictions could trigger state law violations. In addition, similar to the clarification related to information sharing restrictions under federal law, the Commission also proposed that the state law information sharing restriction apply where the sharing of information creates a “reasonable risk” of violating the state law. However, as noted above, the Commission remained concerned about the potential for evasion within the context of this exemption. In this regard, the Part 151 Aggregation Proposal, consistent with the federal law information sharing restriction, included the requirement to file an opinion of counsel specifically identifying the restriction of law and facts particular to the market participant claiming the exemption.

The clarification and expansion of the violation of law exemption in the Part 151 Aggregation Proposal addressed

²⁰ The written comments are available on the Commission’s Web site at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1208>.

²¹ For additional background on part 150 and part 151 and the existing provisions for aggregation, see the Part 151 Aggregation Proposal.

concerns raised in the aggregation petition. First, the clarification and extension of the violation of law exemption responded to concerns that market participants could face increased liability under state, federal and foreign law. While the aggregation petition and other commenters argued that an owned non-financial entity exemption would reduce the risk of liability under antitrust and other laws, the clarification and expansion in the Part 151 Aggregation Proposal would also reduce risk of liability under antitrust or other laws by allowing market participants to avail themselves of the violation of law exemption in those circumstances where the sharing of information created a reasonable risk of violating the above mentioned bodies of law.

The Commission solicited comments as to the appropriateness of extending the information sharing exemption to state law. The Commission also considered, as an alternative, a case-by-case approach, through petitions submitted pursuant to CEA section 4a(a)(7), where the Commission would otherwise rely upon the preemption of state law in administering its aggregation policy.

The Commission noted that the aggregation petition cites to Texas Public Utility Code Substantive Rule 25.503, which provides that “a market participant shall not collude with other market participants to manipulate the price or supply of power.”²² That provision applies to intra-state transactions and resembles regulations of the Federal Energy Regulatory Commission.²³ In this regard, the Commission asked if it should limit application of the proposed exemption for state law information sharing restrictions to laws that have a comparable provision at the federal level, and what criteria it should use in identifying state laws that a person may rely upon for an exemption from aggregation. The Commission also solicited additional comment as to the types of state laws, including specific laws, which could create an information sharing restriction in conflict with the Commission’s aggregation policy.

The Commission further noted that the aggregation petition seeks to extend the exemption to information sharing restrictions that arise from “local” law.²⁴ However, the aggregation petition did not provide examples of local laws that could create restrictions on information sharing, and the

Commission was concerned that an exemption for local law would be difficult to implement due to the large number of such laws and/or regulations that would need to be considered and the vast numbers of localities that might issue such laws and/or regulations.

The Commission solicited comment as to the appropriateness of extending the information sharing exemption to “local” law. Commenters were asked to provide the scope of local law and identify any specific laws that create information sharing restrictions that would conflict with the Commission’s aggregation policy. The Commission also asked what criteria it could use in identifying local laws that a person may rely upon for an exemption from aggregation, and if the Commission should adopt a case-by-case approach through petitions submitted pursuant to CEA section 4a(a)(7) and otherwise rely upon the preemption of local law in administering its aggregation policy.

2. Commenters’ Views

One commenter said that the information sharing exemption should not be expanded, but should instead be limited to violations of federal law.²⁵ This commenter also said that the exemption from aggregation for potential violations should not be included, because it is impractical to determine if potential violations actually justify disaggregation, and that if the exemption is expanded, only “foreign law,” not “international law,” should be a basis for the exemption since international law (such as a treaty) is not directly applicable to information sharing.²⁶

Other commenters said that the proposed exemptions for information sharing requirements under state or foreign law are appropriate, and that a “reasonable risk” of violation is the right standard for the exemptions.²⁷ Commenters also said that requirements under state law should be a valid basis for an exemption regardless of whether a comparable federal law exists, and even if federal law pre-empts state law.²⁸ These commenters cited state

²⁵ Institute for Agriculture and Trade Policy on June 29, 2012 (“CL-IATP”).

²⁶ CL-IATP.

²⁷ EEI on June 29, 2012 (“CL-EEI”), FIA on June 29, 2012 (“CL-FIA”), International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, jointly on June 29, 2012 (“CL-ISDA/SIFMA”).

²⁸ American Gas Association on June 29, 2012 (“CL-AGA”), American Petroleum Institute on June 29, 2012 (“CL-API”), Atmos Energy Holdings on June 29, 2012 (erroneously dated July 29, 2012) (“CL-Atmos”), CL-EEI, CL-FIA, Coalition of Physical Energy Companies on June 29, 2012 (“CL-COPE”).

utility regulations and state regulation of local gas distribution companies as examples of the types of state laws that could prohibit information sharing. Without citing any examples of such laws that may restrict information sharing, two commenters said that local law should also be a valid basis for an exemption.²⁹

Regarding which types of legal provisions should be treated as “state law,” commenters said it should include state statutes, regulations and common law (including, e.g., fiduciary duties under common law),³⁰ and rules, regulations, administrative rulings and court orders imposed by state commissions or other governmental authorities with jurisdiction.³¹

Addressing the requirement of an opinion of counsel, some commenters said that the requirement in the existing rule should not be changed.³² These commenters reasoned that the presumption should be that aggregation is required in all but the most clear-cut cases, and for those cases an opinion would be available.³³

Other commenters said that a memorandum of law prepared by internal or external counsel should suffice if it sets out a legal basis for the exemption.³⁴ These commenters generally pointed out that formal legal opinions can be expensive to obtain, typically contain many qualifications, and otherwise are not a practical means of advancing the goals mentioned in the Part 151 Aggregation Proposal.³⁵ One commenter said that as an alternative to a memorandum of law, a person claiming the exemption should be allowed simply to provide a copy of the court order, administrative ruling or other document showing the prohibition of information sharing.³⁶

3. Proposed Rule

The Commission is proposing to adopt rule 150.4(b)(8), which is largely

²⁹ CL-API, Working Group of Commercial Energy Firms and Sutherland Asbill & Brennan LLP, on behalf of The Commercial Energy Working Group, jointly on June 29, 2012 (“CL-WGCEF”).

³⁰ CL-FIA, Private Equity Growth Capital Council on June 29, 2012 (“CL-PEGCC”).

³¹ CL-AGA, Alternative Investment Management Association Limited on July 6, 2012 (“CL-AIMA”), CL-Atmos.

³² Better Markets, Inc. on June 29, 2012 (“CL-Better Markets”), CL-IATP.

³³ CL-Better Markets, CL-IATP.

³⁴ CL-API, CL-EEI, CL-FIA, CL-ISDA/SIFMA, CL-PEGCC, CL-WGCEF.

³⁵ CL-API, CL-EEI, CL-FIA, CL-ISDA/SIFMA, CL-PEGCC, CL-WGCEF. Commenters also said that persons should be able to rely on a general legal opinion (as compared to a legal opinion or memorandum prepared specifically for that person) with respect to laws that impose a broadly applicable prohibition of information sharing.

³⁶ CL-AIMA.

²² Aggregation petition at 24.

²³ See, e.g., 18 CFR 1c.1 and 1c.2.

²⁴ Aggregation petition at 24.

similar to rule 151.7(i) as it was proposed to be amended. The Commission notes that many of the commenters agreed that the proposed amendment to part 151 appropriately required that the sharing of information create “a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder.” Based on the comments received and further consideration, the Commission does not believe it is necessary that the person show that a comparable federal law exists in order for a state law to be the basis for an exemption.

The Commission has carefully considered the comments asserting that local law and international law should be a basis for the exemption. However, the Commission does not believe that this would be appropriate. First, the Commission notes that the commenters were divided on this point, and only some supported incorporating local law and international law into the exemption. With regard to local law, the Commission continues to believe, as stated in the Part 151 Aggregation Proposal, that an exemption for local law would be difficult to implement due to the number of laws and regulations that would need to be considered and the number of localities that might issue them. Also, even though the number of such laws and regulations may be large, the Commission is not persuaded that there would be a significant number of instances where these laws and regulations would prohibit information sharing that would otherwise be permitted under federal and state law.³⁷ In this respect, the Commission notes that even commenters supportive of including exceptions for local law did not cite any local laws that restrict the information sharing necessary to comply with the Commission’s aggregation policy. Furthermore, the Commission is concerned that reviewing notices of exemptions based on local laws would create a substantial administrative burden for the Commission. That is, balancing the possibility that including local law as a basis for the exemption would be helpful to market participants against the possibility that doing so would lead to confusion or inappropriate results, the Commission preliminarily concludes that the better course is not

to provide for local law to be a basis for the exemption.

With regard to international law, the Commission is persuaded by the commenter who pointed out that the sources of international law, such as treaties and international court decisions, would be unlikely to include information sharing prohibitions that would not otherwise apply under foreign or federal law, and that therefore including international law as a basis for the exemption is unnecessary.

The Commission’s proposed rule 150.4(b)(8) differs from the proposed amendment to rule 151.7, in that instead of requiring a person to provide an opinion of counsel regarding the reasonable risk of a violation of law, the proposed rule would require the person to provide a written memorandum of law (which may be prepared by an employee of the person or its affiliates) which explains the legal basis for determining that information sharing creates a reasonable risk that either person could violate federal, state or foreign law. The Commission is persuaded by the commenters saying that requiring a formal opinion of counsel may be expensive and may not provide benefits, in terms of the purposes of this requirement, as compared to a memorandum of law. As noted in the Part 151 Aggregation Proposal, the purpose of this requirement is to allow Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information (which should be particularly helpful when the asserted impediment arises from laws that the Commission does not directly administer), to consult with other regulators as to the accuracy of the assertion, and to coordinate the development of rules surrounding information sharing and aggregation. The Commission expects that a written memorandum of law would, at a minimum, contain information sufficient to serve these purposes.

The Commission preliminarily believes that if there is a reasonable risk that persons in general could violate a provision of federal, state or foreign law of general applicability by sharing information associated with position aggregation, then the written memorandum of law may be prepared in a general manner (i.e., not specifically for the person providing the memorandum) and may be provided by more than one person in satisfaction of the requirement. For example, the Commission is aware that trade associations commission law firms to provide memoranda on various legal issues of concern to their members.

Under the proposed rule, such a memorandum (i.e., one that sets out in detail the basis for concluding that a certain provision of federal, state or foreign law of general applicability creates a reasonable risk of violation arising from information sharing) could be provided by various persons to satisfy the requirement, so long as it is clear from the memorandum how the risk applies to the person providing the memorandum.

On the other hand, the Commission is not persuaded that, as suggested by some commenters, simply providing a copy of the law or other legal authority would be sufficient, because this would not set out the basis for a conclusion that the law creates a reasonable risk of violation if the particular person providing the document shared information associated with position aggregation. If the effect of the law is clear, the written memorandum of law need not be complex, so long as it explains in detail the effect of the law on the person’s information sharing.

Proposed rule 150.4(b)(8) also reflects the addition of a parenthetical clause to clarify that the types of information that may be relevant in this regard may include, only by way of example, information reflecting the transactions and positions of a such person and the owned entity. The Commission believes it is helpful to clarify in the rule text what types of information may potentially be involved. The mention of transaction and position information as examples of this information is not intended to limit the types of information that may be relevant.

Finally, the Commission preliminarily believes that the question of what legal authorities, in particular, constitute “state law” or “foreign law,” where it is relevant, is a question to be addressed in the written memorandum of law. In general, any state-level or foreign legal authority that is binding on the person could be a basis for the exemption.

The Commission solicits comment as to all aspects of proposed rule 150.4(b)(8). In particular, the Commission solicits comment as to the appropriateness of requiring that a person provide a written memorandum of law, rather than an opinion of counsel, regarding the reasonable risk of a violation of law. Also, what types of information may potentially be the subject of the sharing that is of concern in this rule?

C. Ownership of Positions Generally

1. Part 151 Proposed Approach

The Part 151 Aggregation Proposal reflected the Commission’s long-

³⁷ In addition, in those instances where local law would impose an information sharing restriction that is not present under state or federal law, the Commission believes that it could be inappropriate to favor the local law serving a local purpose to the detriment of the position limits under federal law that serve a national purpose.

standing incremental approach to exemptions from the aggregation requirement for persons owning a financial interest in an entity. The Part 151 Aggregation Proposal highlighted the relevant statutory language of section 4a(a)(1) of the CEA, which requires aggregation of an entity's positions on the basis of either ownership or control of the entity, and the related legislative history and regulatory developments which support the Commission's approach. In addition, the Part 151 Aggregation Proposal also explained that the Commission's historical practice has been to craft narrowly-tailored exemptions, when and if appropriate, to the basic requirement of aggregation when there is either ownership or control of an entity.³⁸

Regarding the threshold level at which an exemption from aggregation on the basis of ownership would be available, the Commission noted in the Part 151 Aggregation Proposal that it has generally found that an ownership or equity interest of less than 10 percent in an account or position that is controlled by another person who makes discretionary trading decisions does not present a concern that such ownership interest results in control over trading or can be used indirectly to create a large speculative position through ownership interests in multiple accounts. As such, the Commission has exempted an ownership interest below 10 percent from the aggregation requirement.³⁹ Prior comments discussed in the Part 151 Aggregation Proposal suggested that a similar analysis should prevail for an ownership interest of 10 percent or more where such ownership represents a passive investment that does not involve control of the trading decisions of the owned entity, because such passive investments would present a reduced concern that ownership would result in trading pursuant to direct or indirect control, as well as a reduced risk for persons with positions in multiple accounts to hold an unduly large overall position.

While other Commission rulemakings prior to the Part 151 Aggregation

³⁸ See also note 41, below, and accompanying text.

³⁹ The Commission codified this aggregation threshold in its 1979 statement of policy on aggregation, which was derived from the administrative experience of the Commission's predecessor. See Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839, 33843 (June 13, 1979). Note, however, that consistent with the approach taken in 151.7(d), proposed rule 150.4(d) will separately require aggregation of investments in accounts with identical trading strategies.

Proposal generally restricted exemptions from aggregation based on ownership to FCMs, limited partner investors in commodity pools, and independent account controllers managing customer funds for an eligible entity, a broader passive investment exemption has previously been considered but not enacted by the Commission.⁴⁰ Further, the Commission reiterated its belief in incremental development of aggregation exemptions over time.⁴¹ Consistent with that incremental approach, the Commission considered the additional information provided and the concerns raised by the aggregation petition, and proposed relief from the ownership criteria of aggregation.

The Part 151 Aggregation Proposal would have established a notice filing procedure to permit a person with an ownership or equity interest in a separately organized entity ("owned entity") of 10 percent or greater, but no more than 50 percent, to disaggregate the positions of the owned entity in specified circumstances. Under that

⁴⁰ See, e.g., 53 FR 13290, 13292 (1988) (proposal). The 1988 proposal for the independent account controller rule requested comment on the possibility of a broader passive investment exemption, and specifically noted:

[Q]uestions also have been raised regarding the continued appropriateness of the Commission's aggregation standard which provides that a beneficial interest in an account or positions of ten percent or more constitutes a financial interest tantamount to ownership. This threshold financial interest serves to establish ownership under both the ownership criterion of the aggregation standard and as one of the indicia of control under the 1979 Aggregation Policy.

In particular, certain instances have come to the Commission's attention where beneficial ownership in several otherwise unrelated accounts may be greater than ten percent, but the circumstances surrounding the financial interest clearly exclude the owner from control over the positions. The Commission is requesting comment on whether further revisions to the current Commission rules and policies regarding ownership are advisable in light of the exemption hereby being proposed. If such financial interests raise issues not addressed by the proposed exemption for independent account controllers, what approach best resolves those issues while maintaining a bright-line aggregation test?

⁴¹ See 77 FR 31767, 31773. This incremental approach to account aggregation standards reflects the Commission's historical practice. See, e.g., 53 FR 41563, 41567, Oct. 24, 1988 (the definition of eligible entity for purposes of the IAC exemption originally only included CPOs, or exempt CPOs or pools, but the Commission indicated a willingness to expand the exemption after a "reasonable opportunity" to review the exemption.); 56 FR 14308, 14312, Apr. 9, 1991 (the Commission expanded eligible entities to include commodity trading advisors, but did not include additional entities requested by commenters until the Commission had the opportunity to assess the current expansion and further evaluate the additional entities); and 64 FR 24038, May 5, 1999 (the Commission expanded the list of eligible entities to include many of the entities commenters requested in the 1991 rulemaking).

proposal, the notice filing would demonstrate compliance with certain conditions set forth in the proposed amendment to part 151. Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission would be able to subsequently call for additional information as well as reject, modify or otherwise condition such relief. Further, such person would be obligated to amend the notice filing in the event of a material change to the circumstances described in the filing.

a. Initial Proposed Ownership Threshold for Disaggregation Relief

The proposed amendment to part 151 would have conditioned disaggregation relief on a demonstration that the person does not have greater than a 50 percent ownership or equity interest in the owned entity. The Part 151 Aggregation Proposal explained that an equity or ownership interest above 50 percent constitutes a majority ownership or equity interest of the owned entity and is so significant as to require aggregation under the ownership prong of Section 4a(a)(1) of the CEA. As noted in the Part 151 Aggregation Proposal, the proposed amendment to part 151 would have provided certainty and an easily administrable bright-line test, and would have addressed concerns about circumvention of position limits by coordinated trading or direct or indirect influence between entities. To the extent that the majority owner may have the ability and incentive to direct, control or influence the management of the owned entity, the proposed bright-line test would be a reasonable approach to the aggregation of owned accounts pursuant to Section 4a(a)(1). A person with a greater than 50 percent ownership interest in multiple accounts would have the ability to hold and control a significant and potentially unduly large overall position in a particular commodity, which position limits are intended to prevent.

The owned entity exemption in the Part 151 Aggregation Proposal would have applied to both financial and non-financial entities that have passive ownership interests. Market participants that qualify for the exemption could file a notice with the Commission demonstrating independence between entities and, thereafter, forgo the development of monitoring and tracking systems for the aggregation of accounts. The Commission sought comment as to whether such passive interests present a significantly reduced risk of coordinated trading compared to owned entities that fail the criteria for the proposed

exemption. In addition, the Commission specifically requested comment as to whether the proposed relief should be limited to ownership interests in non-financial entities.

While the owned non-financial entity exemption mentioned in the aggregation petition would permit disaggregation even if the owned entity is wholly owned, the Commission was concerned that an ownership interest greater than 50 percent presents heightened concerns for coordinated trading or direct or indirect influence over an account or position, and that permitting disaggregation at that level of ownership would be inconsistent with the statutory requirement to aggregate on the basis of ownership. The Part 151 Aggregation Proposal noted that while small ownership interests of less than 10 percent do not warrant aggregation, and although 10 percent or greater ownership has served as a useful threshold for aggregation, the Commission believed relief may be warranted for passive investments above 10 percent. However, for the reasons discussed above, aggregation would be inappropriate where an ownership interest is greater than 50 percent. Therefore, the Commission proposed limiting the availability of the exemption to those having an ownership interest no greater than 50 percent.

b. Initial Proposed Criteria for Disaggregation Relief

The proposed criteria to claim relief under the proposed amendment to part 151 addressed the Commission's concerns that an ownership or equity interest of 10 percent and above may facilitate or enable control over trading of the owned entity or allow a person to accumulate a large position through multiple accounts that could overall amount to an unduly large position. The Part 151 Aggregation Proposal grouped these criteria into four general categories.

First, the proposed amendment to part 151 would have conditioned aggregation relief on a demonstration that the person filing for disaggregation relief and the owned entity do not have knowledge of the trading decisions of the other. The Commission noted that where an entity has an ownership interest in another entity and neither entity shares trading information, such entities demonstrate independence, but persons with knowledge of trading decisions of another in which they have an ownership interest are likely to take such decisions into account in making their own trading decisions.

Second, the proposed amendment to part 151 would have conditioned aggregation relief on a demonstration that the person seeking disaggregation relief and the owned entity trade pursuant to separately developed and independent trading systems. Further, a demonstration that such person and the owned entity have, and enforce, written procedures to preclude the one entity from having knowledge of, gaining access to, or receiving data about, trades of the other, would also be required. Such procedures would address document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities. The Part 151 Aggregation Proposal noted that these conditions would strengthen the independence between the two entities for the owned entity exemption.

Third, the proposed amendment to part 151 would have conditioned aggregation relief on a demonstration that the person does not share employees that control the owned entity's trading decisions, and the employees of the owned entity do not share trading control with such persons. The Part 151 Aggregation Proposal noted that, similar to the restriction on information sharing, the sharing of employees with knowledge of trading decisions presents a strong risk to the independence of trading between entities. In the Part 151 Aggregation Proposal, the Commission sought comment regarding whether the sharing of employees such as attorneys, accountants, risk managers, compliance and other mid- and back-office personnel compromises independence because it would provide each entity with knowledge of the other's trading decisions.⁴²

Fourth, the proposed amendment to part 151 would have conditioned aggregation relief on a demonstration that the person and the owned entity do not have risk management systems that permit the sharing of trades or trading strategies with the other. This condition, which is similar to a condition proposed in the aggregation petition, addressed concerns that risk management systems that permit the sharing of trades or trading strategies with each other present a significant risk of coordinated trading through the sharing of information. The Part 151 Aggregation Proposal did not include a condition that the risk management systems of the

⁴² In the aggregation petition, the Working Groups asserted that entities should be permitted to share "attorneys, accountants, risk managers, compliance and other mid- and back-office personnel." Aggregation petition at Exhibit A.

two entities be separately developed, and the Commission sought comment as to whether independence of trading between the two entities can be maintained when their risk management systems do not communicate trade information.

c. Initial Proposed Notice Filing Requirement

With regard to filing requirements for the exemption in the proposed amendment to part 151, the Commission noted that market participants would be required to file in accordance with regulation 151.7(h). As such, market participants would be required to file a notice with the Commission with a description of how they adhere to the criteria in the proposed amendment to part 151 and a certification that the conditions are met. This certification, as well as any other certification made under regulation 151.7(h), would be required to be made by a senior officer of the market participant with knowledge as to the contents of the notice.⁴³ Further, regulation 151.7(h)(3) requires market participants to promptly update a notice filing in the event of a material change of the information contained in the notice filing.⁴⁴

With regard to the type of material necessary to file a notice to claim an exemption under the proposed amendment to part 151, the Commission noted that each submission would have to be specific to the facts of the particular entity. The person claiming the exemption would be required to provide specific facts that demonstrate compliance with each condition of relief. Such a demonstration would likely include an organizational chart showing the ownership and control structure of the involved entities, a description of the risk management system, a description of the information-sharing systems (including bulletin boards, and common email addresses of the entities identified), an explanation of how and to whom the trade data and position information is distributed (including the responsibilities of the individual receiving such information), and the officers that receive reports of the trade data and position information.⁴⁵

⁴³ See proposed rule 151.7(h)(1)(ii), 77 FR 31767, 31782.

⁴⁴ In this regard, the Commission clarified that a material change would include, among other events, if the person making the original certification is no longer employed by the company. See also CEA sections 6(c)(2) and 9(a)(3).

⁴⁵ The Commission noted that this list was not meant to be exhaustive of the factors that would indicate an exemption is warranted and should not be interpreted as being solely sufficient to claim the exemption because each filing is fact specific. And,

d. Initial Proposed Treatment of Higher Tier Entities

In connection with its request for the Commission to include an owned non-financial entity exemption, the aggregation petition also requested that the Commission provide relief from the filing requirements for claiming the exemption. Specifically, it argued that if an entity files a notice and claims the owned non-financial entity exemption, then “every higher-tier company (a company that holds an interest in the company that submitted the notice) need not aggregate the referenced contracts of the owned non-financial entities identified in the notice.”⁴⁶ After consideration of this request, the Commission proposed rules that would provide relief to such “higher-tier entities” within the context of a corporate structure.⁴⁷

The proposed amendments to part 151 would have provided that higher-tier entities may rely upon a notice for exemption filed by the owned entity, and such reliance would only go to the accounts or positions specifically identified in the notice. For example, if company A had a 30 percent interest in company B, and company B filed an exemption notice for the accounts and positions of company C, then company A could rely upon company B’s exemption notice for the accounts and positions of company C. Should company A wish to disaggregate the accounts or positions of company B, company A would have to file a separate notice for an exemption.

The proposed amendments to part 151 would have also provided that a higher-tier entity that wishes to rely upon an owned entity’s exemption notice would be required to comply with conditions of the applicable aggregation exemption other than the notice filing requirements. Although higher-tier entities would not have to submit a separate notice to rely upon the notice filed by an owned entity, the Commission noted that it would be able, upon call, to request that a higher-tier entity submit information to the Commission, or allow an on-site visit, demonstrating compliance with the applicable conditions.

The Part 151 Aggregation Proposal stated that the proposed amendments to part 151 should significantly reduce the filing requirements for aggregation

exemptions. Further, the Commission did not anticipate that the reduction in filing would impact the Commission’s ability to effectively surveil the proper application of exemptions from aggregation. The first filing of an owned entity exemption notice should provide the Commission with sufficient information regarding the appropriateness of the exemption, while repetitive filings of higher-tier entities would not be expected to provide additional substantive information. However, the Commission again noted that higher-tier entities would still be required to comply with the conditions of the exemption specified in the owned entity’s notice filing.

The Commission specifically requested comments as to the appropriateness of the owned entity exemption as well as the conditions applicable to the exemption, and whether the Commission should add additional criteria and if so, what criteria and why. The Commission also asked if it should require market participants to submit additional information to claim the exemption, and if so, what information and why. With regard to the owned entity exemption, the Commission asked if it should alter the scope of the exemption, and if so, how it should be altered and why. Further, the Commission asked commenters to address the percentage ownership interest, if any, at which a market participant should no longer be able to claim the exemption in the proposed amendments to part 151, and whether there are specific circumstances in which a percentage of ownership higher than 50 percent would be appropriate to claim the exemption notwithstanding the concerns described above regarding coordinated trading, direct or indirect influence, and significantly large and potentially unduly large overall positions in a particular commodity. In addition, the Commission invited comment on the owned non-financial entity exemption set forth in appendix A of the aggregation petition as an alternative to the proposed owned entity exemption.

2. Commenters’ Views

a. Comments on the Initial Proposed Ownership Threshold for Disaggregation Relief

Some commenters supported the proposed rules requiring that, to obtain relief from the aggregation requirement, a person must own 50 percent or less of an owned entity. One commenter said that unless the standards for an independent account controller are met,

any exemption from aggregation for greater than 50 percent-owned entities would constitute an unacceptable weakening of the position limits regime.⁴⁸ This commenter also noted that CEA section 4a(a)(1) requires aggregation of positions held by any persons “directly or indirectly” controlled by a person, and “ownership is the paradigm example of indirect control.”⁴⁹

Two commenters said that the proposed rules went too far in allowing exemptions from aggregation. These commenters were concerned that the exemptions in the Part 151 Aggregation Proposal could impede prevention of excessive speculation on agricultural futures, which requires the imposition of position limits based on consistent aggregation of positions,⁵⁰ and that allowing owners of more than 10 percent of another entity not to aggregate could “potentially spark additional ‘herd-like’ behavior, thus causing another commodities futures boom-bust cycle.”⁵¹

The other commenters on the Part 151 Aggregation Proposal said that the requirement of ownership of 50 percent or less of the owned entity should not apply, and disaggregation relief should be available to any person demonstrating that the owned entity’s trading is independent according to criteria along the lines of proposed rule 151.7(b)(1)(i).⁵² Some of these commenters also said that, as an alternative to providing relief for any person that could demonstrate independent trading by the owned entity, disaggregation relief should be available to the extent specifically provided by the Commission in response to a specific request for relief,⁵³ or if the person makes an additional demonstration of why majority ownership of the owned entity does not result in trading control or information sharing that warrants

⁴⁸ CL–Better Markets.

⁴⁹ CL–Better Markets.

⁵⁰ CL–IATP.

⁵¹ International Association of Machinists and Aerospace Workers on June 29, 2012 (“CL–IAMAW”).

⁵² American Benefits Council on June 29, 2012 (“CL–ABC”), CL–AGA, CL–AIMA, CL–API, Barclays Capital on June 29, 2012 (“CL–Barclays”), Commodity Markets Council on June 29, 2012 (“CL–CMC”), CL–COPE, CL–EEL, CL–FIA, Iberdrola Renewables, LLC and Iberdrola Energy Services LLC, jointly on June 29, 2012 (“CL–Iberdrola”), CL–ISDA/SIFMA, Managed Funds Association on June 28, 2012 (“CL–MFA”) and CL–WGCEF.

⁵³ CL–AIMA, CL–API. Two commenters’ first position (not an alternative position) was along these lines—that disaggregation relief should be available to the extent provided by the Commission. CL–Atmos, CL–MFA.

as noted earlier, the Commission is able to demand additional information regarding the exemption within its discretion.

⁴⁶ Aggregation petition at 23.

⁴⁷ For purposes of the discussion below, “higher-tier” entities include entities with a 10 percent or greater ownership interest in an owned entity.

aggregation.⁵⁴ One commenter representing private investment funds suggested rules allowing disaggregation relief if a person could demonstrate independent trading by the owned entity and one of three alternative conditions were met: (i) The owner uses information about the owned entity's trading only for risk management, (ii) the owned entity only enters into bona fide hedging transactions, or (iii) the owned entity is not consolidated on the owner's financial statements, representatives of the owner on the owned entity's board of directors do not control the owned entity's trading and the owned entity's trading qualifies as bona fide hedging.⁵⁵

The commenters opposed to the requirement of ownership of 50 percent or less of the owned entity provided various reasons for why the requirement should not apply. Some of these commenters said that although ownership of more than 50 percent of an entity is an indicator of control, such ownership does not always equate to control,⁵⁶ because ownership of an entity does not provide control unless the owner has an ability to direct or influence management⁵⁷ or because treating ownership as tantamount to control is contrary to principles of corporate separateness.⁵⁸ Other commenters said that aggregation is consistent with the underlying purposes of the position limits regime only if a person has direct and actual control of the trading of another person or has access to information about the other entity's trading that facilitates its own trading.⁵⁹

Other commenters claimed that the requirement of ownership of 50 percent or less of the owned entity is inconsistent with the CEA or past practices of the Commission. These commenters said that while CEA section 4a(a)(1) refers to positions held by "controlled" persons, it does not refer to positions held by owned persons,⁶⁰ that the Commission does not require aggregation of positions of owned commodity pools, or of positions (even

those held by the entity itself) if there is an independent account controller,⁶¹ and that the "bright line" standard at 50 percent ownership is arbitrary,⁶² inconsistent with both a 1979 policy statement of the Commission that trading control is a question of fact and with prior practice of DCMs to allow owners to demonstrate lack of control of an owned entity's trading,⁶³ or unnecessary in light of the Commission's Part 151 Aggregation Proposal of factors to determine whether a person controls the trading of an owned entity.⁶⁴

Another reason cited by commenters against the requirement of ownership of 50 percent or less of the owned entity is that in certain corporate structures, majority ownership may not provide for control of the owned entity. Commenters said, for example, that limited partners may not control the trading of a limited partnership, even though they own a majority equity interest in the limited partnership,⁶⁵ or a joint venture may contain contractual provisions that prevent the venture partners from controlling its trading,⁶⁶ or a passive majority investor in a commercial company may not control the company's trading.⁶⁷ Commenters also said that it would be inappropriate to treat two companies that operate in different regions or at different levels of commerce (e.g., wholesale and retail) as trading under common control simply because both companies are owned by a common holding company.⁶⁸

Commenters also described other factors that they believe weigh against the requirement of ownership of 50 percent or less of the owned entity in order to disaggregate. One commenter said that requiring persons to aggregate the positions of all majority-owned

entities would lead to more information sharing and coordinated trading between such entities, which the Commission should seek to prevent, and it would also likely lead to incorrect position reporting while disaggregation would encourage more granular and more accurate reporting.⁶⁹ Another commenter was concerned that the Commission's adoption of aggregation rules would lead DCMs and SEFs to apply similar aggregation rules for the position limits regimes that they enforce, thereby increasing the importance of the aggregation rules to a wider variety of firms using many different types of swaps.⁷⁰ A commenter representing employee benefit plans said that the Commission should not require aggregation of the positions of a corporate entity that is the sponsor of an employee benefit plan with the positions of the plan even if the employees of the plan sponsor (or its subsidiaries) control the investments of the plan, because such employees have a legal duty to act solely in the interests of the plan.⁷¹

b. Comments on the Initial Proposed Criteria for Disaggregation Relief

There were a variety of comments on the criteria in the proposed amendment to part 151 that must be met in order for a person to obtain disaggregation relief with respect to an owned entity. One general point raised by several commenters was that the limits on sharing information between the person and the owned entity should not apply to employees that do not direct or influence trading (such as attorneys or risk management and compliance personnel), although the employees may have knowledge of the trading of both the person and the owned entity.⁷² A commenter representing employee benefit plan managers said that restrictions on information sharing are, in general, a problem for plan managers, which have a fiduciary duty to inquire as to an owned entities' activities, so the Commission should recognize that acting as required by fiduciary duties

⁵⁴ CL-ISDA/SIFMA, CL-WGCEF, CL-PEGCC.

One of these commenters said that, instead of requiring aggregation of positions, the Commission should consider requiring that additional safeguards be in place for majority-owned entities, such as requiring that both the person and the owned entity to make certain annual certifications. CL-WGCEF.

⁵⁵ CL-PEGCC and Private Equity Growth Capital Council supplemental letter on August 20, 2012 ("CL-PEGCC Supp.").

⁵⁶ CL-AGA, CL-MFA, CL-PEGCC, CL-WGCEF.

⁵⁷ CL-API, CL-Atmos.

⁵⁸ CL-ISDA/SIFMA, CL-PEGCC.

⁵⁹ CL-CMC, CL-EEL.

⁶⁰ CL-ISDA/SIFMA, CL-PEGCC.

⁶¹ CL-PEGCC.

⁶² CL-AGA, CL-API, CL-COPE.

⁶³ CL-API, CL-WGCEF.

⁶⁴ CL-AIMA.

⁶⁵ CL-CMC, CL-COPE, CL-WGCEF.

⁶⁶ CL-API, CL-CMC.

⁶⁷ U.S. Chamber of Commerce and the Real Estate Roundtable, jointly on June 29, 2012 ("CL-Chamber"). Other commenters along these lines added that to requiring passive investors to aggregate the positions of majority-owned companies would inhibit legitimate commercial and investment activity. CL-FIA, and that providing relief from aggregation for passive investors would be similar to the lack of aggregation for passive owners of commodity pools. CL-PEGCC.

⁶⁸ CL-AGA, CL-Iberdrola. Another commenter added that since the independent account controller exemption would generally not be available to holding companies owning operating companies, the requirement of ownership of 50 percent or less of the owned entity in order to disaggregate creates a regulatory imbalance between such holding companies and the entities to which the independent account controller exemption is available. CL-WGCEF.

⁶⁹ CL-CMC.

⁷⁰ CL-Chamber.

⁷¹ CL-ABC. This commenter also asked for clarification whether a person that owns an entity that controls the trading of an employee benefit plan would be required to aggregate the positions of such plan with such person's positions. *Id.*

⁷² CL-AGA, CL-API, CL-Atmos, CL-Cargill, CL-EEL. Commenters said that shared knowledge among employees is not relevant if they are not involved in trading and do not serve as conduit for sharing trading information. CL-AGA, CL-AIMA, CL-Atmos, and that it is important that risk management and compliance personnel have continuous knowledge of trading. CL-EEL.

does not constitute a violation of the information sharing restriction.⁷³

Summarized below are the comments on each of the four general categories of criteria for disaggregation relief in the proposed rule.

No shared knowledge of trading decisions. Commenters said that this proposed amendment to part 151 should be clarified to indicate that it prohibits the sharing only of knowledge held by personnel with the ability to direct or participate in trading decisions by either the person or the owned entity that would allow them to trade in anticipation or in concert, and that it allows post-trade information sharing for risk management, accounting, compliance, or similar purposes and information sharing among mid- and back-office personnel that do not control trading.⁷⁴ Another commenter said that this proposed amendment to part 151 should be clarified to provide that information sharing resulting when the person and the owned entity (or two owned entities) are counterparties in an arm's length transaction should not be a violation of the rule.⁷⁵

Trade pursuant to separately developed and independent trading systems; have and enforce written procedures to preclude sharing of trading information and other procedures to maintain independence, including separate physical locations. Commenters said that this requirement should not apply to commercial energy firms which use similar trading systems,⁷⁶ or where existing systems can be modified to prevent coordinated trading,⁷⁷ or to prevent the use of third party "off-the-shelf" execution algorithms.⁷⁸ Other commenters said the requirement should apply only to systems that direct trading decisions, and not trade capture, trade risk or trade facilitation systems.⁷⁹ One commenter said this provision of the proposed amendment to part 151 should be deleted, because it is the use of the system, not its development, which is relevant.⁸⁰ Commenters also said that this proposed amendment to part 151 should apply only with respect to personnel directing or participating in trading decisions,⁸¹ and it should permit the sharing of virtual

documentation, so long as such document can be accessed only by persons that do not manage or control trading.⁸² Commenters said that the requirement of separate physical locations should not require that personnel be located in separate buildings, so long as the relevant employees of the person and the owned entity do not have access to each other's physical premises.⁸³ One commenter said that the requirement to have specified policies and procedures should not apply to the owned entity, because it does not control its owner.⁸⁴

No shared employees that control trading decisions. Commenters on this proposed amendment to part 151 said it should not prohibit sharing of board or advisory committee members who do not influence trading decisions, sharing of research personnel, or sharing for training, operational or compliance purposes, so long as trading of the person and the owned entity remains independent.⁸⁵

No risk management systems that permit shared trading. Commenters said that this proposed amendment to part 151 should permit continuous sharing of position information so long as such information is used only for risk management and surveillance purposes and is not shared with trading personnel.⁸⁶

c. Comments on the Initial Proposed Notice Filing Requirement

Commenters also addressed the burdens that would result from the requirement that a filing be made to support disaggregation relief for persons owning more than 10 percent of an owned entity. Two commenters questioned the statement in the Part 151 Aggregation Proposal that allowing persons that own more than 50 percent of an owned entity to file requests for disaggregation relief would be burdensome, saying that such filings would be required only if the person were seeking disaggregation relief, and that such filings could be tailored so as to provide the necessary information in an efficient way.⁸⁷ One of these commenters also said that requiring private investment funds to aggregate positions held by majority-owned entities would be burdensome because it would lead to persons owning between 10 and 50 percent of the fund to make filings to support disaggregation

relief.⁸⁸ Another commenter said that a single aggregate notice filing (with annual updates for material changes) should be permitted, where the person would list all owned entities for which it claims an exemption from the aggregation requirement and make the required certifications, that the filing should be effective retroactively to the beginning of the prior filing period, and that affiliates at same level of ownership should be able to rely on each other's notice filings (as do higher tier owners) if the filings contain the appropriate demonstrations of compliance by the affiliates.⁸⁹ Last, one commenter said that no filing should be required to support disaggregation relief or, in the alternative, a filing should be required only where the absence of control of the owned entity is not obvious and the filing should not be required until 90 days after the threshold level of ownership of the owned entity is obtained.⁹⁰

d. Comments on Other Issues Relating to Disaggregation Relief in the Part 151 Aggregation Proposal

Commenters addressed several miscellaneous issues arising from the proposed amendments to part 151 requiring ownership of 50 percent or less of the owned entity in order to disaggregate. In response to the Commission's request for comment on whether applications for exemption from the aggregation requirements should be handled on a case-by-case basis, several commenters said that doing so would not be efficient and the process in the proposed rule is preferable.⁹¹ One commenter said that the final regulation on aggregation adopted by the Commission should also apply for exemptions from the aggregation requirements of DCMs and SEFs.⁹² Another commenter requested a transition period of at least six months after the date that compliance with the position limits regime is required before compliance with the aggregation requirements would be required.⁹³ Several commenters said that when aggregation of positions are required, the positions should be attributed from the owned entity to the owner on a basis that is pro rata to the owner's interest in

⁷³ CL-ABC.

⁷⁴ CL-AIMA, CL-EEI, CL-MFA, CL-WGCEF.

⁷⁵ CL-COPE.

⁷⁶ CL-WGCEF.

⁷⁷ CL-API.

⁷⁸ CL-AIMA. The commenter said that, in this case, the rule should require only that the systems be independently operated.

⁷⁹ CL-EEI, CL-FIA.

⁸⁰ CL-COPE.

⁸¹ CL-WGCEF.

⁸² CL-FIA.

⁸³ CL-API, CL-EEI, CL-WGCEF.

⁸⁴ CL-AIMA.

⁸⁵ CL-API, CL-Cargill.

⁸⁶ CL-FIA, CL-WGCEF.

⁸⁷ CL-Atmos, CL-PEGCC.

⁸⁸ CL-PEGCC.

⁸⁹ CL-FIA.

⁹⁰ CL-Barclays. Another commenter said that requiring a person owning 50 percent or less of an owned entity to make a filing in support of disaggregation relief is overly burdensome, and such filings should be required only if the person owns more than 50 percent of the owned entity. CL-ISDA/SIFMA.

⁹¹ CL-AGA, CL-EEI, CL-FIA.

⁹² CL-MFA.

⁹³ CL-FIA.

the owned entity, to avoid double counting and an artificial limit on trading that may affect liquidity.⁹⁴ Two commenters addressed information that the Commission may request under the proposed amendments to part 151, saying they should be amended to specifically limit such information to that which is relevant to establishing whether a person meets the criteria for disaggregation and will be kept confidential.⁹⁵

One commenter said that the Commission should not adopt a rule regarding aggregation of positions of owned entities and that the Commission should instead rely on information provided on reports on Commission Form 40, which includes information regarding whether the respondent controls, or is controlled by, any other entity.⁹⁶ Another commenter said that the position limits regime is long overdue and there should be a general requirement of aggregation, with no exceptions or waivers.⁹⁷

3. Proposed Rule

The Commission continues to believe, as stated in the Part 151 Aggregation Proposal, that ownership of an entity is an appropriate criterion for aggregation of that entity's positions. Section 4a(a)(1) of the CEA provides for the general aggregation standard with regard to position limits, and specifically provides:

In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.⁹⁸

The legislative history to the enactment of this provision in 1968 states that Congress added this language to expressly incorporate prior administrative determinations of the Commodity Exchange Authority (predecessor to the Commission) into the statute.⁹⁹ These prior administrative

determinations, as well as regulations of the Commodity Exchange Authority, announced standards that included control of trading and financial interests in positions. As early as 1957, the Commission's predecessor issued determinations requiring that accounts in which a person has a financial interest be included in aggregation.¹⁰⁰ In

Commodity Exchange Commission to fix limits on the amount of speculative "trading" that may be done. The Commission has construed this to mean that it has the authority to set limits on the amount of buying or selling that may be done and on the size of positions that may be held. All of the Commission's speculative limit orders, dating back to 1938, have been based upon this interpretation. The bill would clarify the act in this regard. . . .

Section 2 of the bill amends section 4a(1) of the act to show clearly the authority to impose limits on "positions which may be held." It further provides that trading done and positions held by a person controlled by another shall be considered as done or held by such other; and that trading done or positions held by two or more persons acting pursuant to an express or implied understanding shall be treated as if done or held by a single person.

¹⁰⁰ See Administrative Determination ("A.D.") 163 (Aug. 7, 1957) ("[I]n the application of speculative limits, accounts in which the firm has a financial interest must be combined with any trading of the firm itself or any other accounts in which it in fact exercises control."). In addition, the Commission's predecessor, and later the Commission, provided the aggregation standards for purposes of position limits in the large trader reporting rules. See Superseding of Certain Regulations, 26 FR 2968, Apr. 7, 1961. In 1961, then regulation 18.01 read:

(a) *Multiple Accounts.* If any trader holds or has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and for the purpose of reporting. 17 CFR 18.01 (1961).

In the 1979 Aggregation Policy, the Commission discussed regulation 18.01, stating:

Financial Interest in Accounts. Consistent with the underlying rationale of aggregation, existing reporting Rule 18.10(a) (a) (sic) basically provides that if a trader holds or has a financial interest in more than one account, all accounts are considered as a single account for reporting purposes. Several inquiries have been received regarding whether a nominal (sic) financial interest in an account requires the trader to aggregate. Traditionally, the Commission's predecessor and its staff have expressed the view that except for the financial interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, a financial interest of 10 percent or more requires aggregation. The Commission has determined to codify this interpretation at this time and has amended Rule 18.01 to provide in part that, "For purposes of this Part, except for the interest of a limited partner or shareholder (other than the commodity pool operator) in a commodity pool, the term 'financial interest' shall mean an interest of 10 percent or more in ownership or equity of an account."

Thus, a financial interest at or above this level will constitute the trader as an account owner for aggregation purposes.

1979 Aggregation Policy, 44 FR at 33843.

The provisions concerning aggregation for position limits generally remained part of the Commission's large trader reporting regime until 1999 when the Commission incorporated the

addition, the definition of "proprietary account" in regulation 1.3(y), which has been in effect for decades, includes any account in which there is 10 percent ownership.¹⁰¹

In light of the language in section 4a, its legislative history, subsequent regulatory developments, and the Commission's historical practices in this regard, the Commission continues to believe that section 4a requires aggregation on the basis of either ownership or control of an entity. The Commission also believes that aggregation of positions across accounts based upon ownership is a necessary part of the Commission's position limit regime.¹⁰²

Also, an ownership standard establishes a bright-line test that provides certainty to market participants and the Commission.¹⁰³ Without aggregation on the basis of ownership, the Commission would have to apply a control test in all cases, which would pose significant administrative challenges to individually assess control across all market participants. Further, the Commission considers that if the statute required aggregation based only on control, market participants may be able to use an ownership interest to directly or indirectly influence the account or

aggregation provisions into rule 150.4 with the existing position limit provisions in part 150. See 64 FR 24038, May 5, 1999. The Commission's part 151 rulemaking also incorporated the aggregation provisions in rule 151.7 along with the remaining position limit provisions in part 151. See 76 FR 71626, Nov. 18, 2011.

¹⁰¹ 17 CFR 1.3(y). This provision has been in Regulation 1.3(y)(1)(iv) since at least 1976, which the Commission adopted from regulations of its predecessor, with "for the most part, procedural, housekeeping-type modifications, conforming the regulations to the recently enacted CFTCA." See 41 FR 3192, 3195 (January 21, 1976).

¹⁰² See Revision of Federal Speculative Position Limits and Associated Rules, 64 FR 24038, 24044, May 5, 1999 ("[T]he Commission . . . interprets the 'held or controlled' criteria as applying separately to ownership of positions or to control of trading decisions."). See also, Exemptions from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions, 53 FR 13290, 13292, Apr. 22, 1988. In response to two separate petitions, the Commission proposed the independent account controller exemption from speculative position limits, but declined to remove the ownership standard from its aggregation policy.

¹⁰³ In this regard, the Commission is mindful of the point raised by some commenters that the aggregation rules adopted by the Commission would be a precedent for aggregation rules enforced by DCMs and SEFs, leading to the application of the aggregation rules to a wide variety of firms. See CL-Chamber. The Commission believes that for this reason, it is important that the aggregation rules set out, to the extent feasible, "bright line" rules that are capable of easy application by a wide variety of market participants while not being susceptible to circumvention.

⁹⁴ CL-ABC, CL-Barclays, CL-FIA.

⁹⁵ CL-API, CL-WGCEF.

⁹⁶ CL-Barclays.

⁹⁷ CL-Ja Sto.

⁹⁸ 7 U.S.C. 6a(a)(1).

⁹⁹ See S. Rep. No. 947, 90th Cong., 2 Sess. 5 (1968) regarding the CEA Amendments of 1968, Public Law 90-258, 82 Stat. 26 (1968). This Senate Report provides:

Certain longstanding administrative interpretations would be incorporated in the act. As an example, the present act authorizes the

position and thereby circumvent the aggregation requirement.

The Commission does not believe, as suggested by some commenters, that an aggregation requirement would lead to more information sharing and significantly increased levels of coordinated speculative trading by the entities subject to aggregation. Among other things, the position limits would affect the trading of only the relatively

small number of entities that hold positions in excess of the limits.¹⁰⁴

For example, the following table shows the relatively small number of persons that held positions over the applicable limit during the period of January 17 to September 12, 2012. For comparison, the table also shows the number of persons with positions at a level in excess of 60 percent or 80 percent of the applicable limit. It is

important to note that this table was prepared by applying the current aggregation requirements in regulation 150.4 without applying any of the current exemptions to aggregation that may be available. Thus, this table reflects the maximum number of persons that may hold positions of the level shown, assuming that no exemptions to aggregation apply.

NUMBER OF UNIQUE PERSONS OVER 60, 80, AND 100 PERCENT OF LEVELS OF RULE 150.2 FEDERAL SPECULATIVE POSITION LIMITS JANUARY 17, 2012 TO SEPTEMBER 30, 2012 ¹⁰⁵

Contract/DCM	Percent of limit level	Spot month		Single month		All months	
		Total number of unique persons over level	Number of person-days	Total number of unique persons over level	Number of person-days	Total number of unique persons over level	Number of person-days
Chicago Board of Trade							
Corn and Mini-Corn	60	97	517	22	1347	26	2289
	80	72	372	11	643	13	1069
	100	26	198	5	315	9	822
Oats	60	*	*	6	436	8	527
	80	*	*	*	*	5	283
	100	*	*	*	*	4	217
Soybeans and Mini-Soybeans	60	59	316	33	2751	36	3044
	80	39	223	20	1580	25	1962
	100	19	102	11	979	16	1244
Wheat and Mini-Wheat	60	19	95	33	2877	32	3181
	80	12	53	18	1660	23	2342
	100	6	32	13	1050	15	1446
Soybean Oil	60	54	211	36	3291	47	3568
	80	34	126	25	2161	32	2589
	100	12	47	14	1281	17	1551
Soybean Meal	60	26	158	33	2546	37	2690
	80	18	99	18	1480	21	1645
	100	8	45	7	895	12	930
Kansas City Board of Trade							
Hard Winter Wheat	60	10	38	6	334	7	450
	80	5	28	*	*	*	*
	100	4	20	*	*	*	*
Minneapolis Grain Exchange							
Hard Red Spring Wheat	60	5	12	—	—	*	*
	80	5	12	—	—	—	—
	100	*	*	—	—	—	—
ICE Futures U.S.							
Cotton No. 2	60	5	31	35	3386	39	3417
	80	5	30	21	2133	25	2554
	100	5	25	14	1363	17	1701

Also, some of the entities subject to aggregation, which is based on common ownership or control, might already share information regarding their trading activities. Thus, the Commission continues to believe, as it explained in the Part 151 Aggregation Proposal, that

the regulations proposed here will not result in a significantly increased level of information sharing that would increase coordinated speculative trading. The Commission notes that these proposed regulations will provide further aggregation exemptions,

lessening the need to share information regarding speculative trading to ensure compliance with position limits.

As a final introductory point, the Commission has considered that relief from any rule requiring the aggregation of positions held by separate entities is

¹⁰⁴ See, e.g., Position Limits for Futures and Swaps, 76 FR 71626, 71668 (Nov. 18, 2011)

(describing the number of traders estimated to be subject to position limits).

¹⁰⁵ In this table, “*” means fewer than 4 unique owners exceeded the level, and “—” means no unique owner exceeded the level.

only necessary where the entities would be below the relevant limits on an individual basis, but above a limit when aggregated. Thus, if a group of affiliated entities can take steps to maintain an aggregate position that does not exceed any limit, then the group will not have to seek disaggregation relief.

In other words, seeking disaggregation relief is one option for those groups of affiliated entities that may exceed a limit on an aggregate basis but will remain below the relevant limits on an individual basis. Other avenues are also available to corporate groups that seek to remain in compliance with the position limit regime. For example, the affiliated entities may put into place procedures to avoid exceeding the limits on an aggregate basis.¹⁰⁶ One potential approach that could be available to a holding company with multiple subsidiaries would be to assign each subsidiary an internal limit based on a percentage of the level of the position limit. The holding company would allocate no more in aggregate internal limits than the level of the position limit.¹⁰⁷ Further, a breach of an internal limit would provide the holding company with notice that it should consider filing for bona fide hedging exemptions or taking other compliance steps, as applicable.

a. Disaggregation Relief for Ownership or Equity Interests of 50 Percent or Less

The Commission is proposing to adopt rule 150.4(b)(2), which is largely similar to proposed rule 151.7(b)(1). Proposed rule 150.4(b)(2) would continue the Commission's longstanding rule that persons with either an ownership or an equity interest in an account or position of less than 10 percent need not aggregate such positions solely on the basis of the ownership criteria, and persons with a

¹⁰⁶ The procedures adopted by the affiliates may obviate more complex steps such as the implementation of real-time monitoring software to consolidate all derivative activities of the affiliates, especially if the group currently does not have an aggregate position approaching the size of a position limit and has historically not changed position sizes day-over-day by a significant percentage of the position limit.

¹⁰⁷ An even more cautious approach would be for the holding company to limit the overall allocation to the subsidiaries to less than 100% of the position limit. For example, a holding company with three subsidiaries may assign each subsidiary an internal limit equal to 30% of the level of the federal limit. Thus, the holding company has allocated permission to subsidiaries to hold, in the aggregate, positions equal to up to 90% of the level of the relevant position limit. Each subsidiary would simply report at close of business its derivative position to the holding company. The 10% cushion provides the holding company with the ability to remain in compliance with the limit, even if all subsidiaries slightly exceed the internal limits on the same side of the market at the same time.

10 percent or greater ownership interest would still generally be required to aggregate the account or positions.¹⁰⁸ However, rule 150.4(b)(2) would establish a notice filing procedure, effective upon submission, to permit a person with either an ownership or an equity interest in an owned entity of 50 percent or less to disaggregate the positions of an owned entity in specified circumstances, even if such person has a 10 percent or greater interest in the owned entity.¹⁰⁹ The notice filing would have to demonstrate compliance with certain conditions set forth in proposed rule 150.4(b)(2). As discussed in the Part 151 Aggregation Proposal, and similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission would be able to subsequently call for additional information, and to amend, terminate or otherwise modify the person's aggregation exemption for failure to comply with the provisions of rule 150.4(b)(2). Further, the person would be obligated to amend the notice filing in the event of a material change to the circumstances described in the filing.

The Commission preliminarily believes that a 50 percent limit on the ownership interest in another entity is a reasonable, "bright line" standard for determining when aggregation of positions is required, even where the ownership interest is passive. As explained in the Part 151 Aggregation Proposal, majority ownership (i.e., over 50 percent) is indicative of control, and this standard addresses the Commission's concerns about circumvention of position limits by coordinated trading or direct or indirect influence between entities. To the extent that a majority owner would have the ability and incentive to direct, control or influence the management of the owned entity, the 50 percent limit is a reasonable approach to the aggregation of owned accounts pursuant to Section 4a(a)(1) of the CEA. Aggregation based upon an ownership

¹⁰⁸ For purposes of aggregation, the Commission believes that contingent ownership rights, such as an equity call option, would not constitute an ownership or equity interest.

¹⁰⁹ Under the approach proposed here, and in a manner similar to current regulation, if a person qualifies for disaggregation relief, the person would nonetheless have to aggregate those same accounts or positions covered by the relief if they are held in accounts with substantially identical trading strategies. See proposed rule 150.4(a)(2). The exemptions in proposed rule 150.4 are set forth as alternatives, so that, for example, the applicability of the exemption in paragraph (b)(2) would not affect the applicability of a separate exemption from aggregation (e.g., the independent account controller exemption in paragraph (b)(5)).

or equity interest of greater than 50 percent is appropriate to address the heightened risk of direct or indirect influence over the owned entity.¹¹⁰

Moreover, greater than 50 percent ownership is a standard used by other government agencies and reflects a general understanding that ownership at this level poses substantial potential for direct or indirect control over an owned entity. For example, the U.S. Federal Trade Commission and U.S. Department of Justice use a 50 percent ownership threshold test to determine "control" for the purpose of defining pre-merger and acquisition filing requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1974.¹¹¹

The Commission notes that a requirement of ownership of 50 percent or less of the owned entity in order to obtain disaggregation relief by making a notice filing would not affect a person's ability to obtain other exemptions. For example, exemptions from position limits for bona fide hedging positions or from aggregation for independent account controllers, if applicable, would still be utilized to the extent an owned entity is entering into positions for bona fide hedging or on behalf of customers, as provided in those exemptions.

Regarding those commenters who said that if an owned entity's positions are aggregated with the owner's position, the aggregation should be pro rata to the ownership interest, the Commission believes that a pro rata approach could be administratively burdensome for both owners and the Commission. For

¹¹⁰ The Commission notes that, as stated in the Part 151 Aggregation Proposal, the requirement in proposed rule 150.4(b)(2) of aggregation based on ownership depends on a person's ownership interest in another entity, regardless of the person's voting control of that entity. However, as discussed further below, the Commission believes that relief from the aggregation requirement may be appropriate in some circumstances, where the owned entity is not consolidated on the owner's financial statements. Since the extent of the owner's voting interest in the owned entity may be a factor in determining whether financial consolidation is required, the voting interest may indirectly be a factor in determining if aggregation is required.

¹¹¹ 15 U.S.C. 18(a); see also 16 CFR 801.1(b) (defining "control" for purpose of implementing regulations to include "[h]olding 50 percent or more of the outstanding voting securities of an issuer or, in the case of any unincorporated entity, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity"); Premerger Notification; Reporting and Waiting Period Requirements, 43 FR 33450, 33457 (July 31, 1978) ("Control" was defined at the level of 50 percent stock ownership for two reasons. First, it supplied an objective, easily administrable criterion. Second, except for cases in which the holding is exactly 50 percent, majority ownership will always enable the holder to direct the day-to-day activities of the controlled entity, even though for many large corporations, de facto control may arise from holdings well below 50 percent").

example, the level of ownership interest in a particular owned entity may change over time for a number of reasons, including stock repurchases, stock rights offerings, or mergers and acquisitions, any of which may dilute or concentrate an ownership interest. Thus, it may be burdensome to determine and monitor the appropriate pro rata allocation on a daily basis. Moreover, the Commission has historically interpreted the statute to require aggregation of all the relevant positions of owned entities, absent an exemption. This is consistent with the view that a holder of a significant ownership interest in another entity may have the ability to influence all the trading decisions of the entity in which such ownership interest is held.

The Commission invites commenters to address whether the Commission should adopt an approach that would require aggregation of only a pro-rata allocation of owned-entity positions to equity owners based on the percentage of ownership interest. How could aggregation in a manner pro rata to the ownership interest be effected in practice? What procedures could be used to implement a pro rata method, and what would those procedures entail? If procedures to implement a pro rata method are suggested, please address the burden those procedures could place on the owners and on the Commission.

The Commission also solicits comment on whether the Commission should permit a person to file a notice that would inform the Commission of that person's ownership interest in an owned entity, and permit that person to aggregate only a pro rata allocation of the owned-entity's positions based on that person's less than 100 percent ownership. In light of the potential administrative burdens associated with the adoption of an aggregation methodology based on allocation pro rata to ownership interest, should the Commission provide for aggregation of an owned-entity's positions to the owner based on ownership tiers? Commenters may address, for example, the establishment of two ownership tiers, one for an ownership interest of 10 percent to 25 percent, with an attribution of 25 percent of the owned-entity's positions (rather than 100 percent of the affiliate's position) to the owner, and another tier for an ownership interest of greater than 25 percent to 50 percent, with an attribution of 50 percent of the owned-entity's positions (rather than 100 percent of the affiliate's position) to the owner. Would a tiered approach such as this alleviate concerns about aggregation

in general? What are the potential burdens of applying this approach? If this approach is implemented, should owners be required to file a notice with the Commission when the relevant ownership interest changes from one tier to another?

Regarding those commenters who said that there should be a transition period for application of the requirement of ownership of 50 percent or less of the owned entity in order to obtain disaggregation relief, the Commission notes that this proposal would apply to existing position limits currently in effect, and as noted above, would provide further aggregation exemptions.

The Commission also considered comments that aggregation of positions is unnecessary because information about ownership and control is available to the Commission through reports on Commission Form 40. However, the Commission is not persuaded that these reports are a sufficient substitute for the position limits regime. While these reports provide some information necessary for surveillance of positions, some owned entities may not file these reports. Also, the obligation to provide updates to the Commission if there are material changes to the relevant information, which is included in the proposed revision of rule 150.4, may not necessarily apply to information provided in the reports on Form 40. On a more fundamental level, the Commission believes that compliance with the position limit rules, including aggregation of the positions of owned entities, is primarily the responsibility of the owned entities and their owners. Even if the information on Form 40 were sufficient, it would be impractical and inefficient for the Commission to use that information to monitor compliance with the position limit rules, as compared to the ability of the entities themselves to maintain compliance with the position limits.

Similarly, the Commission is not persuaded by the commenter who asserted that aggregation of positions would, in general, lead to inaccurate reporting of positions. Rather, the Commission believes that the proposed rule would facilitate accurate reporting by providing a "bright line" rule for determining when aggregation is required.¹¹² The Commission emphasizes the responsibility of those who are subject to the aggregation and position reporting requirements to ensure that the information required by

the Commission's regulations is provided accurately.

b. Disaggregation Relief for Ownership or Equity Interests of Greater Than 50 Percent

The Commission continues to believe, as stated in the Part 151 Aggregation Proposal, that an equity or ownership interest above 50 percent constitutes a majority ownership or equity interest of the owned entity and is so significant as to justify aggregation under the ownership prong of Section 4a(a)(1) of the CEA. A person with a greater than 50 percent ownership interest in multiple accounts would have the ability to hold and control a significant and potentially unduly large overall position in a particular commodity, which position limits are intended to prevent. Also, as noted above, in general this "bright line" approach would provide administrative certainty.

While the Commission continues to believe that relief from the aggregation requirement should not be available merely upon a notice filing by a person who has a greater than 50 percent ownership or equity interest in the owned entity, the Commission has considered the points raised by commenters in this regard. In view of the comments, the Commission understands that in some limited situations disaggregation relief may be appropriate even for majority owners if the owned entity is not required to be, and is not, consolidated on the financial statement of the person, if the person can demonstrate that the person does not control the trading of the owned entity, based on the criteria in proposed rule 150.4(b)(2)(i), and if both the person and the owned entity have procedures in place that are reasonably effective to prevent coordinated trading. The person would have to demonstrate that it does not control the owned entity's trading even though the person is the majority owner of the owned entity.

To provide such limited relief in order to address issues raised by commenters would represent a break by the Commission from past practice. The Commission is authorized to provide such relief by the plenary authority granted to the Commission in section 4a(a)(7) of the CEA to provide relief from the requirements of the position limits regime.

Consequently, the proposed rules includes a provision (proposed rule 150.4(b)(3)) that would permit a person with a greater than 50 percent ownership of an owned entity to apply to the Commission for relief from aggregation on a case-by-case basis. The

¹¹² See note 103 and accompanying text, *supra*.

person would be required to demonstrate to the Commission that:

i. the owned entity is not required to be, and is not, consolidated on the financial statement of the person,

ii. the person does not control the trading of the owned entity (based on criteria in rule 150.4(b)(2)(i)), with the person showing that it and the owned entity have procedures in place that are reasonably effective to prevent coordinated trading in spite of majority ownership,¹¹³

iii. each representative of the person (if any) on the owned entity's board of directors attests that he or she does not control trading of the owned entity, and

iv. the person certifies that either (a) all of the owned entity's positions qualify as bona fide hedging transactions or (b) the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect, and the person agrees in either case that:

▪ if this certification becomes untrue for the owned entity, the person will aggregate the owned entity for three complete calendar months and if all of the owned entity's positions qualify as bona fide hedging transactions during that time the person would have the opportunity to make the certification again and stop aggregating,

▪ upon any call by the Commission, the owned entity(ies) will make a filing responsive to the call, reflecting the owned entity's positions and transactions only, at any time (such as when the Commission believes the owned entities in the aggregate may exceed a visibility level), and

▪ the person will provide additional information to the Commission if any owned entity engages in coordinated activity, short of common control (understanding that if there were common control, the positions of the owned entity(ies) would be aggregated).

The Commission wishes to clarify that this relief would not be automatic, but rather would be available only if the Commission finds, in its discretion, that the four conditions above are met. Thus, persons applying for this relief should not assume that relief would be granted. The proposed rule would not impose any time limits on the Commission's process for making the determination of whether relief is appropriately granted, and relief would be available only if and

¹¹³ The Commission points out that since this criterion requires a person to certify that the person does not control trading of its owned entity, the criterion could not be met by a natural person or any entity, such as a partnership, where it is not possible to separate knowledge and control of the person from that of the owned entity.

when the Commission acts on a particular request for relief.

The first requirement would be that the owned entity is not, and is not required to be, consolidated on the financial statements of the person. The Commission is aware that, for most entities, ownership of more than 50 percent of another entity's voting shares is the point at which consolidation of the owned entity on the owner's financial statements is required under U.S. Generally Accepted Accounting Principles ("GAAP").¹¹⁴ Consequently, if a person holds an equity or ownership interest above 50 percent in another entity, but does not hold a greater than 50 percent voting interest in that entity, it may be possible that the owned entity would not be required to be consolidated on the person's financial statements and the person would, therefore, be able to apply to the Commission for relief from the aggregation requirement. Similarly, in some cases, limited partners holding a greater than 50 percent equity or ownership interest in a limited partnership are not required to consolidate the limited partnership because it is controlled by the general partner.¹¹⁵ Also, the Commission realizes that there are exceptions to the consolidation requirement for certain types of entities. For example, financial consolidation may also not be required for entities that are "investment companies" under GAAP, and certain broker-dealers may not be required to consolidate certain owned entities over which the broker-dealer is likely to have only temporary control. The Commission reiterates that lack of financial consolidation would be only one of the factors in determining whether aggregation relief would be granted, and even if the owned entity is not consolidated and other requirements for relief are satisfied, the Commission could nevertheless, in its discretion, determine that relief is not appropriate.

The Commission preliminarily believes, based in part on points raised by commenters, that the presence of

¹¹⁴ See Financial Accounting Standards Board Accounting Standards Codification Topic 810, at paragraphs 810-10-15-8 and 10, available at <https://asc.fasb.org/>. See also Accounting Research Bulletin 51 at paragraph 3 and Statement of Financial Accounting Standard No. 94 at paragraph 2.

¹¹⁵ Thus, proposed rule 150.4(b)(3) would address those commenters who said that aggregation should not be required by limited partners who own a majority equity interest in a limited partnership but do not control its trading. Where a limited partner does not consolidate the limited partnership on its financial statements, and the other conditions of the proposed rule are met, the limited partner could apply to the Commission for relief from the aggregation requirement.

certain additional factors may, in particular circumstances, be favorable to granting relief from the aggregation requirement (although no such factor would be dispositive and the Commission could deny granting relief even in the presence of any or all such factors). These factors could include certain points raised by commenters, such as the owned entity being a newly acquired standalone business or a joint venture subject to special restrictions on control, or two different owned entities conducting operations at different levels of commerce (such as retail and wholesale).¹¹⁶ Under the proposed approach, the Commission would interpret factors such as these to be favorable to granting relief from the aggregation requirement.

If a person with greater than 50 percent ownership of an owned entity could not meet the conditions in proposed rule 150.4(b)(3), the person could apply to the Commission for relief from aggregation under CEA section 4a(a)(7).¹¹⁷ Persons wishing to seek such relief should apply to the Commission stating the particular facts and circumstances that justify the relief. For example, if the owned entity is consolidated on the financial statement of the person, the person could describe the facts and circumstances which the person believes indicate that the person should not be considered to own or control the owned entity's positions, notwithstanding that financial consolidation may be associated with ownership and control. The Commission notes that CEA section 4a(a)(7) does not impose any time limits on the Commission's process for determining whether relief under that section is appropriate, nor does it prescribe or limit the factors that the Commission may consider to be relevant in determining whether to grant relief. The Commission solicits comment as to whether relief from aggregation under CEA section 4a(a)(7) should be available to persons with greater than 50 percent ownership of owned entities who cannot meet the conditions in proposed rule 150.4(b)(3), and as to the facts and circumstances that the Commission should take into account in considering such relief.

The Commission has considered the comment that a corporate entity that is the sponsor of an employee benefit plan should not be required to aggregate the positions of the plan with the sponsor's

¹¹⁶ See generally CL-AGA, CL-API, CL-Chamber, CL-CMC, CL-Iberdrola.

¹¹⁷ Section 4a(a)(7) of the CEA provides authority to the Commission to grant relief from the position limits regime.

proprietary positions.¹¹⁸ The Commission notes that the sponsor of an employee benefit plan is an “eligible entity” as defined in regulation 150.1(d),¹¹⁹ and the Commission preliminarily believes it is appropriate to provide relief in this regard that is similar to the provisions that apply to positions controlled by an IAC. In particular, the Commission proposes to treat the manager of the employee benefit plan as an IAC and the plan’s positions as client positions. To effect this treatment, the Commission is proposing amended rule 150.1(e)(5) and proposed rule 150.4(b)(5) that would allow managers of employee benefit plans (i.e., persons that manage a commodity pool, the operator of which is excluded from registration as a commodity pool operator under rule 4.5(a)(4)) to be treated as an IAC, on the condition that an IAC notice filing is made as required under rule 150.4(c). The Commission emphasizes that this proposed relief would be limited to employee benefit plans.

c. Proposed Criteria for Disaggregation Relief

The Commission is proposing criteria to claim disaggregation relief in proposed rule 150.4(b)(2)(i) that are similar to the criteria set forth in proposed rule 151.7(b)(1)(i). Essentially, the criteria are the conditions that would have to be met in order for a person to rebut the presumption that an ownership or equity interest of between 10 and 50 percent (inclusive) requires aggregation of the positions of the owned entity.¹²⁰

In general, the Commission proposes that these criteria would be interpreted and applied in accordance with the Commissions’ past practices in this regard.¹²¹ In accordance with these

precedents, the Commission would not expect that the criteria would impose requirements beyond a reasonable, plain-language interpretation of the criteria. For example, routine pre- or post-trade systems to effect trading on an operational level (such as trade capture, trade risk or order-entry systems) would not, broadly speaking, have to be independently developed in order to comply with the criteria. Also, employees that do not direct or participate in an entity’s trading decisions would generally not be subject to these requirements. A brief discussion of each of the five criteria in proposed rule 150.4(b)(2)(i) is set forth below.

Proposed rule 150.4(b)(2)(i)(A) would condition aggregation relief on a demonstration that the person filing for disaggregation relief and the owned entity do not have knowledge of the trading decisions of the other. The Commission preliminarily believes that where an entity has an ownership interest in another entity and neither entity shares trading information, such entities demonstrate independence. In contrast, persons with knowledge of trading decisions of another in which they have an ownership interest are likely to take such decisions into account in making their own trading decisions, which implicates the Commission’s concern about independence and enhances the risk for coordinated trading.¹²² As noted above, this proposed criterion would address concerns regarding knowledge of employees who control, direct or participate in an entity’s trading decisions, and would not prohibit information sharing solely for risk management, accounting, compliance, or similar purposes and information sharing among mid- and back-office

personnel that do not control, direct or participate in trading decisions. In response to comments on this criterion, the Commission wishes to clarify that this criterion would generally not require aggregation solely based on knowledge that a party gains during execution of a transaction regarding the trading of the counterparty to that transaction, nor would it encompass knowledge that an entity would gain when carrying out due diligence under a fiduciary duty, so long as such knowledge is not directly used to affect the entity’s trading.

Proposed rule 150.4(b)(2)(i)(B) would condition aggregation relief on a demonstration that the person seeking disaggregation relief and the owned entity trade pursuant to separately developed and independent trading systems. Further, proposed rule 150.4(b)(2)(i)(C) would condition relief on a demonstration that such person and the owned entity have, and enforce, written procedures to preclude the one entity from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures would have to include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities. As noted in the Part 151 Aggregation Proposal, the Commission has applied these same conditions in connection with the IAC exemption to ensure independence of trading between an eligible entity and an affiliated independent account controller.¹²³ Similar to the IAC exemption, proposed rule 150.4(b)(2) permits disaggregation in certain circumstances where there is independence of trading between two entities. Thus, the Commission is proposing the above conditions, which are already applicable and working well in the IAC context, and which are expected to strengthen the independence between the two entities for the owned entity exemption.

The Commission proposes that the phrase “separately developed and independent trading systems” should be interpreted in accordance with the Commission’s prior practices in this regard.¹²⁴ The Commission generally

¹²³ See regulation 150.3(a)(4) (proposed here to be replaced by proposed rule 150.4(b)(5)). Such conditions have been useful in ensuring that trading is not coordinated through the development of similar trading systems, and that procedures are in place to prevent the sharing of trading decisions between entities.

¹²⁴ See, e.g., 1979 Aggregation Policy, 44 FR 33839, 33840–1 (futures commission merchant (FCM) “deemed to control” trading of customer accounts in trading program where FCM gives

¹¹⁸ CL–ABC.

¹¹⁹ The definition of “eligible entity” in regulation 150.1(d) includes the operator of a trading vehicle which is excluded from the definition of the term “pool” under regulation 4.5, which in turn excludes, in regulation 4.5(a)(4), the sponsors of most employee benefit plans.

¹²⁰ As noted in the Part 151 Aggregation Proposal, the criteria would apply to the person filing the notice as well as the owned entity. In addition, for purposes of meeting the criteria, such “person” would include any entity that such person must aggregate pursuant to proposed rule 150.4. For example, if company A files a notice under proposed rule 150.4(c) for company A’s equity interest of 30 percent in company B, then company A must comply with the conditions for the exemption, including any entity with which company A aggregates positions proposed rule 150.4. In this connection, if company A controlled the trading of company C, then company A’s 150.4(c) notice filing must demonstrate that there is independence between company B and company C.

¹²¹ See, e.g., 1979 Aggregation Policy, 44 FR 33839 (providing indicia of independence); CFTC

Interpretive Letter No. 92–15 (CCH ¶ 25,381) (ministerial capacity overseeing execution of trades not necessarily inconsistent with indicia of independence); revision of federal speculative position limits, 64 FR 24038, 24044 (May 5, 1999) (intent in issuing final aggregation rule “merely to codify the 1979 Aggregation Policy, including the continued efficacy of the [1992] interpretive letter”).

¹²² As noted in the Part 151 Aggregation Proposal, the Commission does not consider knowledge of overall end-of-day position information to necessarily constitute knowledge of trading decisions, so long as the position information cannot be used to dictate or infer trading strategies. As such, the knowledge of end-of-day positions for the purpose of monitoring credit limits for corporate guarantors does not necessarily constitute knowledge of trading information. However, the ability to monitor the development of positions on a real time basis could constitute knowledge of trading decisions because of the substantial likelihood that such knowledge might affect trading strategies or influence trading decisions of the other.

does not expect that this criterion would prevent an owner and an owned entity from both using the same “off-the-shelf” system that is developed by a third party. Rather, the Commission’s concern is that trading systems (in particular, the parameters for trading that are applied by the systems) could be used by multiple parties who each know that the other parties are using the same trading system as well as the specific parameters used for trading and, therefore, are indirectly coordinating their trading.¹²⁵

The requirement of “separate physical locations” in proposed rule 150.4(b)(2)(i)(C) would not necessarily require that the relevant personnel be located in separate buildings. The Commission believes that the important factor is that there be a physical barrier between the personnel that prevents access between the personnel that would impinge on their independence. For example, locked doors with restricted access would generally be sufficient, while merely providing the purportedly “independent” personnel with desks of their own would not. Similar principles would apply to sharing documents or other resources.

Proposed rule 150.4(b)(2)(i)(D) would condition aggregation relief on a demonstration that the person does not share employees that control the owned entity’s trading decisions, and the employees of the owned entity do not share trading control with such persons. The Commission continues to be concerned that, as stated in the Part 151 Aggregation Proposal, shared employees with control of trading decisions may undermine the independence of trading between entities. Regarding the comments on the sharing of attorneys, accountants, risk managers, compliance and other mid- and back-office personnel, the Commission proposes, as noted above, that sharing of such personnel between entities would generally not compromise independence so long as the employees do not control, direct or participate in the entities’ trading decisions.¹²⁶

specific advice or recommendations not made available to other customers, unless such accounts and programs are traded independently and for different purposes than proprietary accounts).

¹²⁵ Compare *id.* at 33841. “However, the Commission also recognizes that purportedly different programs which in fact are similar in design and purpose and are under common control may be initiated in an attempt to circumvent speculative limit and reporting requirements.”

¹²⁶ As noted in the Part 151 Aggregation Proposal, the condition barring the sharing of employees that control the owned entity’s trading decisions would include a prohibition on sharing of the types of employees described in the aggregation petition (attorneys, accountants, risk managers, compliance and other mid- and back-office personnel), to the

Similarly, sharing of board or advisory committee members, research personnel or sharing of employees for training, operational or compliance purposes would not result in a violation of the criteria if the personnel do not influence (e.g., “have a say in”) or direct the entities’ trading decisions.¹²⁷

Proposed rule 150.4(b)(2)(i)(E) would condition aggregation relief on a demonstration that the person and the owned entity do not have risk management systems that permit the sharing of trades or trading strategies with the other. This condition would address concerns that risk management systems that permit the sharing of trades or trading strategies with each other present a significant risk of coordinated trading through the sharing of information.¹²⁸ The Commission proposes that this criterion generally would not prohibit sharing of information to be used only for risk management and surveillance purposes, when such information is not used for trading purposes and not shared with employees that, as noted above, control, direct or participate in the entities’ trading decisions. Thus, sharing with employees who use the information solely for risk management or compliance purposes would generally be permitted, even though those employees’ risk management or compliance activities could be considered to have an “influence” on the entity’s trading.

extent such employees participate in control of the trading decisions of the person or the owned entity. For further clarification, *see* previous discussion regarding the condition under proposed rule 150.4(b)(2)(i)(A) (conditioning aggregation relief on a demonstration that the person filing for disaggregation relief and the owned entity do not have knowledge of the trading decisions of the other, and discussing what constitutes “knowledge” for this purpose).

¹²⁷ In this respect, proposed rule 150.4(b)(2)(i)(D) would be consistent with the Commission’s Interpretive Letter No. 92–15 (CCH ¶ 25,381), where an employee both oversaw the execution of orders for a commodity pool, as well as maintained delta neutral option positions in non-agricultural commodities for the proprietary account of an affiliate of the sponsor of the commodity pool. The Commission concluded that the use of clerical personnel who are dual employees of both affiliates would not require aggregation when the clerical personnel engage in ministerial activities and steps are taken to maintain independence, such as: (i) Limiting trading authority so that the personnel do not have responsibility for the two entities’ activities in the same commodity; and (ii) separating the times at which the personnel conduct activities for the two entities.

¹²⁸ The Commission remains concerned, as stated in the Part 151 Aggregation Proposal and as noted above, that a trading system, as opposed to a risk management system, that is not separately developed from another system can subvert independence because such a system could apply the same or similar trading strategies even without the sharing of trading information.

d. Proposed Notice Filing Requirement

The Commission is proposing a notice filing requirement in proposed rule 150.4(c) that is similar to the criteria set forth in proposed rule 151.7(h)(1), with a modification to add an application procedure for ownership interests of more than 50 percent under proposed rule 150.4(b)(3). The proposed rule contemplates that the filing under proposed rule 150.4(c)(1) would be made before the exemption from aggregation is needed, since the filing is a pre-requisite for obtaining the exemption. However, where a prior filing is impractical (such as where a person lacks information regarding a newly-acquired subsidiary’s activities), the Commission proposes that the filing under proposed rule 150.4(c)(1) should be made as promptly as practicable.

Even though a filing under proposed rule 150.4(c)(1) may be made after an ownership or equity interest is acquired, the Commission proposes that the exemption from aggregation would not be effective retroactively because the filing is a pre-requisite to the exemption. The Commission believes that retroactive application of such filings could result in administrative difficulty in monitoring the scope of exemptions from aggregation and negatively affect the Commission staff’s surveillance efforts.

Generally, the Commission proposes that entities could consolidate these filings in any efficient manner by, for example, discussing more than one owned entity in a single filing, so long as the scope of the filing is made clear.¹²⁹ The Commission also wishes to emphasize that if an entity determines to no longer apply an exemption (or if an exemption is no longer available), the entity would be required to inform the Commission by making a filing under proposed rule 150.4(c) because this would constitute a material change to the prior filing. Of course, once an exemption no longer applies to an owned entity, the person would be required to subsequently aggregate the positions of the entity in question.

In order to implement an application procedure for ownership interests of more than 50 percent under proposed rule 150.4(b)(3), as noted above, the Commission is also proposing proposed rule 150.4(c)(2), under which filings would not be effective until the Commission’s finding that the person

¹²⁹ In response to commenters on the Part 151 Aggregation Proposal, the Commission clarifies that section 8 of the CEA would apply to the information that the Commission may request under proposed rule 150.4(c), and sets out the extent to which such information will be treated confidentially.

has satisfied the conditions of proposed rule 150.4(b)(3).

The Commission solicits comment as to all aspects of proposed rule 150.4. Commenters are invited to address the potential effects and implications of the proposed rule as the scope of the position limits regime may change in the future. For example, what issues or concerns arising from the scope and the requirements of the disaggregation relief in the proposed rule would have to be addressed if the Commission were to adopt its proposal to establish speculative position limits for 28 exempt and agricultural commodity futures and option contracts, and physical commodity swaps that are “economically equivalent” to such contracts?¹³⁰

If the Commission were to adopt its proposal to establish position limits on physical commodity swaps, are there any implications with respect to the interplay between the disaggregation relief in the proposed rule and the Commission’s other rules relating to swaps? For instance, the Commission understands that various corporate groups organize the swap activities of the affiliated entities within corporate groups in different ways. Some corporate groups centralize some or all swap activities in a particular affiliate, while in other groups the affiliates engage in swaps independently. Also, corporate groups may apply centralized risk management policies to varying degrees, which may affect how the affiliated entities in the group engage in swaps. What are the implications of the disaggregation relief in the proposed rule for the various ways that affiliated entities in corporate groups organize their swap activities? In considering the proposed rule, what other Commission rules should the Commission take into account and what are the implications of how other Commission rules may affect affiliated entities? Have corporate groups begun to organize their swap activities to comply with other Commission rules in ways that could be affected by the proposed rule? If so, what considerations should the Commission take into account in this regard?

The Commission also solicits comment as to the appropriateness of the conditions for disaggregation relief in proposed rule 150.4(b), and whether relief should be available for persons that have a greater than 50 percent ownership or equity interest in an owned entity. If such relief should be available, is it appropriate to condition

such relief on the owned entity not being, and not being required to be, consolidated on the financial statements of the owner? Is financial consolidation a relevant consideration in this regard? Why or why not? For example, is financial consolidation a useful proxy for other characteristics that are relevant to the position limits regime, such as ownership and control?

Regarding the condition in proposed rule 150.4(b)(3)(iii), is it clear when an individual board member is considered the “representative” of a person on the board of directors? Are there modifications to this condition that would help to identify which board members should be required to make the certification?

e. Proposed Revisions To Clarify Regulations

In connection with the proposed modifications to rule 150.4, the Commission has reviewed whether the text of existing regulation 150.4 is easy to understand and apply. In this regard, the Commission notes that the existing regulation may be unclear, especially in terms of the relationship between the provisions of paragraphs (a) through (d) of the existing regulation and whether a particular paragraph is an exception to another. Also, as more different types of market participants have studied existing regulation 150.4 (and regulation 151.7, which has similar provisions), both in connection with the Dodd-Frank Act and otherwise, questions have arisen about the application of the aggregation requirements to a wide variety of circumstances. The Commission believes it is important that the rules setting forth the aggregation requirements be clear in their application to both the circumstances in which they currently apply, and the various circumstances in which they may apply in the future. These textual modifications are not intended to effect any substantive change to the meaning of rule 150.4, and the Commission invites commenters to address whether any of these modifications change the meaning of the aggregation requirements in their particular circumstances.¹³¹

Therefore, the Commission is proposing to modify the text to clarify that paragraph (a) of rule 150.4 states the general requirement to aggregate

¹³¹ The textual modifications proposed here relate to the Commission regulations currently in effect. The Commission notes that its proposal regarding position limits includes amendments to the text of certain Commission regulations. See *Position Limits for Derivatives* (November 5, 2013). If both of the proposals are adopted, conforming technical changes to reflect the interplay between the two amendments may be necessary.

positions a person may hold in various accounts, and paragraph (b) of the rule sets out the exemptions to the aggregation requirement that may apply. The Commission believes that this format clarifies that the exemptions in rule 150.4(b) are alternatives; that is, aggregation is not required to the extent that any of the exemptions in rule 150.4(b) may apply.

In rule 150.4(b), the Commission is proposing text for rule 150.4(b)(1) that is substantially similar to existing regulation 150.4(c). The Commission believes that stating this provision as the first exemption will clarify that any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest in a pooled account or positions may apply this exemption. That is, if the requirements of this exemption are satisfied with respect to a person, then the person need not determine if the requirements of the exemption in paragraph (b)(2) or (b)(3) are satisfied. The text of paragraphs (b)(2) and (b)(3), in turn, state that they apply to persons with an ownership or equity interest in an owned entity, other than an interest in a pooled account which is subject to paragraph (b)(1).

Proposed rule 150.4(b)(1) states that for any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest in a pooled account or positions, aggregation of the accounts or positions of the pool is not required, except as provided in paragraphs (b)(1)(i), (b)(1)(ii) or (b)(1)(iii). Although existing regulation 150.4(c) does not contain any explicit statement of this rule, the lack of an aggregation requirement in these circumstances is implicit in the existing regulation’s statement that aggregation is required only in certain specified circumstances. Thus, proposed rule 150.4(b)(1)(i) states explicitly a principle that is implicit in the existing regulation.¹³² Paragraphs (b)(1)(i), (b)(1)(ii) and (b)(1)(iii) of proposed rule 150.4 set out the circumstances in which aggregation requirements apply; these circumstances are substantially similar to those covered by paragraphs

¹³² This modification to the rule is not intended to effect a substantive change. Rather, it is intended to state explicitly a rule that the Commission has applied since at least 1979. See note 100, above.

¹³⁰ See *Position Limits for Derivatives* (November 5, 2013).

(c)(1), (c)(2) and (c)(3) of existing regulation 150.4, but the text of the rule has been modified to simplify the wording of the provisions.¹³³

Paragraphs (b)(4) to (b)(8) of rule 150.4 set forth other exemptions that may apply in various circumstances. The exemption for certain accounts held by FCMs in paragraph (b)(4) is substantially the same as existing regulation 150.4(d), except that it has been rephrased in a form of a statement of when an exemption is available, instead of the statement in the existing regulation that the aggregation requirement applies unless certain conditions are met. Paragraph (b)(5) sets forth the exemption for accounts carried by an IAC that is substantially similar to existing regulation 150.3(a)(4). Paragraphs (b)(6), (b)(7) and (b)(8) set forth the exemptions for underwriting, broker-dealer activity and circumstances where laws restrict information sharing that are discussed in more detail above. Paragraph (b)(9) describes how higher-tier entities may apply an exemption pursuant to a notice filed by an owned entity.

The Commission solicits comment as to whether the revised text of rule 150.4 is easy to understand and apply.

D. Underwriting

1. Part 151 Proposed Approach

As noted above, regulation 151.7(g) includes an exemption from aggregation where an ownership interest is in an unsold allotment of securities. In the Part 151 Aggregation Proposal, the Commission noted that the ownership interest of a broker-dealer¹³⁴ in an entity based on the ownership of securities acquired as part of reasonable activity in the normal course of business as a dealer is largely consistent with the ownership of an unsold allotment of securities covered by the underwriting exemption in regulation 151.7(g). In both circumstances, the ownership interest is likely transitory and not to hold for investment purposes. Accordingly, the Commission proposed to include an aggregation exemption in regulation 151.7(g) for such activity.¹³⁵

However, the Commission noted in the Part 151 Aggregation Proposal that

¹³³ The revised text also includes references to a "limited member" in addition to the references in the existing regulation to a limited partner in a pool.

¹³⁴ Broker-dealers are those persons registered as such with the SEC, *see* 15 U.S.C. 78o, or similarly registered with a foreign regulatory authority.

¹³⁵ The Commission specifically noted that this proposed exemption would not apply to registered broker-dealers that acquire an ownership interest in securities with the intent to hold for investment purposes.

this exemption would not have applied where a broker-dealer acquires more than a 50 percent ownership interest in another entity because such acquisition would not be consistent with holding a transitory interest for the purpose of market making and runs a higher risk of coordinated trading.¹³⁶ Therefore, a broker-dealer that acquires a greater than 50 percent ownership interest in another entity would be required to aggregate the positions of that entity, in the absence of another aggregation exemption.

The Commission requested comment on whether ownership of stock, by a broker-dealer registered with the SEC or similarly registered with a foreign regulatory authority, that is acquired as part of reasonable activity in the normal course of business as a dealer, without other ownership interests or indicia of control or concerted action, warrants aggregation.

2. Commenters' Views

FIA commented on the Part 151 Aggregation Proposal, saying that the underwriting exemption should not require that ownership be acquired "as part of [the] reasonable activity" of a broker-dealer, because the normal course requirement is sufficient and the additional requirement that the acquisition be part of reasonable activity creates uncertainty.¹³⁷ FIA also said that broker-dealers should be able to use the underwriting exemption for any level of ownership, i.e., even a more than 50 percent ownership interest, or, alternatively, the ownership interests that a broker-dealer holds in its capacity as a broker-dealer should not be aggregated with ownership interests held by the broker-dealer or its affiliates in any other capacity.¹³⁸

3. Proposed Rule

The Commission continues to believe that any acquisition by a broker-dealer of a greater than 50 percent ownership interest in an owned entity (other than in a distribution of securities directly by an issuer or through an underwriter) requires aggregation, and further relief from this requirement is not appropriate. For example, if a broker-dealer has a 49 percent ownership interest in an entity and then acquires a 2 percent ownership interest in the same entity in the normal course of the

¹³⁶ The proposed rules would encompass within the proposed exemption a broker-dealer's ownership of securities in anticipation of demand or as part of routine life cycle events, if the activity was in the normal course of the person's business as a broker-dealer.

¹³⁷ CL-FIA.

¹³⁸ CL-FIA.

broker-dealer's activity, aggregation of the owned entity's positions should be required.

On the other hand, the Commission is proposing an exemption from aggregation where an ownership interest is in an unsold allotment of securities in proposed rule 150.4(b)(7) that is essentially the same as the exemption in regulation 151.7(g). However, proposed rule 150.4(b)(7) does not include the phrase "as part of reasonable activity," as was suggested by a commenter on the Part 151 Aggregation Proposal, because the Commission proposes to interpret the phrase "reasonable activity" to be effectively synonymous with the phrase "normal course of business" in this context.

The Commission solicits comment as to all aspects of proposed rule 150.4(b)(7). In particular, the Commission solicits comment as to the appropriateness of the proposed treatment of ownership interests acquired in the normal course of the broker-dealer's activity.

E. Independent Account Controller for Eligible Entities

1. Part 151 Proposed Approach

As noted above, regulation 150.3(a)(4) provides an eligible entity with an exemption from aggregation of the eligible entity's customer accounts that are managed and controlled by independent account controllers. The definition of eligible entity in regulation 150.1(d) includes "the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter. . . ." However, with regard to a CPO that is exempt under regulation 4.13, the definition of an independent account controller in regulation 150.1(e)(5) only extends to "a general partner of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter." At the time the Commission expanded the IAC exemption to include regulation 4.13 commodity pools, market participants generally structured such pools as limited partnerships.¹³⁹

The Commission understands that today, not all regulation 4.13 commodity pools are formed as partnerships. For example, regulation 4.13 pools may be formed as limited liability companies and have managing members, not general partners. Accordingly, in the Part 151 Aggregation Proposal, the Commission proposed to expand the definition of independent account controller to

¹³⁹ *See* 63 FR 38532.

include the managing member of a limited liability company, and to amend the definitions of eligible entity and independent account controller to specifically provide for regulation 4.13 commodity pools established as limited liability companies.

2. Commenters' Views

One commenter said that the independent account controller rule should be expanded to apply to any person with a role equivalent to a general partner in a limited partnership or managing member of a limited liability company, to accommodate various structures that are used for commodity pools in jurisdictions outside the U.S.¹⁴⁰

Another commenter addressed 4.13 pools more broadly, and said that the Commission's rules should treat ownership of 4.13 pools in the same way that the rules treat ownership of operating companies.¹⁴¹ In particular, this commenter said that the Commission should eliminate the requirement that the positions of a 4.13 pool be aggregated with the positions of any person that owns more than 25% of the 4.13 pool.¹⁴²

3. Proposed Rule

The Commission proposes to adopt rule 150.4(b)(5) to take the place of the existing IAC rule in regulation 150.3(a)(4), so that the IAC exemption is in the regulatory section providing for aggregation of positions. Proposed rule 150.4(b)(5) is substantially similar to existing regulation 150.3(a)(4) except that, in response to the commenters, the Commission proposes to modify it (and the related definitions in regulation 150.1) so that it could be applied with respect to any person with a role equivalent to a general partner in a limited liability partnership or a managing member of a limited liability company.

Regarding the treatment of regulation 4.13 pools in a manner that is equivalent to the treatment of operating companies, the Commission believes that this is a matter that could be the subject of relief granted under CEA section 4a(a)(7).¹⁴³ Persons wishing to seek such relief should apply to the Commission stating the particular facts and circumstances that justify the relief.

The Commission solicits comment as to all aspects of the proposed rule 150.4(b)(5) and the related amendments

to regulation 150.1. In particular, the Commission solicits comment as to the appropriateness of treating limited liability companies that are commodity pools in the same way as limited liability partnerships that are commodity pools. Commenters are invited to provide information regarding the considerations that determine whether commodity pools are, in practice, structured as limited liability companies or limited liability partnerships and whether there are any relevant differences in the two types of entities. Also, what are the facts and circumstances that commenters believe would justify relief under CEA section 4a(a)(7)?

III. Related Matters

A. Considerations of Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

On May 30, 2012, the Commission proposed, partially in response to a petition for interim relief from part 151's provision for the aggregation of positions across accounts,¹⁴⁴ certain modifications to its policy for aggregation under the part 151 position limits regime (the "Part 151 Aggregation Proposal"). In an order dated September 28, 2012, the District Court for the District of Columbia vacated part 151 of the Commission's regulations. The Commission is now proposing modifications to part 150 of the Commission's regulations that are substantially similar to the modifications proposed to part 151.

¹⁴⁴ A copy of the petition (the "aggregation petition") can be found on the Commission's Web site at www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ijdocs/wgap011912.pdf. The aggregation petition was originally filed by the Working Group of Commercial Energy Firms; certain members of the group later reconstituted as the Commercial Energy Working Group. Both groups (hereinafter, collectively, the "Working Groups") presented one voice with respect to the aggregation petition.

The Part 151 Aggregation Proposal provided the public with an opportunity to comment on the Commission's considerations of costs and benefits of the proposed rules. In the Part 151 Aggregation Proposal, the Commission explained its position that the proposed changes to the aggregation policy would, on net, lower costs for market participants without lessening the effectiveness of the Commission's position limits regime. The Commission requested comment on all aspects of its consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed therein. In addition, the Commission requested that commenters provide data and any other information or statistics that they believe supports their positions with respect to the Commission's consideration of costs and benefits.

The modifications to part 150 proposed herein reflect the Commission's consideration of the comments that were received on the proposed amendments to part 151. The Commission summarizes the proposed modifications to part 150 below, including those provisions proposed to be modified or amended in response to public comment on the Part 151 Aggregation Proposal, describes expected costs and benefits of the proposed regulations, requests public comment on its considerations of costs and benefits, and considers the proposed regulations in light of the five factors outlined in Section 15(a).¹⁴⁵

1. Background

As discussed above, the Commission's historical approach to position limits generally includes three components: (1) The level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, in any individual month, and in all months combined, (2) an exemption for positions that constitute bona fide hedging transactions, and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.

The proposed rules address the third component of the Commission's position limits regime—aggregation—which is set out in regulation 150.4. This regulation generally requires that

¹⁴⁵ The Commission notes that the opinions and beliefs expressed herein are preliminary assertions based on comments from previous releases, and are subject to change after consideration of any further comments. The Commission welcomes public comment on all aspects of this release in order to better inform its policy determinations.

¹⁴⁰ CL—AIMA.

¹⁴¹ CL—ABC.

¹⁴² CL—ABC.

¹⁴³ Section 4a(a)(7) of the CEA provides authority to the Commission to grant relief from the position limits regime.

unless a particular exemption applies, a person must aggregate all positions for which that person: (1) Controls the trading decisions, or (2) has a 10 percent or greater ownership interest in an account or position; and in doing so the person must treat positions that are held by two or more persons pursuant to an express or implied agreement or understanding as if they were held by a single person.

2. Part 151 Aggregation Proposal

As noted above, the Commission received the aggregation petition on January 19, 2012.¹⁴⁶ The aggregation petition requested interim relief under CEA section 4a(a)(7) from, among other things, part 151's provision for aggregation of positions across accounts. The Commission also received letters that were generally supportive of the aggregation petition. In addition, several commenters opined on the aggregation rules in connection with the Commission's request for comment on the spot-month position limits on cash-settled contracts established on an interim final basis in November 2011.¹⁴⁷ As further discussed in the Part 151 Aggregation Proposal, the aggregation petition and the interim final regulation commenters asserted that the Commission should clarify regulation 151.7(i), which provides an exemption where the sharing of information would cause a violation of federal law, and expand the exemption to include circumstances in which the sharing of information would cause a violation of state or foreign law. In addition, the aggregation petition and commenters to the interim final regulation requested that the Commission create an aggregation exemption for owned non-financial entities. In this connection, some interim final regulation commenters argued that the Commission should only aggregate on the basis of control and not ownership. Finally, one interim final regulation commenter requested that the Commission expand the exemption provided in § 151.7(g) for the ownership interests of broker-dealers connected with specific market-making activity.

As regards the violation-of-laws exemption in § 151.7(i), the Part 151 Aggregation Proposal clarified that the exemption would apply where the sharing of information presents a "reasonable risk" of violating the applicable law(s), retained the requirement to submit an opinion of counsel, and expanded the violation-of-

laws exemption to include state law and the law of foreign jurisdictions.

Proposed rule 151.7(b)(1) in the Part 151 Aggregation Proposal provided that any person with an ownership or equity interest in an entity (financial or non-financial) of between 10 percent and 50 percent (inclusive) may disaggregate the owned entity's positions upon demonstrating compliance with each of several specified indicia of independence. The proposed indicia were that such person and the owned entity: (1) Do not have knowledge of the trading decisions of the other; (2) trade pursuant to separately developed and independent trading systems; (3) have in place policies and procedures to preclude sharing knowledge of, gaining access to, or receiving data about, trades of the other; (4) do not share employees that control the trading decisions of the other; and (5) maintain a risk management system that does not allow the sharing of trade information or trading strategies between entities.

The Commission also proposed to expand the exemption for the underwriting of securities in regulation 151.7(g) to include ownership interests acquired through the market-making activities of an affiliated broker dealer. The Part 151 Aggregation Proposal proposed to exempt from aggregation ownership interests acquired as part of a person's reasonable market-making activity in the normal course of business as a broker-dealer registered with the SEC or comparable registration in a foreign jurisdiction, so long as there is no other ownership interests or indicia of control or concerted action. The Commission said in the Part 151 Aggregation Proposal that this exemption would apply to ownership interests that are likely transitory and not for investment purposes.

Proposed rule 151.7(j) in the Part 151 Aggregation Proposal extended filing relief to "higher-tier" entities—i.e., entities with an ownership interest in the entity that is itself the owner of an entity and the subject of a filing for relief from aggregation. As such, the proposed rule allowed higher-tier entities to rely on exemption notices filed by owned entities. The Part 151 Aggregation Proposal explained that such an exemption would reduce the burden of filing exemption notices by eliminating redundancies.

The Commission also proposed in the Part 151 Aggregation Proposal to amend the IAC exemption in regulation 151.7(f), which includes commodity pools exempt from registration under § 4.13 that are structured as limited partnerships, to also encompass

commodity pools structured as limited liability companies.

As discussed below, the Commission received comments on the Part 151 Aggregation Proposal.¹⁴⁸ The amendments now being proposed to regulation 150.4 reflect the Commission's consideration of the comments that were received on the Part 151 Aggregation Proposal. Thus, the discussion below covers the amendments in the Part 151 Aggregation Proposal and the comments on those proposed amendments.¹⁴⁹ The Commission considers these comments, discusses the current proposed amendments to the aggregation provisions in § 150.4, considers the costs and benefits of the current proposal, and evaluates the current proposal in light of the five enumerated factors of Section 15(a)(2) of the CEA.

3. Comments on the Part 151 Aggregation Proposal

The Commission received numerous comments regarding the proposed changes to the aggregation policy in § 151.7. This section summarizes the issues raised in those comments relevant to the Commission's considerations of costs and benefits; a more thorough discussion of comments relating to each provision of the Part 151 Aggregation Proposal can be found in section II of this release.

The proposed owned-entity exemption and its attendant indicia of independence was a topic in the majority of comments. Several commenters requested the Commission extend the owned entity exemption to a person with a greater than 50 percent ownership in the owned entity, so long as the person and the owned entity can both demonstrate independence.¹⁵⁰ These commenters generally objected to the 50 percent ceiling on the grounds that ownership above 50 percent is potentially indicative of control but does not equate to control, and that ownership of an entity regardless of control over that entity is not an appropriate measure to determine aggregation.¹⁵¹ Some commenters asserted that the "bright-line test" of 50

¹⁴⁸ The written comments are available on the Commission's Web site at <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1208>.

¹⁴⁹ For additional background on part 150 and part 151 and the existing provisions for aggregation, see the Part 151 Aggregation Proposal.

¹⁵⁰ CL-ABC, CL-AGA, CL-AIMA, CL-API, CL-Barclays, CL-CMC, CL-COPE, CL-EEI, CL-FIA, CL-Iberdrola, CL-ISDA/SIFMA, CL-MFA, CL-WGCEF.

¹⁵¹ CL-AGA, CL-MFA, CL-PEGCC, CL-WGCEF, CL-API, CL-Atmos, CL-CMC, CL-Chamber, CL-EEI.

¹⁴⁶ See note 18, supra.

¹⁴⁷ See Proposed Rules, 77 FR at 31769, fn. 24.

percent ownership is arbitrary.¹⁵² Another claimed that passive ownership poses little risk of coordinated trading and that requiring aggregation even when management and trading are independent inhibits legitimate commercial activity.¹⁵³ Some commenters expressed concern that the aggregation standards may require information sharing and coordination between entities that had previously constructed barriers to preclude such activity, and that relaxing those barriers to comply with aggregation standards may create antitrust concerns.¹⁵⁴

Conversely, other commenters expressed support for the Commission's proposed 50 percent ceiling as reasonable and appropriate.¹⁵⁵ Two commenters suggested that the Commission should not expand the exemption for owned entities.¹⁵⁶

Commenters presented several alternatives to the 50 percent threshold. Some commenters suggested that ownership over 50 percent should create a "rebuttable presumption," requiring entities to demonstrate why ownership above that threshold does not result in trading control or information sharing.¹⁵⁷ Others supported disaggregation relief for an entity with greater than 50 percent ownership only in circumstances in which the Commission had specifically approved a request for relief.¹⁵⁸ One commenter requested an exemption specifically for private equity investment funds that meet certain criteria.¹⁵⁹ Another requested an exemption for pension plans to free them from aggregating a plan sponsor's corporate positions with the plan's positions given that pension plan managers are subject to fiduciary responsibilities to the plans they manage.¹⁶⁰ In lieu of a new rule on owned entities, one commenter urged the Commission to rely on Form 40 reports and raise the presumptive control standard to 50 percent instead of 10 percent, thus never requiring aggregation below 50 percent ownership.¹⁶¹

Commenters also expressed concerns about the costs associated with the owned-entity exemption—in particular, the direct and indirect costs of the 50

percent "ceiling" for disaggregation imposed by § 151.7(b)(1)(ii). Several noted that developing a system to coordinate trading among aggregated entities will be costly for market participants.¹⁶² One commenter said it would be costly to implement a system to monitor when ownership of an entity exceeds 10 percent.¹⁶³

More specifically, two commenters said that the rules would require entities that are currently operated and managed separately, but who have common upstream ownership greater than 50 percent, to implement information sharing systems solely to comply with the Commission's position limits regime. These commenters noted that these systems would be costly to implement without providing a corresponding benefit because these entities are not currently operating in concert.¹⁶⁴ Similarly, another commenter said that aggregation is impractical for commercial entities engaged in independent operations under common ownership and may put such entities at a competitive disadvantage.¹⁶⁵ Another commenter noted that automatic aggregation at 50 percent would require sophisticated information controls and expensive trade monitoring systems.¹⁶⁶

Commenters also stated concerns about costs of complying with the 50 percent "ceiling" for private funds and pension plans. One commenter noted that private funds would need entirely new (and costly) programs to monitor, allocate, and coordinate trading across portfolio companies though the fund company was not previously involved in trading.¹⁶⁷ Another commenter had the same concern regarding the costs incurred by pension plans, which do not currently collect position or trading information from owned collective investment vehicles, to monitor positions in real-time across potentially hundreds of these vehicles.¹⁶⁸

Commenters were also concerned that the automatic aggregation at 50 percent would lead to indirect costs by unnecessarily limiting hedging, because commonly owned companies will have to remain below position limits unless a bona fide hedging exemption is available.¹⁶⁹ Commenters were also concerned about potential impacts on investment in other entities; one opined

that the rules would discourage investment because owners would have to be more deeply involved in the operations of owned companies, including by overseeing trading.¹⁷⁰ One commenter said that automatic aggregation at 50 percent would hinder management and could limit joint-venture formation.¹⁷¹

Commenters also weighed in on the other aspects of the Commission's proposed rules. Regarding the filing of exemptions, one commenter noted that the Commission's estimated costs of aggregation filings appeared to be correct. This commenter also disputed the validity of the Working Group's "fear of vast new information infrastructure" and said that entities affected by the provisions will have the resources to apply for and receive the proposed exemptions from aggregation.¹⁷²

Regarding the violation-of-laws exemption, several commenters generally expressed support for the "reasonable risk" of violation standard,¹⁷³ and the proposed exemption for federal, state, or foreign laws.¹⁷⁴ One commenter expressed that the exemption should be limited to violations of federal law, and that exemption from aggregation for potential violations is impractical and should not be allowed.¹⁷⁵ Further, some commenters opined that a memorandum of law, prepared by internal, as opposed to outside, counsel, should suffice, thereby mitigating outside legal fees.¹⁷⁶ Another commenter noted it had no objection to the proposed opinion of counsel requirement,¹⁷⁷ while others expressed support for the requirement as proposed, on grounds that aggregation relief should be available in only the most clear-cut cases.¹⁷⁸

Some commenters asserted that aggregation should be applied on a pro-rata basis to avoid the double-counting of positions and a potential limit on trading that may affect liquidity.¹⁷⁹ One commenter said that the aggregation requirements would cause pension plans to reconsider investing in collective investment vehicles. This commenter also maintained that the current federal position limits regime has had little effect on commodity pools

¹⁵² CL-AGA, CL-API, CL-COPE.

¹⁵³ CL-FIA.

¹⁵⁴ CL-WGCEF, CL-CMC, CL-COPE.

¹⁵⁵ CL-Better Markets, Chris Barnard on June 21, 2012 ("CL-Barnard").

¹⁵⁶ CL-IAMAW, CL-IATP.

¹⁵⁷ CL-ISDA/SIFMA, CL-WGCEF, CL-PEGCC.

¹⁵⁸ CL-AIMA, CL-API, CL-Atmos, CL-MFA.

¹⁵⁹ CL-PEGCC.

¹⁶⁰ CL-ABC.

¹⁶¹ CL-Barclays.

¹⁶² CL-API, CL-Chamber, CL-CMC.

¹⁶³ CL-Barclays.

¹⁶⁴ CL-COPE, CL-Iberdrola.

¹⁶⁵ CL-Chamber.

¹⁶⁶ CL-WGCEF.

¹⁶⁷ CL-PEGCC.

¹⁶⁸ CL-ABC.

¹⁶⁹ CL-API, CL-Chamber, CL-PEGCC.

¹⁷⁰ CL-CMC, CL-Chamber.

¹⁷¹ CL-WGCEF.

¹⁷² CL-IATP.

¹⁷³ CL-EEI, CL-FIA.

¹⁷⁴ CL-ISDA/SIFMA.

¹⁷⁵ CL-IATP.

¹⁷⁶ CL-API, CL-EEI, CL-FIA, CL-ISDA/SIFMA,

CL-PEGCC, CL-WGCEF.

¹⁷⁷ CL-Atmos.

¹⁷⁸ CL-Better Markets, CL-IATP.

¹⁷⁹ CL-ABC, CL-Barclays, CL-FIA.

because position limits were imposed on only nine agricultural products.¹⁸⁰

One commenter noted that the Part 151 Aggregation Proposal to allow higher-tier entities to rely on filings by subsidiaries strikes an appropriate cost balance.¹⁸¹ Another commenter expressed support for the alternative of a single aggregate notice filing, that filing should be effective retroactively, and that sister affiliates of the filing entity should be able to rely on the filing.¹⁸²

4. The Proposed Amendments to Part 150

a. Aggregation of Positions in Owned Entities

The Commission is proposing two exemptions concerning the aggregation of positions in owned entities. First, as proposed in the Part 151 Aggregation Proposal, the Commission is proposing to allow a person to disaggregate the positions of an owned entity provided such person demonstrates compliance with the conditions of the exemption. Such conditions include ownership of less than 50 percent of the owned entity, independent trading systems, prohibition of the sharing of trading knowledge between the entities, and the other criteria found in proposed regulations 150.4(b)(2)(i)(A–E). Second, the Commission is proposing to allow persons with a greater than 50 percent ownership interest to apply for relief in accordance with proposed regulation 150.4(b)(3), subject to the conditions of that section and the approval of the Commission or its delegate.

As noted above and in the Part 151 Aggregation Proposal, the Commission's general policy on aggregation is derived from CEA Section 4a(a)(1), which directs the Commission to aggregate positions based on separate considerations of ownership, control, or persons acting pursuant to an express or implied agreement. The Commission's historical approach to its statutory aggregation obligation has thus included both ownership and control factors in a manner designed to prevent evasion of prescribed position limits. The Commission continues to believe that ownership of an entity is an appropriate criterion for aggregation of that entity's positions.

Some commenters on the Part 151 Aggregation Proposal opposed the requirement that a person own 50 percent or less of another entity in order to obtain relief from the aggregation requirement, asserting that an

ownership stake of greater than 50 percent does not necessarily indicate control. However, as explained in part II.B.3. above, this requirement of 50 percent or less ownership is in line with the language in CEA section 4a, the legislative history of that section, subsequent regulatory developments, and the Commission's historical practices in this regard. Moreover, the ability for persons owning 50 percent or less of another entity (subject to establishing the indicia of independence) to disaggregate the positions of the owned entity would substantially liberalize the Commission's approach to aggregation for position limits. The Commission does not consider this ceiling on disaggregation to be arbitrary; rather, ownership above 50 percent of an entity is a level at which there is a strong likelihood that a person would be able to use its ownership interest to directly or indirectly influence the owned entity's accounts or positions. As noted above, 50 percent ownership is a standard used by other government agencies and reflects a general understanding that greater than 50 percent ownership level poses substantial potential for direct or indirect control over an owned entity. Accordingly, the Commission views the 50 percent ceiling to be a reasonable outer limit in most cases on the general availability of aggregation exemptions, even for passively-owned entities.

However, the Commission recognizes that in certain specific circumstances it may be appropriate to allow exemptions from aggregation of an owned entity's positions, even at greater than 50 percent ownership. In particular, the Commission notes that while, in many instances, ownership of more than 50 percent of an entity requires the owner to consolidate the financial statements of the owned entity, consolidation is not always required. Thus, as discussed in more detail in section II.B3.b of this release, the proposed amendments to part 150 include a provision for a person with more than 50 percent ownership of an owned entity, but that does not consolidate that entity in its financial statements, to apply to the Commission for aggregation relief on a case-by-case basis, provided the applicant can demonstrate adherence to stringent indicia of independence. Notwithstanding that it represents a relaxation from historical practice, the Commission believes that allowing case-by-case applications for disaggregation addresses commenters' concerns without jeopardizing the effectiveness of

the Commission's position limits regime.

The Commission expects no material negative effects on market quality as a result of the proposed relief from aggregation that would be available to persons that hold ownership interests in other entities. The Commission does not believe that a material reduction in hedging will result from the proposed requirement that, to obtain relief from aggregation based on notice only, a person must own 50 percent or less of an entity, because hedge exemptions would be available to any entity regardless of position aggregation. In addition, the proposed aggregation exemptions are more permissive than the 10 percent threshold currently applied. Impacts from the proposed regulations on investment activity where the investor desires a passive interest should also be minor, as these proposed regulations permit a passive investor to have a larger ownership interest and still claim an exemption from aggregation. As noted above, prior rules required aggregation at a 10 percent ownership level, so these proposed regulations allowing for relief from aggregation at higher ownership levels should lower the overall impact of aggregation on market quality factors.

The Commission requests comment on its proposed amendments to regulation 150.4. Are there other potential impacts on market quality factors that the Commission should consider? What costs and benefits may attend the proposed owned entity exemptions in proposed regulations 150.4(b)(2) and 150.4(b)(3) that the Commission should consider?

b. Consideration of Alternative Approaches to Aggregation of Positions in Owned Entities

The Commission believes that the approach reflected in these proposed regulations—a bright-line ceiling on the availability of notice relief from aggregation at 50 percent ownership, with the potential for case-by-case relief in appropriate circumstances—is preferable to the various alternatives suggested by commenters for a variety of reasons.

Several commenters to the Part 151 Aggregation Proposal suggested that the aggregation requirements should be loosened further than was proposed by allowing persons with a more than 50 percent ownership interest in another entity to obtain relief from aggregation by demonstrating independent trading by the two entities. While this approach would make relief from the aggregation requirements available to more entities in more different situations, the

¹⁸⁰ CL–ABC.

¹⁸¹ CL–IATP.

¹⁸² CL–FIA.

Commission believes, as noted above, that CEA Section 4a(a)(1) requires the aggregation of positions of an owned entity and that a 50 percent ownership interest is a reasonable indicator that a person is the owner of an entity and therefore aggregation should be required. The Commission notes that the proposed amendments to regulation 150.4 would allow an entity with a more than 50 percent ownership interest in another entity to apply for relief from the aggregation requirement on a case-by-case basis if it meets the other conditions in regulation 150.4(b)(3). Through an exemption application, such entities may be able to rebut the presumption that greater than 50 percent ownership results in trading control or information sharing; however, the Commission does not believe it is appropriate to grant such entities a broader exemption based only on a notice filing, because of the importance of the ownership standard in the statute as described above. The Commission has not proposed the commenters' alternative because, while to loosen the standards as requested might lower immediate compliance burdens, the Commission believes it would also lessen the effectiveness of the position limits regime.

Another commenter on the Part 151 Aggregation Proposal urged that the Commission not require aggregation of positions and instead rely on information reported on Form 40. However, the Commission notes that not necessarily all subsidiaries file those reports, and in any case the Commission believes that effective and efficient compliance with position limit regulations, including compliance with aggregation requirements, is better served when it is primarily the responsibility of each market participant. The Commission believes that each entity can track its own compliance more efficiently compared to the Commission tracking the compliance of all the market participants involved; thus, the Commission does not endorse the shifting of the compliance burden from large traders to the Commission. For these reasons, the Commission believes that this proposed alternative does not have advantages that would justify its acceptance, and instead it could potentially impede compliance with the position limits regime.

The Commission believes that aggregation on a pro-rata basis, as suggested by some commenters, would be administratively burdensome for both owners of financial interests and the Commission. For example, since the level of financial interest in a particular

company may change over time, it would be burdensome to determine and monitor the appropriate pro rata allocation on a daily basis. Moreover, a pro rata approach would be inconsistent with the Commission's historical requirement of aggregation of all the relevant positions of owned entities, absent an exemption. This is consistent with the view that a holder of a significant ownership interest in another entity may have the ability to influence all the trading decisions of that entity in which such ownership interest is held. For these reasons, the Commission declines to propose amending the policy in § 150.4 to require a pro-rata aggregation of positions.

c. Other § 150.4 Exemptive Relief

The Commission is proposing the violation-of-laws exemption largely as previously adopted in part 151 with the proposed changes in the Part 151 Aggregation Proposal, with one amendment. The Commission has proposed the alternative posed by commenters to allow a memorandum of law, which can be prepared by internal counsel, to satisfy the requirement that the applicant explain the potential for a violation of law. This requirement is intended to provide the Commission with the ability to review the legal basis for the asserted regulatory impediment to the sharing of information, particularly where the asserted impediment arises from laws and/or regulations that the Commission does not directly administer; to consult with other federal regulators as to the accuracy of the opinion; and to coordinate the development of rules surrounding information sharing and aggregation across accounts in the future. The Commission believes that a memorandum of law prepared by internal counsel could provide the information and legal analysis to accomplish these goals, and a formal opinion of counsel is not required. Thus, the proposed amendments to part 150 include the requirement suggested by commenters on the Part 151 Aggregation Proposal.

The Commission requests comment as to the costs and benefits of proposed rule 150.4(b)(8). In particular, the Commission requests comment as to the relative costs and benefits of requiring a written memorandum of law, rather than an opinion of counsel, regarding the reasonable risk of a violation of law.

Regarding higher-tier entities, the Commission is proposing regulation 150.4(b)(9), which is identical to previously proposed regulation 151.7(j). The exemption in proposed regulation

150.4(b)(9) would allow higher-tier entities to rely on exemption notices filed by the owned entity, with respect to the accounts or positions specifically identified in the notice. In response to the suggestion of one Part 151 Aggregation Proposal commenter that aggregate notice filings should be permitted, the Commission notes, as discussed above, that entities would be able to utilize the exemption in the manner most efficient for their enterprise. However, the Commission is not persuaded by the commenter's assertion that the filing should be permitted to be effective retroactively, because retroactive application would result in administrative difficulty in monitoring the scope of exemptions from aggregation and negatively affect the Commission staff's surveillance efforts.

The Commission is also proposing exemptions for underwriting activity in proposed regulation 150.4(b)(6) and for broker dealer activity in proposed regulation 150.4(b)(7). The Commission believes that such activity may present less of a risk of coordinated trading because in both circumstances, the ownership interest is likely transitory and not held for investment purposes.

Finally, consistent with the approach taken in 151.7(d), proposed rule 150.4(d) will require aggregation of investments in accounts with substantially identical trading strategies.

5. Costs and Benefits

In the Part 151 Aggregation Proposal, the Commission stated its goal in proposing to amend the aggregation provisions of part 151:

It is the Commission's goal that this proposal uphold part 151's regulatory aims without diminishing its effectiveness. In so doing, the Commission adheres to its belief that aggregation represents a key element to prevent evasion of prescribed position limits and that its historical approach towards aggregation—one that appropriately blends consideration of ownership and control indicia—remains sound.¹⁸³

Similarly, in proposing these amendments to part 150, the Commission aims to achieve an appropriate balance between reducing costs for market participants and maintaining the effectiveness of part 150's regulatory objectives. The Commission believes that the regulations proposed herein would contribute to that goal by maintaining the Commission's historical approach to aggregation while simultaneously updating that approach with thoughtful exemptions that relieve the burdens of

¹⁸³ 77 FR 31767 at 31779.

aggregation for those market participants who can demonstrate compliance with certain criteria and who choose to avail themselves of the exemptions—without undermining the effectiveness of the Commission's position limits regime.

In adopting the now-vacated part 151, the Commission noted that the amendments to regulation 151.7 largely tracked regulation 150.4 and therefore reflected continuity in the position limits regime. In this release, the Commission is proposing to provide the same exemptions that it had provided in regulation 151.7, along with the additional exemptions proposed in the Part 151 Aggregation Proposal, with some changes to reflect the views of commenters on that release.¹⁸⁴

Using existing part 150 as the standard for comparison, the Commission will consider the incremental costs and benefits that arise from these proposed amendments. That is, if these proposed regulations are not adopted, the aggregation standards that would apply would be those described in regulation 150.4 as it currently exists.

Although the Commission anticipates certain costs as a result of the proposed regulations—including a greater number of entities preparing and filing notices and memoranda of law, among other costs, since the availability of relief from aggregation has been expanded—the Commission believes that the regulations proposed herein, on a net basis, would cause market participants that use the exemptions in the regulations to incur a smaller burden as compared to the burden they would have incurred under regulation 150.4.

a. Costs

There are a myriad of ways a market participant could conceivably ensure proper compliance with the proposed amendments to regulation 150.4, depending on the particular circumstances of each market participant. In general, however, the Commission anticipates that entities

¹⁸⁴ In regulation 151.7, the Commission added a requirement that accounts trading pursuant to identical trading strategies be aggregated. The Commission also provided exemptions for the underwriters of securities and for instances in which the sharing of information between persons would cause either person to violate federal law or regulations adopted thereunder. The Commission proposed in the Part 151 Aggregation Proposal to extend the violation-of-laws exemption to include state law and the laws of a foreign jurisdiction; to include an exemption for broker-dealers engaged in market-making activity; to allow higher-tier entities to file notices on behalf of lower-tier entities; to expand the applicability of the IAC exemption to include limited liability companies; and to provide a limited exemption for entities owning greater than 10 but less than 50 percent of another entity.

who wish to take advantage of the exemptions in proposed regulation 150.4 will incur direct costs associated with the following: (1) Developing a system for aggregating positions across owned entities; (2) initially determining which owned entities, other persons, or transactions qualify for any of the exemptions in regulation 150.4; (3) developing and maintaining some system of determining the scope of such exemptions over time; (4) potentially amending current operational structures to achieve eligibility for such exemptions; and (5) preparing and filing notices of exemption with the Commission, including memoranda of law if claiming the violation-of-laws exemption.¹⁸⁵

To a large extent, market participants have incurred many of these costs to comply with existing regulation 150.4. For example, market participants that are affected by the existing aggregation requirement should already have a system in place for aggregating positions across owned entities. This rulemaking does not increase the costs of complying with the basic aggregation requirements of part 150, and in fact may decrease those costs by providing for relief from the aggregation requirements in certain situations. Because the Commission and DCMs generally have required aggregation of positions starting at a 10 percent ownership threshold under the current regulatory requirements of part 150 and the acceptable practice found in the prior version of part 38, the Commission expects that market participants active on DCMs have developed systems of aggregating positions across owned entities.¹⁸⁶

Thus, the main direct costs associated with the proposed amendments to regulation 150.4, relative to the standard of existing regulation 150.4, would be those incurred by entities as they determine whether they may be eligible

¹⁸⁵ The Commission notes that direct costs associated with how a particular entity aggregates its positions would be dependent upon that entity's individual ownership structure, how and why the entity chooses to avail themselves of any particular exemption, and the methods employed by the entity to ensure compliance. Thus, as noted in the Part 151 Aggregation Proposal, costs relating to this rule are highly entity-specific; actual costs may be higher or lower than the Commission can anticipate accurately.

¹⁸⁶ The 10 percent threshold has been in place for the nine agricultural contracts with federal limits for decades, and for other contracts where limits were imposed by DCMs and enforced by the Commission. See *supra*, note 39 (citing to the statement of policy on aggregation issued in 1979, where the Commission codified its view, that, except in certain limited circumstances, a financial interest in an account at or above 10 percent "will constitute the trader as an account owner for aggregation purposes." 44 FR 33839, 33843, June 13, 1979).

for the proposed exemptions, and as they make subsequent filings required by the exemptions. For example, the Commission recognizes that there may be costs to market participants to adapt their systems in order to allow such systems to be used to determine whether persons qualify for the exemptions from the aggregation requirement proposed herein. Some entities may also incur direct costs to modify existing operational procedures—such as firewalls and reporting schemes—in order to be eligible to claim an exemption.

The Commission does not believe that these proposed regulations would result in material indirect costs to market participants or the public. For market participants, these proposed regulations provide for relief in certain circumstances from the requirement to aggregate positions. For the public, the Commission believes that these proposed regulations appropriately balance the need for exemptions from aggregation in certain circumstances with the public interest in maintaining the effectiveness of the Commission's position limits regime.

The direct costs of the proposed regulations are impracticable to quantify in the aggregate because such costs are heavily dependent on the characteristics of each entity's current systems, its corporate structure, its use of derivatives, the specific modifications it would implement in order to qualify for an exemption, and other circumstances. However, the Commission believes that market participants would choose to incur the costs of qualifying for and using the exemptions in the proposed regulations only if doing so is less costly than complying with the position limits. Thus, by providing these market participants with a lower cost alternative (i.e., qualifying for and using the exemptions) the proposed regulations may ease the overall compliance burden resulting from position limits, for it is reasonable to assume that no entity will elect the exemption if the benefits of doing so do not justify the costs. Accordingly, the Commission anticipates that notwithstanding the additional costs of determining eligibility and filing exemptions, the net result of the proposed rules for impacted market participants would be a reduction in costs as compared to the current standard in regulation 150.4.

In the Part 151 Aggregation Proposal, the Commission requested "that commenters submit data from which the Commission can consider and quantify the costs of the proposed rules" because it recognized that "costs associated with

the aggregation of positions are highly variable and entity-specific.” No commenter on that rule provided data, leaving the Commission without additional data or another basis to quantify the incremental direct costs to determine eligibility and file for exemptions beyond those previously estimated by the Commission.

One commenter asserted that the compliance with the rules would cost in excess of the \$5.9 million estimate stated in the Part 151 Aggregation Proposal; however, the Commission notes that this comment relates to an estimate of costs relating to now-vacated regulation 151.7 and not the costs relating to the proposed rules in this release. Another commenter, without providing estimates, described a list of costs that could be incurred by each affected entity, including: (1) Evaluating its business structure and determine whether or not it qualifies for disaggregation relief; (2) planning for being compelled to aggregate should corporate structure change; (3) designing, testing, and implementing systems to aggregate positions across multiple entities across jurisdictions to ensure intraday compliance with position limits; and (4) incurring the “as yet unknown and ongoing cost of complying” with the proposed rules. The Commission again notes that entities who have been transacting in futures markets have been subject to these aggregation requirements for decades, and should have means of aggregating positions across multiple owned entities.

Some of the costs mentioned above likely relate to the imposition of the Commission’s aggregation provision on swaps contracts as well as on the additional contract markets that would have been subject to federal position limits under the now-vacated part 151. Although part 151 is no longer in effect, the Commission has proposed, in accordance with the Dodd-Frank Act revisions to CEA section 4a, amendments to part 150 that would, among other things: expand the number of contract markets subject to federal position limits; impose speculative limits on swaps contracts; and require exchanges to conform their aggregation policies to the Commission’s aggregation policy in § 150.4.¹⁸⁷ That proposed rulemaking thus may have significant implications for the Commission’s considerations of costs and benefits of the instant proposal.

Should that rule be adopted as proposed, the aggregation policies

proposed herein would apply on a federal level to commodity derivative contracts, including swaps, based on an additional 19 commodities. This expansion may create additional compliance costs for futures market participants, who would have to expand current procedures for aggregating futures positions in order to include swaps positions, as well as for swaps market participants, who would be required to develop a system to comply with aggregation policies or expand already existing policies and procedures to incorporate the aggregation rules. Further, should the other proposed rulemaking be adopted as proposed, exchanges would be required to conform their aggregation policies to the Commission’s aggregation policy. As such, all contracts with speculative position limits, including exempt commodity contracts, would utilize the Commission’s aggregation policy, including the amendments to that policy proposed in this rulemaking.

Until and unless that proposal is finalized by the Commission, part 150 applies to only the nine contracts enumerated in current § 150.2; in that case, the Commission believes that many of the costs described by commenters would be substantially less than previously estimated. The Commission requests that commenters submit data from which the Commission can quantify the costs of the proposed rules amending § 150.4. The Commission also requests that commenters provide data that would help the Commission to compare the potential cost implications of the instant proposal in the event that the other amendments to part 150 are adopted to the potential cost implications in the event that they are not.

The Commission understands that the additional exemptions proposed herein may create additional costs to file the proper exemptive notices in accordance with regulations 150.4(c) and 150.4(d). However, the exemptions are elective, so no entity is required to make this filing if that entity determines the costs of doing so do not justify the potential benefit resulting from the exemption. Thus, the Commission does not anticipate the costs of obtaining any of the exemptions to be overly burdensome. Nor does the Commission anticipate the costs would be so great as to discourage entities from utilizing available exemptions, as applicable.

In accordance with the Paperwork Reduction Act (PRA) the Commission has estimated the costs of the paperwork required to claim the proposed exemptions. As stated in the PRA section of this release, the Commission

estimates that 240 entities will submit a total of 340 responses per year and incur a total burden of 7,100 labor hours at a cost of approximately \$852,000 annually in order to claim exemptive relief under regulation 150.4.¹⁸⁸ This burden includes a recounting of the estimates included in the final regulations promulgating now vacated part 151, as those exemptions are being re-proposed in part 150; however, the estimates have been reduced from that rulemaking because of the relatively smaller sphere of impact for part 150 as compared to part 151. That is, as part 151 extended federal position limits to swap contracts, the impact of that rule was broader than the impact anticipated for the proposed regulations herein. Should the proposed amendments to other sections of part 150 be adopted, the Commission anticipates the PRA burden would increase accordingly.

The Commission requests comment on its consideration of the costs imposed by the proposed regulations. Are there other direct or indirect costs that the Commissions should consider? Has the Commission accurately characterized the nature of the costs to be incurred? Commenters are specifically encouraged to submit both qualitative and quantitative estimates of the potential costs associated with the proposed changes to § 150.4, as well as data or other information to support such estimates.

b. Benefits

As discussed above, the Commission’s goal in proposing amendments to its aggregation policy in regulation 151.7 was to reduce costs for market participants without jeopardizing the effectiveness of its aggregation policy and by extension its position limits regime. Similarly, the Commission believes that the proposed amendments to regulation 150.4 would help to realize that goal, essentially benefiting both market participants (through lower costs) and the market at large (through an effective position limits regime).

The Commission continues to view aggregation as an essential part of its position limits regime. The proposed regulations include exemptions from the aggregation policy, the purpose of which is to prevent evasion of position limits through coordinated trading. The Commission believes that because the proposed exemptions would require demonstration of eligibility and qualification for an entity to take advantage of them, only those entities

¹⁸⁷ See Position Limits for Derivatives (November 5, 2013).

¹⁸⁸ See Section III.B of this release for a more detailed summary of the Commission’s PRA burden estimates.

whose activities impose a lesser risk of coordinated trading would be exempted from the aggregation requirements. In this way, the Commission believes that the exemptions that would be available through these proposed regulations would not inhibit the effectiveness of the Commission's aggregation policy in particular or position limits regime in general.

However, for those entities who represent a lesser risk of coordinated trading—as demonstrated by their eligibility to obtain an applicable exemption—the proposed rule represents a benefit in the form of lower costs of complying with the Commission's position limits regime while preserving the important protections of the existing aggregation policy. Based on the comments received on the part 151 Aggregation Proposal, the Commission has attempted where possible to minimize the regulatory burden of applying for the exemption—for example, allowing a memorandum of law prepared by internal counsel instead of a formal opinion—to increase the net benefits available to market participants. The Commission also proposed an avenue for certain entities to apply for relief on a case-by-case basis, providing additional flexibility for market participants.

The Commission requests comment on its considerations of the benefits of the proposed rules. Are there other benefits to markets, market participants, and/or the public that the Commission should consider? Commenters are specifically encouraged to include both quantitative and qualitative assessments of the potential benefits of the proposed regulations in § 150.4, as well as data or other information to support such assessments.

6. Section 15(a) Considerations

As the Commission has long held, position limits are an important regulatory tool that is designed to prevent concentrated positions of sufficient size to manipulate or disrupt markets. The aggregation of accounts for purposes of applying position limits represents an integral component that impacts the effectiveness of those limits. The rules proposed herein would amend the Commission's longstanding aggregation policy to introduce certain exemptions. The Commission believes these proposed regulations would preserve the important protections of the existing aggregation policy, but at a lower cost for market participants.

a. Protection of Market Participants and the Public

The Commission believes these proposed rules would not materially affect the level of protection of market participants and the public provided by the aggregation policy reflected currently in regulation 150.4. Given that the account aggregation standards are necessary to implement an effective position limit regime, it is important that the exemptions proposed herein be sufficiently tailored to exempt from aggregation only those accounts that pose a low risk of coordinated trading. The owned-entity exemption would maintain the Commission's historical presumption threshold of 10 percent ownership or equity interest and make that presumption rebuttable only where several conditions indicative of independence are met. This proposed exemption focuses on the conditions that impact trading independence. In addition, by providing an avenue to apply for relief when ownership is greater than 50 percent of the owned entity, the proposed rules would allow market participants greater flexibility in meeting the requirements of the position limits regulations, provided they are eligible to apply. The Commission believes that these proposed exemptions would allow the Commission to direct its resources to monitoring those entities that pose a higher risk of coordinated trading and thus a higher risk of circumventing position limits, without reducing the protection of market participants and the public that the Commission's aggregation policy affords.

The Commission believes the proposed exemptions would reduce costs for market participants without compromising the integrity or effectiveness of the Commission's aggregation policy.

b. Efficiency, Competition, and Financial Integrity of Markets

As discussed above, the Commission does not believe that the proposed regulations would negatively impact market quality indicators, such as liquidity or incentive for investment, to the detriment of the efficiency, competitiveness, or integrity of derivatives markets. Rather, the Commission believes that these proposed regulations would balance appropriately the need to preserve account aggregation as a tool to uphold the integrity of the part 151 position limit regime, while also providing for relief from the aggregation requirements where they are not necessary to prevent coordinated speculative trading. The

Commission expects the proposed rules to further the Commission's mission to deter and prevent manipulative behavior while maintaining sufficient liquidity for hedging activity and protecting the price discovery process. Prior rules required aggregation at a 10 percent ownership level, so these regulations, which propose relief from aggregation at higher ownership levels, should lower the overall impact of aggregation on market quality factors without imposing unnecessary or inappropriate restrictions on trading.

c. Price Discovery

Similarly, because the Commission has structured the exemptions in these proposed regulations to maintain the effectiveness of the position limits regime in part 150, the Commission believes that these rules would not impact the price discovery process, which the position limit regime (including the account aggregation provisions in regulation 150.4) is designed to protect. Because the exemptions in and of themselves do not directly impact the formation of prices—only the aggregation of positions—the rules would not impact the price discovery process.

d. Risk Management

The Commission has stated previously that the imposition of position limits requires market participants to ensure they do not amass positions of sufficient size to disrupt the orderly flow of the market or to influence unduly the formation of prices. In so doing, market participants protect themselves—and the market as a whole—from the disruption that such large positions could cause, when traded improperly.¹⁸⁹ The proposed rules would allow entities to not aggregate positions in circumstances where the Commission has determined that the positions are at a lesser risk of disrupting the market through the coordinated trading of affiliated entities. Thus, the Commission believes these rules, if adopted, would not lessen the effectiveness of the sound risk management practices that the position limits regime promotes. The Commission does not expect the proposed regulations to materially inhibit the use of derivatives for hedging, because hedge exemptions are available to any entity regardless of position aggregation and the proposed regulations would be more permissive than the 10 percent threshold for

¹⁸⁹ 76 FR 71626 at 71675.

aggregation that applied in existing regulation 150.4.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations related to the costs and benefits of the rules.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.¹⁹⁰ A regulatory flexibility analysis or certification typically is required for “any rule for which the agency publishes a general notice of proposed rulemaking pursuant to” the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).¹⁹¹ The requirements related to the proposed amendments fall mainly on registered entities, exchanges, FCMs, swap dealers, clearing members, foreign brokers, and large traders. The Commission has previously determined that registered DCMs, FCMs, swap dealers, major swap participants, eligible contract participants, SEFs, clearing members, foreign brokers and large traders are not small entities for purposes of the RFA.¹⁹² While the requirements under the proposed rulemaking may impact non-financial end users, the Commission notes that position limits levels apply only to large traders. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities. The Chairman made the same certification in the Proposal,¹⁹³ and the Commission did not receive any

comments on the RFA in relation to the proposed rulemaking.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (“PRA”) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. 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 issued by the Office of Management and Budget (“OMB”). Certain provisions of the proposed regulations would result in amendments to a previously-approved collection of information requirements within the meaning of the PRA. Therefore, the Commission is submitting to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 the information collection requirements proposed in this rulemaking proposal as an amendment to the previously-approved collection associated with OMB control number 3038–0013.

If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, headed “Commission Records and Information.” In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974. In January of 2012, the Commission received a petition requesting relief under section 4a(a)(7) of the CEA and clarification of certain aggregation requirements in regulation 151.7.

On May 30, 2012, the Commission published in the **Federal Register** a notice of proposed modifications to part 151 of the Commission’s regulations. The modifications addressed the policy for aggregation under the Commission’s position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. In an Order dated September 28, 2012, the District Court for the District of

Columbia vacated part 151 of the Commission’s regulations. The Commission is now proposing modifications to the aggregation provisions of part 150 of the Commission’s regulations that are substantially similar to the aggregation modifications proposed to part 151, except that the modifications address the policy for aggregation under the Commission’s position limits regime for futures and option contracts on nine agricultural commodities set forth in part 150.

The Commission is also proposing to amend other sections of part 150 in a separate rulemaking that would, among other things: Expand the number of contract markets subject to federal position limits; impose speculative limits on swaps contracts; and require exchanges to conform their aggregation policies to the Commission’s aggregation policy in part 150.4.¹⁹⁴ Given the increase in scope proposed in the other rulemaking, the Commission anticipates a corresponding increase in the PRA burdens arising from this proposal should the amendments to other sections of part 150 be adopted. Unless and until that rulemaking is finalized, however, the instant proposal applies only to the nine commodities enumerated in current § 150.2. The Commission requests comment regarding the impact on its PRA analysis should the amendments to part 150 proposed in the separate rulemaking be adopted.

Specifically, regulation 150.4(b)(2) proposes an exemption for a person to disaggregate the positions of a separately organized entity (“owned entity”). To claim the exemption, a person would need to meet certain criteria and file a notice with the Commission in accordance with regulation 150.4(c). The notice filing would need to demonstrate compliance with certain conditions set forth in regulations 150.4(b)(2)(i)(A)–(E). Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the filing.

The proposed rules also contain proposed regulation 150.4(b)(3) which establishes a similar but separate owned-entity exemption with more intensive qualifications for exemption. To claim the exemption, a person would

¹⁹⁰ 44 U.S.C. 601 *et seq.*

¹⁹¹ 5 U.S.C. 601(2), 603–05.

¹⁹² See Policy Statement and Establishment of Definitions of “Small Entities” for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, FCMs, and large traders) (“RFA Small Entities Definitions”); Opting Out of Segregation, 66 FR 20740, 20743, Apr. 25, 2001 (eligible contract participants); Position Limits for Futures and Swaps; Final Rule and Interim Final Rule, 76 FR 71626, 71680, Nov. 18, 2011 (clearing members); Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33548, June 4, 2013 (SEFs); A New Regulatory Framework for Clearing Organizations, 66 FR 45604, 45609, Aug. 29, 2001 (DCOs); Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, Jan. 19, 2012, (swap dealers and major swap participants); and Special Calls, 72 FR 50209, Aug. 31, 2007 (foreign brokers).

¹⁹³ See 77 FR 31780.

¹⁹⁴ See Position Limits for Derivatives (November 5, 2013).

need to meet certain criteria above and beyond that imposed by regulation 150.4(b)(2) and file an application for exemption with the Commission in accordance with regulation 150.4(c). The notice filing would need to demonstrate compliance with certain conditions as well as additional information that could inform the Commission's decision to grant or not to grant the person's application. Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the filing.

The Commission is also proposing to amend the definitions of eligible entity and independent account controller in part 150.1 and 150.4(5) to specifically provide for regulation 4.13 commodity pools established as limited liability companies. In addition, the Commission is proposing to amend the definition of independent account controller to specifically provide for commodity pool operators that operate excluded pools as defined under regulation 4.5(a)(4) of the Commission's regulations. These amendments would likely expand the number of entities that can file for the independent account controller aggregation exemption.

The proposal includes two provisions in proposed regulations 150.4(b)(6) and 150.4(b)(7) providing exemptions from aggregation for underwriting agents and broker-dealers engaging in market making activity, respectively. Both exemptions are self-executing and do not require a notice filing.

The proposal also includes proposed regulation 150.4(b)(8) which provides an exemption from aggregation where the sharing of information between persons would cause either person to violate federal law. The exemption would apply to a situation where the sharing of information creates a reasonable risk of a violation of federal, state, or foreign law or regulations adopted thereunder. The rules also propose a requirement that market participants file a notice demonstrating compliance with the condition, including an internal memorandum of counsel. The memorandum allows Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information, and is particularly helpful where the asserted impediment arises from laws and/or regulations that the Commission does not directly administer. Further, Commission staff

will have the ability to consult with other federal regulators as to the accuracy of the opinion, and to coordinate the development of rules surrounding information sharing and aggregation across accounts in the future.

Finally, the proposed rules propose relief from notice filings for "higher-tier" entities, which, under proposed regulation 150.4(b)(9), may rely on the filings submitted by owned entities. A "higher-tier" entity need not submit a separate notice pursuant to the notice filing requirements to rely upon the notice filed by an owned entity as long as it complies with conditions of the applicable aggregation exemption.

2. Methodology and Assumptions

It is not possible at this time to precisely determine the number of respondents affected by the proposed rules. Many of the regulations that impose PRA burdens are exemptions that a market participant may elect to take advantage of, meaning that without intimate knowledge of the day-to-day business decisions of all its market participants, the Commission could not know which participants, or how many, may elect to obtain such an exemption. Further, the Commission is unsure of how many participants not currently in the market may be required to or may elect to incur the estimated burdens in the future.

These limitations notwithstanding, the Commission has made best-effort estimations regarding the likely number of affected entities for the purposes of calculating burdens under the PRA. The Commission used its proprietary data, collected from market participants, to estimate the number of respondents for each of the proposed obligations subject to the PRA by estimating the number of respondents who may be close to a position limit and thus may file for relief from aggregation requirements.

The Commission's estimates concerning wage rates are based on 2011 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association ("SIFMA"). The Commission is using a figure of \$120 per hour, which is derived from a weighted average of salaries across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2011, modified to account for an 1800-hour work-year, adjusted to account for the average rate of inflation in 2012. This figure was then multiplied by 1.33

to account for benefits¹⁹⁵ and further by 1.5 to account for overhead and administrative expenses.¹⁹⁶ The Commission anticipates that compliance with the provisions would require the work of an information technology professional; a compliance manager; an accounting professional; and an associate general counsel. Thus, the wage rate is a weighted national average of salary for professionals with the following titles (and their relative weight): "programmer (average of senior and non-senior)" (15% weight), "senior accountant" (15%) "compliance manager" (30%), and "assistant/associate general counsel" (40%). All monetary estimates have been rounded to the nearest hundred dollars.

The Commission welcomes comment on its assumptions and estimates.

3. Reporting Burdens

Proposed regulation 150.4(b)(2) would require qualified persons to file a notice in order to claim exemptive relief from aggregation. Further, proposed regulation 150.4(b)(2)(ii) states that the notice is to be filed in accordance with proposed regulation 150.4(c), which requires a description of the relevant circumstances that warrant disaggregation and a statement that certifies that the conditions set forth in the exemptive provision have been met. Regulation 150.4(b)(3) specifies that qualified persons may request an exemption from aggregation in accordance with proposed regulation 150.4(c). Such a request would be required to include a description of the relevant circumstances that warrant disaggregation and a statement certifying the conditions have been met. Persons claiming these exemptions would be required to submit to the Commission, as requested, such information as relates to the claim for exemption. An updated or amended notice must be filed with the Commission upon any material change.

¹⁹⁵ The Bureau of Labor Statistics reports that an average of 32.8% of all compensation in the financial services industry is related to benefits. This figure may be obtained on the Bureau of Labor Statistics Web site, at <http://www.bls.gov/news.release/ecec.t06.htm>. The Commission rounded this number to 33% to use in its calculations.

¹⁹⁶ Other estimates of this figure have varied dramatically depending on the categorization of the expense and the type of industry classification used (see, e.g., BizStats at <http://www.bizstats.com/corporation-industry-financials/finance-insurance-52/securities-commodity-contracts-other-financial-investments-523/commodity-contracts-dealing-and-brokerage-523135/show> and Damodaran Online at <http://pages.stern.nyu.edu/~adamodar/pc/datasets/uValuedata.xls>). The Commission has chosen to use a figure of 50% for overhead and administrative expenses to attempt to conservatively estimate the average for the industry.

The release also proposes to extend relief available under 150.4(b)(5) to additional entities; the Commission expects that, as a result of the expanded exemptive relief available to these entities, a greater number of persons will file exemptive notices under 150.4(b)(5). The Commission also expects entities to file for relief under proposed regulation 150.4(b)(8), which allows for entities to file a notice, including a memorandum of law, in order to claim the exemption.

Given the expansion of the exemptions that market participants may claim, the Commission anticipates an increase in the number of notice filings. However, because of the relief for “higher-tier” entities under regulation 150.4(b)(9) the Commission expects that increase to be offset partially by a reduction in the number of filings by “higher-tier” entities. Thus, the Commission anticipates a net increase in the number of filings under regulation 150.4 as a result of the adoption of these proposed rules. The Commission believes that this increase will create an increase in the annual labor burden. However, because entities have already incurred the capital, start-up, operating, and maintenance costs to file other exemptive notices—such as those currently allowed for independent account controllers and futures commission merchants under regulation 150.4—the Commission does not anticipate an increase in those costs.

The Commission estimates that 100 entities will each file two notices annually under proposed regulation 150.4(b)(2), at an average of 20 hours per filing. Thus, the Commission approximates a total per entity burden of 40 labor hours annually. At an estimated labor cost of \$120, the Commission estimates a cost of approximately \$4,800 per entity for filings under proposed regulation 150.4(b)(2).

The Commission estimates that 25 entities will each file one notice annually under proposed regulation 150.4(b)(3), at an average of 30 hours per filing. Thus, the Commission approximates a total per entity burden of 30 labor hours annually. At an estimated labor cost of \$120, the Commission estimates a cost of approximately \$3,600 per entity for filings under proposed regulation 150.4(b)(3).

The Commission estimates that 75 entities will each file one notice annually under proposed regulation 150.4(b)(5), at an average of 10 hours per filing. Thus, the Commission approximates a total per entity burden of 10 labor hours annually. At an

estimated labor cost of \$120, the Commission estimates a cost of approximately \$1,200 per entity for filings under proposed regulation 150.4(b)(5).

The Commission estimates that 40 entities will each file one notice annually under proposed regulation 150.4(b)(8), including the requisite memorandum of law, at an average of 40 hours per filing. Thus, the Commission approximates a total per entity burden of 40 labor hours annually. At an estimated labor cost of \$120,¹⁹⁷ the Commission estimates a cost of approximately \$4,800 per entity for filings under proposed regulation 150.4(b)(8).

In sum, the Commission estimates that 240 entities will submit a total of 340 responses per year and incur a total burden of 7,100 labor hours at a cost of approximately \$852,000 annually in order to claim exemptive relief under regulation 150.4.

4. Comments on Information Collection

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission’s estimate of the burden of the proposed collections of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395-6566 or by email at OIRA-submissions@omb.eop.gov. Please provide the Commission with a copy of comments submitted so that all comments can be summarized and addressed in the final regulation preamble. Refer to the Addresses section of this notice for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information

between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

As noted above, the following proposed amendments to part 150 may require conforming technical changes if the Commission also adopts any proposed amendments to its regulations regarding position limits.¹⁹⁸

List of Subjects in 17 CFR Part 150

Position limits, Bona fide hedging, Referenced contracts.

For the reasons discussed in the preamble, the Commission proposes to amend 17 CFR part 150 as follows:

PART 150—LIMITS ON POSITIONS

■ 1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a, 6c, and 12a(5), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 150.1 to revise paragraphs (d), (e)(2), and (e)(5) to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *Eligible entity* means a commodity pool operator; the operator of a trading vehicle which is excluded, or which itself has qualified for exclusion from the definition of the term “pool” or “commodity pool operator,” respectively, under § 4.5 of this chapter; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) Which authorizes an independent account controller independently to control all trading decisions with respect to the eligible entity’s client positions and accounts that the independent account controller holds directly or indirectly, or on the eligible entity’s behalf, but without the eligible entity’s day-to-day direction; and

(2) Which maintains:

(i) Only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities to the managed positions and accounts, and necessary

¹⁹⁷ See above, text accompanying note 196.

¹⁹⁸ See Position Limits for Derivatives (November 5, 2013).

to fulfill its duty to supervise diligently the trading done on its behalf; or

(ii) If a limited partner, limited member or shareholder of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

(e) * * *

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to the managed positions and accounts to fulfill its duty to supervise diligently the trading done on its behalf or as consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

* * * * *

(5) Who is:

(i) Registered as a futures commission merchant, an introducing broker, a commodity trading advisor, or an associated person of any such registrant, or

(ii) A general partner, managing member or manager of a commodity pool the operator of which is excluded from registration under § 4.5(a)(4) of this chapter or § 4.13 of this chapter, provided that such general partner, managing member or manager complies with the requirements of § 150.4(c).

* * * * *

§ 150.3 [Amended]

■ 3. Amend § 150.3 as follows:

■ a. Remove the semicolon and the word “or” at the end of paragraph (a)(3);

■ b. Add a period at the end of paragraph (a)(3); and

■ c. Remove paragraph (a)(4).

■ 4. Revise § 150.4 to read as follows:

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated*—(1) *Trading control or 10 percent or greater ownership or equity interest.* For the purpose of applying the position limits set forth in § 150.2, unless an exemption set forth in paragraph (b) of this section applies, all positions in accounts for which any person, by power of attorney or otherwise, directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest must be aggregated with the positions held and trading done by such person. For the purpose of determining the positions in accounts for which any person controls trading or holds a 10 percent or greater ownership or equity interest, positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the

positions or ownership or equity interests were held by, or the trading were done or controlled by, a single person.

(2) *Substantially identical trading.* Notwithstanding the provisions of paragraph (b) of this section, for the purpose of applying the position limits set forth in § 150.2, any person that, by power of attorney or otherwise, holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies, must aggregate all such positions.

(b) *Exemptions from aggregation.* For the purpose of applying the position limits set forth in § 150.2, and notwithstanding the provisions of paragraph (a)(1) of this section, but subject to the provisions of paragraph (a)(2) of this section, the aggregation requirements of this section shall not apply in the circumstances set forth in this paragraph (b).

(1) *Exemption for ownership by limited partners, shareholders or other pool participants.* Any person that is a limited partner, limited member, shareholder or other similar type of pool participant holding positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest in a pooled account or positions need not aggregate the accounts or positions of the pool with any other accounts or positions such person is required to aggregate, except that such person must aggregate the pooled account or positions with all other accounts or positions owned or controlled by such person if such person:

(i) Is the commodity pool operator of the pooled account;

(ii) Is a principal or affiliate of the operator of the pooled account, unless:

(A) The pool operator has, and enforces, written procedures to preclude the person from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(B) The person does not have direct, day-to-day supervisory authority or control over the pool’s trading decisions;

(C) The person, if a principal of the operator of the pooled account, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool; and

(D) The pool operator has complied with the requirements of paragraph (c) of this section on behalf of the person or class of persons; or

(iii) Has, by power of attorney or otherwise directly or indirectly, a 25 percent or greater ownership or equity interest in a commodity pool, the operator of which is exempt from registration under § 4.13 of this chapter.

(2) *Exemption for certain ownership of greater than 10 percent in an owned entity.* Any person with an ownership or equity interest in an owned entity of 10 percent or greater but not more than 50 percent (other than an interest in a pooled account subject to paragraph (b)(1) of this section), need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:

(i) Such person, including any entity that such person must aggregate, and the owned entity:

(A) Do not have knowledge of the trading decisions of the other;

(B) Trade pursuant to separately developed and independent trading systems;

(C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;

(D) Do not share employees that control the trading decisions of either; and

(E) Do not have risk management systems that permit the sharing of trades or trading strategy; and

(ii) Such person complies with the requirements of paragraph (c) of this section.

(3) *Exemption for certain ownership of greater than 50 percent in an owned entity.* Any person with a greater than 50 percent ownership or equity interest in an owned entity (other than an interest in a pooled account subject to paragraph (b)(1) of this section), need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:

(i) Such person certifies to the Commission that the owned entity is not required under U.S. generally accepted accounting principles to be, and is not, consolidated on the financial statement of such person;

(ii) Such person, including any entity that such person must aggregate, and the owned entity meet the requirements of paragraphs (b)(2)(i)(A) through (E) of this section and such person demonstrates to the Commission that procedures are in place that are

reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity;

(iii) Each representative (if any) of the person on the owned entity's board of directors (or equivalent governance body) certifies that he or she does not control the trading decisions of the owned entity;

(iv) Such person certifies to the Commission that either all of the owned entity's positions qualify as bona fide hedging transactions or the owned entity's positions that do not so qualify do not exceed 20 percent of any position limit currently in effect, and agrees with the Commission that:

(A) If such certification becomes untrue for any owned entity of the person, such person will aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate; however, after a period of three complete calendar months in which such person aggregates such accounts or positions and all of the owned entity's positions qualify as bona fide hedging transactions, such person may make such certification again and be permitted to cease such aggregation;

(B) Any owned entity of the person shall, upon call by the Commission at any time, make a filing responsive to the call, reflecting only such owned entity's positions and transactions, and not reflecting the inventory of the person or any other accounts or positions such person is required to aggregate (this requirement shall apply regardless of whether the owned entity or the person is subject to § 18.05 of this chapter); and

(C) Such person shall inform the Commission, and provide to the Commission any information that the Commission may request, if any owned entity engages in coordinated activity regarding the trading of such owned entity, such person, or any other accounts or positions such person is required to aggregate, even if such coordinated activity does not conflict with any of the requirements of paragraphs (b)(2)(i)(A) to (b)(2)(i)(E) of this section;

(v) The Commission finds, in its discretion, that such person has satisfied the conditions of this paragraph (b)(3);

(vi) Such person, when first requesting disaggregation relief under this paragraph, complies with the requirements of paragraph (c)(2) of this section; and

(vii) Such person complies with the requirements of paragraph (c)(1) of this section if, subsequent to a Commission finding that the person has satisfied the

conditions of this paragraph (b)(3), there is a material change to the information provided to the Commission in the person's original filing under paragraph (c)(2) of this section.

(4) *Exemption for accounts held by futures commission merchants.* A futures commission merchant or any affiliate of a futures commission merchant need not aggregate positions it holds in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or of its affiliates, if:

(i) A person other than the futures commission merchant or the affiliate directs trading in such an account;

(ii) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account;

(iii) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10 percent or more in, or controls; and

(iv) The futures commission merchant or the affiliate has complied with the requirements of paragraph (c) of this section.

(5) *Exemption for accounts carried by an independent account controller.* An eligible entity need not aggregate its positions with the eligible entity's client positions or accounts carried by an authorized independent account controller, as defined in § 150.1(e), except for the spot month in physical-delivery commodity contracts, provided that the eligible entity has complied with the requirements of paragraph (c) of this section, and that the overall positions held or controlled by such independent account controller may not exceed the limits specified in § 150.2.

(i) *Additional requirements for exemption of affiliated entities.* If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would

maintain the independence of their activities; provided, however, that such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities to the managed positions and accounts and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate disclosure documents that meet the standards of § 4.24 or § 4.34 of this chapter, as applicable, where such disclosure documents are required under part 4 of this chapter.

(6) *Exemption for underwriting.* A person need not aggregate the positions or accounts of an owned entity if the ownership or equity interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(7) *Exemption for broker-dealer activity.* A broker-dealer registered with the Securities and Exchange Commission, or similarly registered with a foreign regulatory authority, need not aggregate the positions or accounts of an owned entity if such broker-dealer does not have greater than a 50 percent ownership or equity interest in the owned entity and the ownership or equity interest is based on the ownership of securities acquired in the normal course of business as a dealer, *provided that* such person does not have actual knowledge of the trading decisions of the owned entity.

(8) *Exemption for information sharing restriction.* A person need not aggregate the positions or accounts of an owned entity if the sharing of information associated with such aggregation (such as, only by way of example, information reflecting the transactions and positions of a such person and the owned entity) creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, provided that such person does not have actual knowledge of information associated with such aggregation, and provided further that such person has filed a prior notice pursuant to paragraph (c) of this section and included with such notice a written memorandum of law explaining in detail the basis for the conclusion that

the sharing of information creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder. However, the exemption in this paragraph shall not apply where the law or regulation serves as a means to evade the aggregation of accounts or positions. All documents submitted pursuant to this paragraph shall be in English, or if not, accompanied by an official English translation.

(9) *Exemption for higher-tier entities.* If an owned entity has filed a notice under paragraph (c) of this section, any person with an ownership or equity interest of 10 percent or greater in the owned entity need not file a separate notice identifying the same positions and accounts previously identified in the notice filing of the owned entity, provided that:

(i) Such person complies with the conditions applicable to the exemption specified in the owned entity's notice filing, other than the filing requirements; and

(ii) Such person does not otherwise control trading of the accounts or positions identified in the owned entity's notice.

(iii) Upon call by the Commission, any person relying on the exemption in this paragraph (b)(9) shall provide to the Commission such information concerning the person's claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(c) *Notice filing for exemption.* (1) Persons seeking an aggregation exemption under paragraph (b)(1)(ii), (b)(2), (b)(3)(vii), (b)(4), (b)(5), or (b)(8) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, and shall include:

(i) A description of the relevant circumstances that warrant disaggregation; and

(ii) A statement of a senior officer of the entity certifying that the conditions set forth in the applicable aggregation exemption provision have been met.

(2) Persons with a greater than 50 percent ownership or equity interest in an owned entity seeking an aggregation exemption under paragraph (b)(3)(vi) of this section shall file a request with the Commission, which shall not become effective unless and until the Commission finds, in its discretion, that such person has satisfied the conditions

of paragraph (b)(3) of this section, and shall include:

(i) A description of the relevant circumstances that warrant disaggregation;

(ii) A statement of a senior officer of the entity certifying that the conditions set forth in paragraph (b)(3) of this section have been met;

(iii) A demonstration that procedures are in place that are reasonably effective to prevent coordinated trading decisions by such person, any entity that such person must aggregate, and the owned entity; and

(iv) All certifications required under paragraph (b)(3) of this section.

(3) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide such information demonstrating that the person meets the requirements of the exemption, as is requested by the Commission. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(4) In the event of a material change to the information provided in any notice filed under this paragraph (c), an updated or amended notice shall promptly be filed detailing the material change.

(5) Any notice filed under this paragraph (c) shall be submitted in the form and manner provided for in paragraph (d) of this section.

(d) *Form and manner of reporting and submitting information or filings.* Unless otherwise instructed by the Commission or its designees, any person submitting reports under this section shall submit the corresponding required filings and any other information required under this part to the Commission using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission. Unless otherwise provided in this section, the notice shall be effective upon filing. When the reporting entity discovers errors or omissions to past reports, the entity shall so notify the Commission and file corrected information in a form and manner and at a time as may be instructed by the Commission or its designee.

(e) *Delegation of authority to the Director of the Division of Market Oversight.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(i) In paragraph (b)(3) of this section:

(A) To determine, after consultation with the General Counsel or such other employee or employees as the General Counsel may designate from time to time, if a person has satisfied the conditions of paragraph (b)(3) of this section; and

(B) To call for additional information from a person claiming the exemption in paragraph (b)(3) of this section, reflecting such owned entity's positions and transactions (regardless of whether the owned entity or the person is subject to § 18.05 of this chapter).

(ii) In paragraph (b)(9)(iii) of this section to call for additional information from a person claiming the exemption in paragraph (b)(9)(i) of this section.

(iii) In paragraph (d) of this section for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(3) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

Issued in Washington, DC, on November 8, 2013, by the Commission.

Christopher J. Kirkpatrick,
Deputy Secretary of the Commission.

Appendices to Aggregation of Positions—Commission Voting Summary and Statement of Chairman

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

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the proposed rule that would modify the CFTC's aggregation provisions for limits on speculative positions.

As we move forward on position limits for futures and swaps, it is important to concurrently implement reforms to the Commission's current regulations regarding which positions are totaled up as being owned or controlled by a particular entity. These total, aggregated positions under common control are then subject to the speculative position limits, taking into consideration any relevant exemptions.

We live in a time when companies often have numerous affiliated entities, sometimes

measured in the hundreds or thousands. Thus, it is appropriate to look at how speculative position limits apply across the enterprise. When Lehman Brothers failed, it had 3,300 legal entities within its corporate family. The question is—do you count all those 3,300 legal entities that Lehman Brothers once controlled, or do you apply a limit for each and every one of the 3,300? If we chose the second, that would be, in practice, a loophole around congressional intent. That's why this issue of aggregation comes into play.

The proposal generally provides for aggregation when various entities are under

common control. For instance, if the ownership interest is greater than 50 percent, it will be presumed to be aggregated and part of the group.

The proposal provides for certain exemptions from aggregation for the following reasons:

- Where sharing of information would violate or create reasonable risk of violating a federal, state or foreign jurisdiction law or regulation;

- Where an ownership interest is less than 50 percent and trading is independently controlled;

- Where an ownership interest is greater than 50 percent in a non-consolidated entity whose trading is independently controlled, and an applicant certifies that such entity's positions either qualify as bona fide hedging positions or do not exceed 20 percent of any position limit; or

- Where ownership of less than 50 percent results from broker-dealer activities in the normal course of business.

[FR Doc. 2013-27339 Filed 11-14-13; 8:45 am]

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Federal Register

Vol. 78, No. 221

Friday, November 15, 2013

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Privacy Act Compilation	741-6064
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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65515-65868	1
65869-66248	4
66249-66620	5
66621-66824	6
66825-66994	7
66995-67288	8
67289-67924	12
67925-68324	13
68325-68686	14
68687-68980	15

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR		40.....67224, 67225
		50.....68774
Proclamations:		51.....65903, 66858
9047.....	66605	55.....68774
9048.....	66607	70.....67224, 67225
9049.....	66609	72.....67224, 67225
9050.....	66611	74.....67224, 67225
9051.....	66613	150.....67224, 67225
9052.....	66615	429.....66202, 67319
9053.....	66617	430.....66202
9054.....	66619	431.....66202
9055.....	67287	
9056.....	68325	
Executive Orders:		
13653.....	66819	
Administrative Orders:		
Notices:		
Notice of October 30,		
2013.....		65867
Notice of November 7,		
2013.....		67289
Notice of November		
12, 2013.....		68323
5 CFR		
733.....	66825	
Proposed Rules:		
1201.....	67076	
6 CFR		
1001.....	66995	
1002.....	66995	
1003.....	66995	
7 CFR		
271.....	65515	
274.....	65515	
761.....	65523	
762.....	65523	
765.....	65523	
766.....	65523	
772.....	65523	
Proposed Rules:		
245.....	65890	
905.....	67977	
1211.....	67979, 68298	
3550.....	65582	
9 CFR		
94.....	68327	
317.....	66826	
318.....	66826	
320.....	66826	
327.....	66826	
331.....	66826	
381.....	66826	
412.....	66826	
424.....	66826	
10 CFR		
430.....	68331	
770.....	67295	
Proposed Rules:		
2.....	66660	
12 CFR		
204.....	66249	
652.....	65541	
1005.....	66251	
1024.....	68343	
1267.....	67004	
1269.....	67004	
1270.....	67004	
Proposed Rules:		
380.....	66661	
702.....	65583	
1006.....	67848	
14 CFR		
21.....	68687	
25.....	67291	
34.....	65554	
39.....	65869, 65871, 66252,	
	66254, 66258, 67009, 67011,	
	67013, 67015, 67018, 67020,	
	67022, 68345, 68347, 68352,	
	68355, 68357, 68360, 68688,	
	68691, 68693, 68697	
45.....	65554	
61.....	66261	
71.....	65554, 65555, 65556,	
	67024, 67292, 67293, 67294,	
	67295, 67296, 67297, 67298,	
	67299, 68699	
91.....	68360	
95.....	68699	
97.....	68702, 68704	
121.....	67800	
382.....	67882, 67918	
399.....	67882	
Proposed Rules:		
25.....	66317, 67077, 67320,	
	67321, 67323, 68775	
39.....	66666, 66668, 66859,	
	66861	
71.....	67324, 68777	
121.....	67983	
135.....	66865	
1260.....	68375, 68376	
1273.....	68375	
1274.....	68375, 68376	
15 CFR		
30.....	67927	
16 CFR		
1.....	65557	

801.....68705
 1500.....66840

17 CFR

1.....68506
 3.....68506
 22.....68506
 23.....66621
 30.....68506
 140.....68506
 190.....66621
 200.....67468
 240.....67468
 249.....67468

Proposed Rules:

150.....68946
 170.....67078, 67985
 200.....66428
 227.....66428
 232.....66428
 239.....66428
 240.....66428
 249.....66428
 300.....66318

20 CFR

404.....66638
 416.....66638

21 CFR

73.....68713
 510.....66263
 520.....66263
 522.....66263
 558.....66263
 886.....68714
 1240.....66841
 1308.....68716

Proposed Rules:

Ch. I.....65588
 20.....65904
 310.....65904
 314.....65904, 67985
 600.....65904
 601.....67985
 1308.....65923

22 CFR

41.....66814
 230.....66841
 502.....67025

24 CFR

50.....68719
 55.....68719
 58.....68719

Proposed Rules:

214.....66670

25 CFR

151.....67928

Proposed Rules:

226.....65589

26 CFR

1.....66639, 68735
 54.....68240

Proposed Rules:

1.....68779, 68780
 300.....65932

29 CFR

1910.....66641, 66642
 1926.....66641, 66642
 2590.....68240
 4022.....68739

Proposed Rules:

1904.....67254, 68782
 1910.....65932
 1926.....65932
 1952.....67254, 68782

30 CFR

Proposed Rules:

75.....68783
 936.....66671

33 CFR

100.....66844, 67026
 110.....67300
 117.....65873, 65874, 66265,
 66266, 67027, 67938
 151.....67027
 155.....67027
 160.....67027
 165.....65874, 66267, 66269,
 67028

Proposed Rules:

97.....68784
 117.....67084, 67999
 140.....67326
 141.....67326
 142.....67326
 143.....67326
 144.....67326
 145.....67326
 146.....67326
 147.....67326
 160.....68784
 165.....67086, 68002

34 CFR

Ch. III.....66271
 668.....65768
 674.....65768
 682.....65768
 685.....65768

Proposed Rules:

Ch. VI.....66865

36 CFR

1191.....67303

37 CFR

384.....66276
 385.....67938

38 CFR

17.....68364

39 CFR

3010.....67951

40 CFR

9.....66279
 19.....66643
 52.....65559, 65875, 65877,
 66280, 66648, 66845, 67036,
 67307, 67952, 68365, 68367
 81.....66845
 98.....68162
 180.....65561, 65565, 66649,
 66651, 67038, 67042, 67048,
 68741
 300.....66283
 372.....66848
 721.....65570, 66279

Proposed Rules:

52.....65590, 65593, 66320,
 67090, 67327, 68005, 68377,
 68378
 63.....66108, 66321
 98.....66674
 300.....66325

42 CFR

433.....66852

44 CFR

64.....65882
 206.....66852

45 CFR

146.....68240
 147.....68240
 153.....66653
 155.....66653
 156.....66653
 157.....66653
 158.....66653
 170.....65884

Proposed Rules:

1613.....65933

46 CFR

Proposed Rules:

97.....68784

47 CFR

1.....66287, 66288

22.....66288
 25.....67309
 27.....66288, 66298
 64.....67956
 69.....67053
 73.....66288, 67310
 74.....66288

Proposed Rules:

Ch. I.....65601
 64.....68005
 73.....68384
 90.....65594

48 CFR

Proposed Rules:

927.....66865
 952.....66865
 970.....66865

49 CFR

27.....67882
 571.....68748
 575.....66655

Proposed Rules:

26.....68016
 173.....66326
 174.....66326
 178.....66326
 179.....66326
 180.....66326

50 CFR

10.....65844
 17.....68370
 20.....65573
 21.....65576, 65578, 65844
 223.....66140
 224.....66140
 300.....65887
 622.....68372, 68373
 635.....68757
 648.....65888, 66857
 660.....68764
 679.....68374

Proposed Rules:

17.....65936, 65938, 68660
 21.....65953, 65955
 100.....66885
 223.....66675
 224.....66675
 226.....65959
 242.....66885
 635.....66327
 648.....66887
 679.....65602, 68390

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws>.

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H.R. 2094/P.L. 113-48
School Access to Emergency Epinephrine Act (Nov. 13, 2013; 127 Stat. 575)

H.R. 3302/P.L. 113-49

To name the Department of Veterans Affairs medical center in Bay Pines, Florida, as the "C.W. Bill Young Department of Veterans Affairs Medical Center". (Nov. 13, 2013; 127 Stat. 577)
Last List November 5, 2013

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