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Federal Register

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0982]

Drawbridge Operation Regulations; Hackensack River, New Jersey

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Port Authority Trans-Hudson Corporation (PATH), National Railroad Passenger Corporation (AMTRAK) and New Jersey Transit Rail Operation (NJTRO) Railroad Bridges. This deviation allows the PATH Bridge, mile 3.0; Amtrak's Portal Bridge, mile 5.0; and NJTRO's Upper Hack and HX Bridges, miles 6.9 and 7.7, respectively, all across the Hackensack River, NJ to remain closed during the Super Bowl XLVIII weekend to facilitate the movement of more than 150,000 visitors, guests and area residents to various public events and activities in New York and New Jersey.

DATES: This deviation is effective from 10 a.m. Saturday, February 1, through 1 a.m. Monday, February 3, 2014.

ADDRESSES: The docket for this deviation, [USCG–2013–0982] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: In the closed position the PATH Bridge, mile 3.0, has a vertical clearance of 40 feet at mean high water, and 45 feet at mean low water; AMTRAK Portal Bridge, mile 5.0, has a vertical clearance of 28 feet at mean high water, and 23 feet at mean low water; NJTRO Upper Hack Bridge, mile 6.9, has a vertical clearance of 8 feet at mean high water, and 13 feet at mean low water; NJTRO HX Bridge, mile 7.7, has a vertical clearance of 8 feet at mean high water and 13 feet at mean low water. The existing drawbridge operating regulations for these bridges are found at 33 CFR 117.723.

The bridge owners requested that the bridges not open for marine traffic from 10:00 a.m. Saturday, February 1 through 1:00 a.m. Monday, February 3, 2014, to facilitate the expected movement of more than 150,000 visitors, guests and area residents to various public events and activities in the New York and New Jersey area during the Super Bowl XLVIII weekend.

Hackensack River is transited primarily by commercial navigation. Bridge owners reported that there were no requests for bridge openings for any of the bridges for the past three years. Vessels that can pass under the closed draws may do so at all times.

Under this temporary deviation the PATH, Portal, Upper Hack and HX bridges may remain closed for marine traffic from 10:00 a.m. on Saturday, February 1 through 1:00 a.m. on Monday, February 3, 2014.

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

Dated: December 2, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–29856 Filed 12–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2013–0981]

Drawbridge Operation Regulations; Passaic River, Newark and Harrison, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the National Railroad Passenger Corporation (AMTRAK) Dock Railroad Bridge across Passaic River, mile 5.0, between Newark and Harrison, New Jersey. This deviation allows the AMTRACK Dock Bridge, mile 5.0, across the Passaic River to remain closed during the Super Bowl XLVIII weekend to facilitate the movement of more than 150,000 visitors, guests and area residents to various public events and activities in New York and New Jersey.

DATES: This deviation is effective from 10:00 a.m. Saturday, February 1 through 1:00 a.m. Monday, February 3, 2014.

ADDRESSES: The docket for this deviation, [USCG–2013–0981] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Joe Arca, Project Officer, First Coast Guard

District, *joe.m.arca@uscg.mil,* or (212) 668–7165. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The AMTRAK Dock Bridge has a vertical clearance of 24 feet at mean high water, and 29 feet at mean low water in the closed position. The existing drawbridge operating regulations are found at 33 CFR 117.739(e).

AMTRAK, requested that the Dock Bridge not open for marine traffic from 10:00 a.m. Saturday, February 1 through 1:00 a.m. Monday, February 3, 2014, to facilitate the expected movement of more than 150,000 visitors, guests and area residents to various public events and activities in the New York and New Jersey area during the Super Bowl XLVIII weekend.

Passaic River is transited primarily by commercial navigation. The bridge owner reported that there were no requests for bridge openings at the Dock Bridge for the past three years. Vessels that can pass under the closed draw may do so at all times.

Under this temporary deviation the Dock Bridge may remain closed for marine traffic from 10:00 a.m. on Saturday, February 1 through 1:00 a.m. on Monday, February 3, 2014.

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

Dated: December 2, 2013.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2013–29858 Filed 12–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN89

Secondary Service Connection for Diagnosable Illnesses Associated With Traumatic Brain Injury

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations concerning service connection. This final rule acts upon a report of the National Academy of Sciences, Institute of Medicine (IOM), Gulf War and Health, Volume 7: Long-Term Consequences of Traumatic Brain Injury, regarding the association between traumatic brain injury (TBI) and five diagnosable illnesses. This amendment establishes that if a veteran who has a service-connected TBI also has one of these diagnosable illnesses, then that illness will be considered service connected as secondary to the TBI.

DATES: *Effective Date:* This rule is effective January 16, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Ford, Regulatory Specialist, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6813. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 10, 2012, VA published in the **Federal Register** (77 FR 73366) a proposed rule to amend VA adjudication regulations (38 CFR Part 3) by revising 38 CFR 3.310 to add five diagnosable illnesses as secondary conditions which would be held to be the proximate result of service-connected TBI. The proposed rule identified those five illnesses as: (1) Parkinsonism, including Parkinson's disease, manifested following moderate or severe TBI; (2) Unprovoked seizures manifested following moderate or severe TBI; (3) Dementias (presenile dementia of the Alzheimer type and post-traumatic dementia) if manifest within 15 years following moderate or severe TBI; (4) Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI; and (5) Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI. We provided a 60-day public-comment period, which ended on February 8, 2013, and received 201 public comments.

1. Executive Summary

A. Purpose

This final rule amends VA's regulation concerning determinations of ''secondary service connection'' by identifying circumstances under which certain illnesses will, absent clear evidence to the contrary, be found to be the secondary result of a service-connected TBI. The effect of the rule will be to eliminate the need for case-specific development and decision on that issue, thereby promoting efficiency and consistency in claim adjudications and making it easier for qualifying claimants to establish service connection for these conditions.

VA provides disability compensation and other benefits for disability resulting from disease or injury that is ''service connected,'' meaning that it arose in service, was aggravated by service, or otherwise is causally related to service. *See* 38 CFR 3.303. ''Secondary service connection'' refers to the situation in which a service-connected disease or injury causes or aggravates a distinct condition. In that situation, 38 CFR 3.310(a) provides that ''disability which is proximately due to or the result of a service-connected disease or injury shall be service connected'' and ''the secondary condition shall be considered a part of the original condition.''

Regulations in VA's Schedule for Rating Disabilities currently recognize that TBIs potentially may produce a variety of cognitive, emotional/behavioral, or physical effects, including conditions that may be diagnosed as distinct mental or physical disorders. 38 CFR 4.124a, Diagnostic Code 8045. However, when a Veteran has suffered a TBI in service and also has been diagnosed with a distinct mental or physical condition, such as depression or endocrine dysfunction, it may not be apparent whether the latter condition was caused by the TBI or resulted from some other cause. In such cases, VA ordinarily would seek to obtain a medical opinion on that question and would make a determination taking into account the medical opinion and all other relevant evidence of record.

In a report titled ''Gulf War and Health, Volume 7: Long-Term Consequences of Traumatic Brain Injury,'' the IOM analyzed the available scientific and medical literature regarding the long-term consequences of TBI. In that report, IOM identified certain diagnosable conditions as to which there is relatively strong evidence that such conditions are associated with TBI because, for example, reliable studies show that those conditions occur more frequently in persons who have suffered a TBI than in other populations. After considering the IOM report and obtaining advice from medical experts and others within VA, the Secretary determined that there is a sufficient basis to establish a rule providing that certain diagnosable illnesses will be found to be the secondary result of TBI in certain circumstances, absent clear evidence to the contrary. Establishing such a rule will eliminate the need in individual cases to obtain a medical opinion or develop other evidence to determine whether the condition is associated with a TBI.

This rule is necessary to implement the Secretary's determination. Under 38 U.S.C. 501(a)(1), the Secretary is authorized to issue regulations regarding ''the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits.'' By eliminating the need to obtain medical opinions or other evidence in certain circumstances, this rule will enable VA to decide these claims more expeditiously and efficiently. Relatedly, this rule will make it easier for claimants to establish secondary service connection for the conditions covered by this rule. Further, this rule will ensure that claims involving the covered conditions are decided in accordance with available scientific knowledge and it will ensure consistency in the adjudication of claims.

It is important to note that this rule is intended only to identify circumstances in which, absent clear evidence to the contrary, VA must find the identified conditions to be the secondary result of service-connected TBI. It is not intended to limit or preclude a finding of secondary service connection for any other conditions or for any of the five specified conditions that are manifest outside the time periods set forth in this rule. Any claim that is not within the scope of this rule will be developed and decided under generally applicable procedures based on the evidence relating to that claim.

B. Summary of Major Provisions

This final rule revises 38 CFR 3.310 to provide that, absent clear evidence to the contrary, five diagnosable illnesses ''shall be held to be'' secondary results of TBI in certain circumstances. The identified circumstances pertain to the severity of the TBI and the period of time between the TBI and the manifestation of the secondary condition. Specifically, paragraph (d)(1) of the rule provides for secondary service connection of the following illnesses: (1) Parkinsonism, including Parkinson's disease, manifested following moderate or severe TBI; (2) Unprovoked seizures manifested following moderate or severe TBI; (3) Dementias of the following types: presenile dementia of the Alzheimer type, frontotemporal dementia, and dementia with Lewy bodies, if manifest within 15 years following moderate or severe TBI; (4) Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI; and (5) Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI. If those conditions are met, the secondary condition will be service connected and considered to be part of the service-connected TBI for purposes of providing VA disability benefits.

The time periods set forth in this rule are based upon available scientific and medical evidence, as summarized by the IOM, and reflect the finding that, when the secondary condition manifests within such time period, it is reasonable to conclude, without the need for further evidentiary development, that the condition resulted from the TBI. Because no time period is specified for Parkinsonism or unprovoked seizures following moderate or severe TBI, secondary service connection will be established if those conditions are manifest at any time after the TBI.

Paragraph (d)(3) of the final rule sets forth the criteria VA will use to determine whether a TBI in service was mild, moderate, or severe. Those criteria are the standard criteria that VA and the Department of Defense (DoD) both currently employ in evaluating the severity of a TBI. The criteria consist of five distinguishing factors, each pertaining to the effects of the injury at the time of the injury or shortly thereafter. The rule provides that a claimant need not meet all the criteria of a particular level of severity in order for VA to classify the TBI at that severity level. Rather, VA will rank the TBI at the highest level in which any criterion is met, except where the qualifying criterion is the same at both levels, in which case, VA would look to the other criterion to determine the highest level assignable.

Paragraph (d)(2) of the rule would state that neither the severity levels nor the time limits set forth in the rule will preclude a finding of service connection for conditions shown by evidence to be proximately due to service-connected TBI. It further explains that, if a claim does not meet requirements of this rule for a mandatory finding of secondary service connection, VA will develop and decide the claim under generally applicable principles of service connection without regard to paragraph (d)(10) of this rule.

2. Responses to Comments

We note that numerous commenters appeared to have slightly misunderstood the nature of the proposed rule in their comments. We are not establishing presumptions of service connection for these conditions. The proposed rule provides a legal framework for establishing the listed disabilities as service connected secondary to service-connected TBI. Presumptions, as VA generally uses them in establishing service connection, provide the nexus element between an event in service that is not itself disabling and the development of a disability. Secondary service connection, whether provided by regulation or shown by medical or lay evidence, links the secondary condition to an already established service-connected disability. However, the intent of the comments is clear, and we are responding to them as if the commenters had used ''secondary service connection'' instead of ''presumption.'' When noting the commenters' suggestions, we are using the commenters' term ''presumption'' so as to not change the commenters' meaning.

Favorable Comments

VA received numerous comments generally supporting the proposed rule and noting that when the final rule is published, it will be beneficial to veterans who have suffered a TBI. We agree with these comments and thank the commenters for submitting their views.

Comment Suggesting That the Proposed Rule Should Include a Presumption That a TBI Occurred

One commenter stated that the lack of a formal diagnosis of TBI should not be used to deny claims for conditions secondary to TBI. Instead, existence of the conditions should be used to presume the presence of TBI. Parkinsonism, Parkinson's disease, unprovoked seizures, dementia, depression, and diseases of hormone deficiency resulting from hypothalamo-pituitary changes are conditions that often occur in individuals who have no history of TBI; therefore, the mere presence of any of these conditions cannot be used to presume the presence of TBI. Further, each of these conditions manifest a distinct set of signs and symptoms that do not, by themselves, imply the preexistence of TBI. The purpose of this rulemaking is to address those situations in which a veteran has suffered a TBI during military service, later develops one of the five listed conditions, and the question arises as to whether the latter condition should be considered to be secondary to the former. Addressing situations where a veteran has one of the five listed conditions in the absence of TBI is outside the scope of this rulemaking.

Another commenter suggested that, similar to the new PTSD regulation at 38 CFR 3.304(f), lay evidence alone be sufficient evidence to demonstrate that a TBI occurred in service. The commenter reasoned that there may be

no records available for these claims given the delay of identification and onset of many of these conditions and, therefore, lay evidence may be the only way that many of these claims could be granted. This comment relates to evidence necessary to prove service connection for TBI under 38 U.S.C. 1110. This rulemaking focuses on the secondary service-connected conditions that are a proximate result of TBI; therefore, this comment is outside the scope of this rulemaking.

Comments Regarding Effective Dates

One commenter expressed the hope that the ''earliest effective date'' would provide veterans with retroactive benefits based on this rule. Another commenter asked whether this rule will be retroactive. In accordance with 5 U.S.C. 553(d), we are making this rule effective on the day 30 days after the date this notice is published in the **Federal Register**. We will apply this rule to all cases pending before VA on or after that date. If a claim that was previously and finally denied is later reopened and granted based on this rule, VA cannot pay benefits retroactive to the previously denied claim. Payments retroactive to a previously denied claim are authorized only in limited circumstances involving clear and unmistakable error or newly obtained service department records, but not where benefits are awarded based on a change in law. The U.S. Court of Appeals for the Federal Circuit has explained that, generally, ''[i]t is only by filing a [clear and unmistakable error] claim that a veteran can obtain benefits retroactive to the date of the original [VA] decision.'' *Comer* v. *Peake,* 552 F.3d 1362, 1370–71 (Fed. Cir. 2009). Further, 38 U.S.C. 5110(g) states that the effective date of an award of benefits made ''pursuant to any Act or administrative issue . . . shall not be earlier than the effective date of the Act or administrative issue.''

Although payments would not be retroactive to a previously denied claim, we note that this rule change would constitute a liberalizing VA regulation under 38 U.S.C. 5110(g) and 38 CFR 3.114. Under those provisions, a claimant is eligible for certain retroactive benefits based on the liberalizing law or VA issue, if the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing VA regulation and such eligibility existed continuously from that date to the date of the administrative determination of entitlement or of the claimant's request for review. In those circumstances, the effective date of an award will be ''fixed in accordance with the facts found'' except that it ''shall not be earlier than the effective date of the Act or administrative issue'' on which the award is based and, ''[i]n no event shall such award . . . be retroactive for more than one year from the date of application therefor.'' 38 U.S.C. 5110(g). Under this statute, if a qualifying application is received within one year of the date this final rule becomes effective, VA potentially may pay benefits retroactive to the effective date of this rule. If a qualifying application is filed more than one year after the effective date of this final rule, VA may pay benefits for a retroactive period of up to one year prior to the date of the application.

Comment Suggesting That Presumption Be Extended to Conditions With Limited/Suggestive Evidence of an Association With TBI

As stated in the proposed rule, this rulemaking is based on a report of the National Academy of Sciences, IOM, Gulf War and Health, Volume 7: Long-Term Consequences of Traumatic Brain Injury, regarding the association between TBI and subsequent illness. The report ranked the illnesses it studied into five categories based on the IOM's degree of confidence in the association between TBI and the illness:

1. Sufficient evidence of a causal relationship.
2. Sufficient evidence of an association.
3. Limited/suggestive evidence of an association.
4. Inadequate/insufficient evidence to determine whether an association exists.
5. Limited/suggestive evidence of no association.

Upon review of the report, the Secretary determined that a rulemaking is warranted to establish five diagnosable illnesses, for which there is ''sufficient evidence of a causal relationship'' or ''sufficient evidence of an association,'' as secondary conditions to TBI.

One commenter noted that the proposed rule would only establish presumptions for conditions in the top two categories. The commenter urged VA to also establish presumptions for every condition that the IOM ranked in the category ''limited/suggestive evidence of an association.'' Without citing any authority, the commenter asserted, ''The first three levels describe cases where the relationship is indicated by at least a preponderance of evidence.'' The commenter also described the third category as follows: ''For example, an evaluation of 'limited/suggestive evidence of an association' may describe a condition very likely to follow TBI, but where the research has yet to satisfactorily describe the incidence, thresholds, or causal mechanism.'' The commenter noted that the presumptions in the proposed rule were all based on illnesses ranked in the top two categories and urged VA to include illnesses from the third category as well.

We disagree that the category ''limited/suggestive evidence of an association'' describes conditions ''very likely to follow TBI, but where the research has yet to satisfactorily describe the incidence, thresholds, or causal mechanism.'' Nothing in the IOM report indicates that definition. In fact, the IOM report clearly states that this category means, ''Evidence is suggestive of an association between TBI and a specific health outcome in human studies but is limited because chance, bias, and confounding could not be ruled out with reasonable confidence.'' In contrast to the IOM's findings of ''sufficient evidence'' of a causal or statistical association, the ''limited/suggestive'' classification reflects some uncertainty as to whether the condition ordinarily can be associated with TBI. Moreover, the ''preponderance of evidence'' standard to which the commenter refers is not the basis for this final rule. This rule concerns the Secretary's decision to establish a special evidentiary rule applicable to specific conditions as to which there is particularly strong evidence of an association with TBI. Evidence in equipoise is the general standard of proof VA employs when weighing the evidence in an individual veteran's case in the absence of a special evidentiary rule. In exercising his rulemaking authority under 38 U.S.C. 501, the Secretary has decided to establish a special evidentiary rule for those conditions as to which there is strong evidence of an association with TBI, while retaining the generally applicable evidentiary rules, including evidence in equipoise standard, for all other conditions.

The primary purpose of this final rule is to codify sound medical principles recognized in the IOM report. For example, in the absence of any rule establishing service connection secondary to TBI, a veteran who suffered a moderate or severe TBI in service and is diagnosed with a neuroendocrinological disorder (*i.e.,* diseases of hormone deficiency that result from hypothalamo-pituitary changes) within 12 months thereafter could obtain service connection by submitting a physician's opinion that it is as likely as not that the TBI caused

the neuroendocrinological disorder. Such a physician's opinion would be consistent with the IOM's findings. Because illnesses listed in the top two IOM categories ordinarily would, upon proper development, be found to be secondary to TBI, VA has determined that it is appropriate to establish this rule to promote efficient and consistent decisions. Because the IOM's findings of ''limited/suggestive evidence'' reflect some uncertainty as to whether the condition ordinarily can be associated with TBI, VA believes that claims involving those conditions should continue to be decided based upon full development and evaluation of all evidence in each case, including the veteran's full medical history. In claims involving any disease not covered by this final rule, VA will apply the generally applicable standards governing service connection and secondary service connection to determine, based on the evidence in each case, whether the claimant's condition resulted from a service-connected TBI or is otherwise service connected. For these reasons, we make no change based on this comment.

Comment Suggesting Presumptions Should Be Adopted When Evidence Is Inconclusive

The same commenter asserted that the proposed rule ''contradicts the VA's stated policy of adopting presumptions where the factual record or medical evidence is inconclusive.'' In support of this statement, the commenter quoted the preamble of the rulemaking that created 38 CFR 1.18, ''Guidelines for Establishing Presumptions of Service Connection for Former Prisoners of War'':

> Evidentiary presumptions of service connection serve a number of purposes. By codifying medical findings and principles that otherwise might not be familiar to VA adjudicators, they promote the efficient resolution of issues of service connection without the need for case-by-case investigation and interpretation of the available medical literature. They promote fair and consistent decision making by establishing simple adjudicatory rules to govern the claims of similarly situated veterans. They also may assist claimants who would otherwise face substantial difficulties in obtaining direct proof of service connection due to the complexity of the factual issues, the lack of contemporaneous medical records during service, or other circumstances.

69 FR 60084, Oct. 7, 2004.

The commenter noted that in that rulemaking, VA established new presumptions for former prisoners of war (POW) based partly on the proposition that relevant medical research was poorly-developed because of the unusual nature of the POW experience, because few subjects were available for study, and because there are few comparable civilian populations. Based on the preamble language of this proposed rule, the commenter asserted, ''A presumption's purpose is to produce easier and more consistent outcomes for claimants in cases where the factual record is unavailable or where the medical science is undeveloped.'' The commenter further stated that the purpose of a presumption of service connection is ''not to codify scientific certainty, but rather to avoid denying claims simply because methodological research challenges have prevented the publication of high-quality medical science.''

In applying this analysis to the proposed rule, the commenter noted that the IOM report recognized that the research on the long-term health effects of TBI is limited and that the studies that have been done were limited by the difficulty of performing controlled primary studies on these effects. The commenter went on to assert that the proposed rule ''merely codifies existing scientific certainties; it provides no aid for cases where persistent scientific uncertainty may prevent adjudicators from correctly deciding meritorious claims.'' Based on these assertions, the commenter again stated that VA should extend the TBI presumptions to include all conditions for which the IOM found ''limited/suggestive evidence'' of an association.

As a preliminary matter, we agree with the commenter that the proposed rule essentially codifies established scientific principles, as this was VA's intention in proposing the rulemaking. However, we disagree that the state of medical knowledge on the health effects of POW service is the same or similar to the state of medical knowledge on the health effects of TBI. First, there are many more TBI subjects available for study than former POWs. According to the Defense and Veterans Brain Injury Center, there are over 266,000 veterans who suffered a TBI sometime between 2000 and 2012. Defense and Veterans Brain Injury Center, ''DoD Worldwide Numbers for TBI,'' *http://www.dvbic.org/dod-worldwide-numbers-tbi* (last visited April 15, 2013). In contrast, there were only 29,350 living former POWs in 2005 (when the final rule of the cited rulemaking was published). U.S. Dept. of Veterans Affairs, Office of the Assistant Secretary for Policy and Planning, ''American Prisoners of War (POWs) and Missing in Action (MIAs)'' (2006). According to data from VA's Office of Performance Analysis & Integrity, there are now only 10,059 living former POWs.

Second, there are many more comparable civilian population studies for TBI than for former POWs, including those who suffered TBIs from motor vehicle accidents, sports injuries, and workplace injuries. There is, therefore, considerably more medical research available on TBI than on former POWs. IOM was not limited to reviewing scientific studies of veterans, and according to its report, it did an initial assessment of 30,000 titles and abstracts and out of those further reviewed approximately 1,900 peer-reviewed scientific studies. There have been far fewer studies of former POWs. There are fewer than 200 peer-reviewed scientific studies on POWs. The rulemaking cited by the commenter established rules applicable only to former POWs precisely because VA determined that the challenges facing former POWs were very different from those facing veterans alleging injury due to most other types of in-service experiences.

We disagree that it would be appropriate to establish a rule directing a finding of service connection secondary to TBI on a matter for which there has been no ''publication of high-quality medical science.'' As stated in the preamble to the POW rulemaking cited above, ''presumptions [of service connection] are generally based on scientific and medical data that provide a basis for inferring a connection between a particular disease and some circumstance regarding the veteran's service.'' We believe that the scope of the proposed rule is properly limited to conditions for which sound scientific research permits confidence that an association with TBI exists in virtually every case. Where existing scientific evidence is less conclusive, we believe it is more appropriate to decide claims based on development and analysis of the facts of each case, including medical examinations and opinions taking account of the veteran's medical condition and history. This approach is consistent with the recognition by the U.S. Court of Appeals for Veterans Claims that medical studies and treatises alone often are insufficient to establish that a particular veteran's medical condition was caused by his or her service, but that there may be instances where medical treatises provide a sufficient ''degree of certainty'' that they may provide a basis for finding service connection in an individual case. *Sacks* v. *West,* 11 Vet. App. 314, 317 (1998).

Further, we note that the rankings in the IOM report, particularly in the

broadly defined ''limited/suggestive evidence'' category, do not precisely correspond to or control the statutory standards governing service connection, which VA is responsible for implementing through rulemaking and adjudication. There may be significant differences in the strength of the evidence for different conditions in the same category. The IOM also acknowledges that its ''limited/suggestive evidence'' classifications are ''limited because chance, bias, and confounding could not be ruled out with reasonable confidence.''

Finally, we note that VA's rating schedule indicates that TBI may cause a variety of cognitive, emotional/behavioral, and physical effects and instructs VA raters to appropriately consider and rate all such effects. 38 CFR 4.124a, Diagnostic Code 8045. These provisions properly notify VA raters to fully consider all potential health effects of TBI, including distinctly diagnosed conditions that may be due to a TBI. This final rule is intended to promote efficiency and uniformity by codifying certain well established medical principles, but is not intended to imply any finding by VA that veterans who incurred TBIs in service presently face unusual difficulties in establishing the right to compensation for the effects of their injuries, due to scientific uncertainty or other causes. In instances where there is some scientific uncertainty, or where TBI is one of several potential causes of a particular health effect, we believe that case-by-case evaluation of the facts of the veteran's disability picture is appropriate and that current procedures provide an adequate basis for ensuring the full and fair evaluation of disability due to TBI.

For these reasons, we make no change based on this comment.

Comment Suggesting the Proposed Rule Applies a Higher Evidentiary Standard for Service Connection Secondary to TBI

As part of the commenter's suggestion to create presumptions for every condition in the ''limited/suggestive evidence'' category, the same commenter asserted that the proposed rule applied a higher evidentiary standard than called for by statute. In support of this assertion, the commenter cited to the ''benefit of the doubt rule'' in 38 U.S.C. 5107(b). The commenter repeated the argument that conditions in the top three categories ''describe cases where the relationship is indicated by at least a preponderance of evidence.'' The commenter also asserted that VA should establish TBI presumptions for conditions in the fourth category, ''Inadequate/insufficient evidence to determine whether an association exists,'' because this ''describes conditions where doubt exists, due to insufficient or conflicting evidence'' and, therefore, the ''benefit of the doubt'' standard is satisfied. The commenter acknowledged that the ''benefit of the doubt rule'' applies to adjudicatory facts rather than legislative facts.

The ''benefit of the doubt rule'' states:

> (b) Benefit of the Doubt.—The Secretary shall consider all information and lay and medical evidence of record in a case before the Secretary with respect to benefits under laws administered by the Secretary. When there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.

38 U.S.C. 5107(b). There is no indication that Congress intended VA to use the benefit of the doubt principle when developing regulations, and this rulemaking is not based on the benefit of the doubt rule. Under 38 U.S.C. 501, VA has authority to issue regulations that are ''necessary or appropriate'' to carry out the laws VA administers. The evidentiary factors involved in adjudicating one claim are entirely different than the factors VA considers in drafting regulations of general applicability, and it ordinarily would not be logical to use the standard in section 5107(b) in the latter context. As previously explained, this rule establishes a special evidentiary rule for certain conditions as to which there is particularly strong evidence of an association with TBI; it does not purport to define all circumstances in which the evidence in a particular case may meet the benefit of the doubt standard. Furthermore, we note that § 3.310(d) is not an exclusive list of all of the conditions that may be secondarily service connected based on service-connected TBI; it merely establishes secondary service connection for a certain condition for which there is sound evidence of a strong association with TBI. Claimants may still file claims for secondary service connection for conditions not listed in § 3.310(d) under § 3.310(a). We make no change based on this comment.

In addition to 38 U.S.C. 5107(b), the commenter asserted that another statute, 38 U.S.C. 5103A, ''Duty to assist claimants,'' should guide VA's establishment of TBI presumptions. In support of this assertion, the commenter stated that VA's duty to assist a claimant in obtaining necessary evidence ''surely encompasses a duty not to require claimants to provide *unnecessary* evidence.'' The commenter concluded that, ''If the VA already has information sufficient to satisfy the 'benefit of the doubt rule' for a given question, then additional supporting evidence is unnecessary and the VA should not require it.'' The commenter pointed out that in some cases, VA has adopted presumptions for illnesses ranked in the limited/suggestive category, ''for conditions related to prisoner of war status, herbicide exposure, and general military service, among others.''

This comment appears to rest on the premise that the IOM's finding of ''limited/suggestive evidence'' of an association between TBI and a particular health effect is sufficient evidence to establish secondary service connection for that health effect in every case, such that any further evidentiary development would be unnecessary. VA does not agree with that premise. The IOM's own definition of ''limited/suggestive evidence'' indicates that there may be significant limitations on the conclusions and inferences that may be drawn from the available medical evidence regarding health effects in that category. Further, as the U.S. Court of Appeals for Veterans Claims has noted, evidence from medical studies and treatises of a general nature often is insufficient, standing alone, to resolve questions of causation and service connection in individual cases. Even if medical studies indicate that TBI is one possible risk factor for the development of a particular condition, it may be necessary to develop and consider each veteran's medical history regarding the onset, nature, and course of the veteran's condition and any other risk factors applicable to the veteran's case in order to determine the likelihood that the condition is related to TBI. It is VA's policy to avoid unnecessary development of evidence, and VA applies this policy on a case-by-case basis. 38 CFR 3.304(c). However, we do not believe that the IOM's findings of ''limited/suggestive evidence'' that certain conditions may be associated with TBI will obviate the need to develop and consider other medical evidence in all or most cases involving those conditions.

As noted above, VA proposed in this rulemaking to codify sound medical principles recognized in the IOM report, not to create presumptions. VA has created presumptions for certain diseases for which the IOM or VA has found ''limited/suggestive evidence of an association'' with herbicide exposure or other circumstances of service. In some instances, VA has determined that presumptions were not warranted for diseases in IOM's ''limited/suggestive

evidence'' category. Many of those determinations were made under a specific statutory formula for making such determinations in the context of the use of Agent Orange during the Vietnam War. Moreover, those prior determinations were based on the evidence and circumstances applicable to the particular condition at issue and do not establish any binding precedent for future rulemaking concerning other circumstances. Consequently, we make no change based on this comment.

Comment Suggesting That There Are Practical Reasons To Establish More Categories as Service Connected Secondary to TBI Than Proposed

In addition to the above legal arguments, the same commenter asserted that there are practical reasons for VA to expand the list of conditions beyond the five in the proposed rule. The commenter stated:

> When evaluating whether to adopt this presumption, the VA should take into consideration the very real costs that will arise if it requires claimants to jump through the hoop of re-proving facts that the VA already knows to be true. First, some claimants will fail to provide the results of the IOM Study and therefore fail to prove this element. Second, some adjudicators may incorrectly infer from the VA's decision not to adopt a presumption that the IOM Study's evidence is insufficient to satisfy the veteran's burden of proof. Third, the adjudication system is already far too burdened for the VA to saddle it with *pro forma* responsibilities. We recognize that the VA may be reluctant to disturb the veteran's statutory burden of proof, but these costs are too high a price to pay in cases where the burden of proof has become a mere formality.

The commenter's first point, that ''some claimants will fail to provide the results of the IOM Study and therefore fail to prove the [nexus] element,'' implies that the results of a scientific study or report are the only way a veteran can satisfy the nexus element in a service-connection claim. This assumption is incorrect because in most cases, the nexus element is proven via a medical opinion from an appropriate professional. The medical opinion would contain any necessary citation to medical authorities. Further, as noted above, the U.S. Court of Appeals for Veterans Claims has noted that, except where medical treatises speak with a sufficient ''degree of certainty,'' such treatises alone generally cannot establish that a particular claimant's disability is service connected and it is ordinarily necessary to obtain a medical opinion concerning the specific veteran's condition. *Sacks* v. *West,* 11 Vet. App. 314, 317 (1998). We, therefore, make no change based on this comment.

Regarding the commenter's concern that VA adjudicators may incorrectly infer from VA's decision not to issue rules directing a finding of secondary service connection for certain diseases that the IOM Study's evidence is insufficient to satisfy the veteran's burden of proof, we do not believe this is valid basis to change the proposed rule. That is because the proposed rule expressly precludes such inferences with regard to the severity of levels of the illnesses or the time limits with the following provision:

> (2) Neither the severity levels nor the time limits in paragraph (d)(1) of this section preclude a finding of service connection for conditions shown by evidence to be proximately due to service-connected TBI. If a claim does not meet the requirements of paragraph (d)(1) with respect to the time of manifestation or the severity of the TBI, or both, VA will develop and decide the claim under generally applicable principles of service connection without regard to paragraph (d)(1).

Furthermore, such inferences would also not be logical with regard to other conditions because the establishment of this rulemaking would not preclude a veteran from filing a claim for compensation with VA for a service-connected disability secondary to TBI for a condition other than the ones listed in the proposed rule. We note also that VA's rating schedule reflects that TBI may result in a variety of cognitive, emotional/behavioral, and physical effects, and directs VA raters to assign ratings applicable to all such conditions found in an individual's case to be the result of a TBI. 38 CFR 4.124a, Diagnostic Code 8045. That provision, which properly notifies VA raters to consider all health effects potentially associated with TBI, further makes clear that the beneficial provisions of this rule must not be construed to preclude compensation for other health effects associated with TBI.

The third comment, that ''the adjudication system is already far too burdened for the VA to saddle it with *pro forma* responsibilities,'' is based upon a false premise: That providing evidence of nexus by obtaining a medical opinion is inherently ''*pro forma''* whenever a veteran's claim falls outside the conditions that are listed in the proposed rule. In many cases, VA is required to obtain a medical opinion under 38 U.S.C. 5103A, ''Duty to assist claimants.'' As noted above, this statute requires VA to obtain a medical examination or a medical opinion ''when such an examination or opinion is necessary to make a decision on the claim.''

As stated above, the limitations in the scope of the proposed rule are based on sound medical and scientific principles regarding the health effects of TBI. In our judgment, there is no basis to expand these provisions as suggested by the commenter. In some cases, doing so would actually be contrary to current medical and scientific research. VA will monitor ongoing TBI research and can modify or expand the secondary service connections of TBI if medical research leads to that conclusion. For these reasons, we make no change based on this comment.

Another commenter also suggested that VA expand the diagnosable illnesses as secondary to service connection to TBI, to include post-traumatic headache, chronic post-traumatic stress disorder, exacerbation or precipitation of a psychiatric disorder (e.g., a stable bipolar patient whose bipolar illness becomes unstable following TBI), attentional disorders, sleep and wake disorders, and anxiety. The IOM report on which this rule is based did not expressly address all of those conditions and, to the extent it did address them, did not find sufficient evidence of an association between such conditions and TBI. We recognize that the health effects the commenter identifies may be found to be related to TBI in a particular case and, as noted above, VA's rating schedule for TBI instructs raters to provide appropriate evaluations for all health effects found to be related to a veteran's TBI. As to the conditions listed by the commenter, we find no basis for changing the current practice of relying upon case-by-case determinations as to whether those conditions are related to a veteran's TBI.

Another commenter suggested that the language of the proposed rulemaking be strengthened so that certain behavioral and social problems, while not diagnosable, including diminished social relationships, aggressive behaviors, long-term unemployment, be included in evaluating the severity of the claim for compensation purposes. For the reasons stated above, we believe that these types of effects are most properly evaluated on a case-by-case basis under VA's rating schedule, which provides that, in assigning a disability evaluation for TBI, due consideration will be given to emotional/behavioral dysfunction, whether or not such function is diagnosed as a mental disorder. 38 CFR 4.124a, Diagnostic Code 8045.

Comment Suggesting Language Stating That Claims That Are Not Included in This Rulemaking Will Be Given Equal Consideration

One commenter suggested that VA should use explicit language stating that cases/claims that fall outside of the established time frames of § 3.310(d) will be given equal consideration to determine whether a condition is secondarily service connected to the original TBI condition. The commenter states that many veterans do not report TBIs, which skews the entire timeframe, and inadequate screening and coping skills may delay diagnosis and screening of secondary conditions. Similarly, another commenter suggested that we remove all time limits because, in her experience, certain conditions relating to TBI do not manifest until many months after the TBI occurred.

The conditions and time limits specified in this rule reflect the IOM's findings and the Secretary's determination that IOM's findings provide a sufficient basis for concluding that, absent clear evidence to the contrary, the identified conditions will be deemed to be a secondary result of service-connected TBI in each case where they are manifest within the specified time periods. We decline to remove the time limits, because doing so would result in a broad rule going well beyond the scope of the IOM's findings. However, we emphasize that this rule is intended only to assist claimants and simplify adjudications in cases falling within the scope of this rule. It is not intended to have any adverse effect on claims involving other conditions or involving conditions manifest outside the times frames in this rule. In all claims for service connected benefits, VA evaluates all evidence of record on a case-by-case basis and applies generally applicable principles of service connection set forth in statute and regulation to determine whether the condition is service connected. This case-by-case analysis ensure that VA gives due consideration to unique circumstances in individual claims, such as delays in reporting an injury or delays in diagnosis.

Language to this effect is already included in the proposed rule at § 3.310(d)(2), which states that ''If a claim does not meet the requirements of paragraph (d)(1) with respect to the time of manifestation or the severity of the TBI, or both, VA will develop and decide the claim *under generally applicable principles of service connection without regard to paragraph (d)(1).*'' (Emphasis added.) We interpret generally applicable principles of service connection to include secondary service connection. Thus, we believe that the language that specifically refers to secondary service connection is unnecessary.

Comments Suggesting the Inclusion of Mild TBIs and Multiple Mild TBIs

At least two commenters urged VA to include mild TBI within the scope of this rulemaking. One commenter stated that the effects of mild TBI may not be apparent immediately following injury and that limiting the presumptions reflected in paragraph (d) to moderate or severe TBI, and placing time limitations for onset of symptoms, is not appropriate. Another commenter suggested that mild TBIs can swell the connections between neurons in the brain and this swelling, in turn, can cause types of dementia of the Alzheimer's type.

The primary and secondary studies cited by the IOM support its finding that there is sufficient evidence of an association between TBI (including mild TBI) and depression, as well as limited/suggestive evidence of an association between mild TBI and dementia of the Alzheimer type and parkinsonism, but only in the case of mild TBI with loss of consciousness. We did not include mild TBI in the rulemaking regarding dementia. A finding by the IOM of ''limited/suggestive evidence'' indicates that the evidence is suggestive of an association between TBI and the specific health outcome in human studies but is limited because chance, bias, and confounding factors could not be ruled out with reasonable confidence. There were no findings of a causal relationship or association between mild TBI and the other conditions that are the subject of this rulemaking. Given the findings of the IOM, and research since the IOM report was issued, VA does not believe that the rule should be amended as suggested by the commenter. We, therefore, make no changes based on this comment.

One commenter stated that multiple mild TBIs should be considered equivalent to moderate TBI for the purposes of this rulemaking. Citing the discussion by the IOM of the dose-response relationship, the commenter argued that the IOM treats multiple mild TBIs as a high-exposure cohort similar to severe TBI. In its report, the IOM described the types of evidence that were evaluated by the committee. This included data from observational studies that may infer a causal relationship between an event and possible outcome. The IOM noted that the dose-response relationship could be one element considered when inferring causality. The dose-response relationship is studied in various scientific disciplines, most notably toxicology. It describes the change in effect on an organism caused by differing levels of exposure to a stressor after a certain exposure time. On pages 107–08 of its report, the IOM observed that ''if studies of presumably low-exposure cohorts (for example, mild TBIs or a single injury) show only mild increases in risk whereas studies of presumably high-exposure cohorts (for example, moderate to severe TBIs or repeated injuries) show larger increases in risk, the pattern would be consistent with a dose-response relationship.'' VA views this as a restatement of the definition of dose-response relationship using TBI and physical injury as examples of stressors, not a finding by the IOM equating multiple mild TBIs with severe TBI. Our conclusion is consistent with a reading of the IOM report as a whole.

We note that because there is very little research on the chronic effects of mild TBI, VA and the DoD recently invested $62.2 million, to be spent over the next 5 years on a research consortium, ''Chronic Effects of Neurotrauma Consortium—CENC'' to study the chronic effects of mild TBI and common comorbidities in order to improve diagnostic and treatment options. See *http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2473.*

In addition, the commenter argued that failure to include multiple mild TBIs in the proposed rule is inconsistent with VA's purpose of adopting presumptions where persistent scientific uncertainty interferes with correct adjudication. As this commenter correctly noted, in a previous rulemaking, we stated that evidentiary presumptions ''may assist claimants who would otherwise face substantial difficulties in obtaining direct proof of service connection due to the complexity of the factual issues, the lack of contemporaneous medical records during service, or other circumstances.'' 69 FR 60084, October 7, 2004. We wrote this in relation to the use of presumptions in the case of prisoners of war who may have incurred injury in circumstances in which contemporaneous medical records were not created or are not available, and in which direct confirmatory proof of an incident is difficult to obtain. Presumptions are sometimes acceptable where factual uncertainty exists. However, the primary purpose of this final rule is to codify the sound medical principles recognized in the IOM report, and thus, addressing situations where there is scientific uncertainty relating to

TBI is outside the scope of this rulemaking.

Another group also urged VA to include multiple mild TBIs within the scope of this rulemaking, citing studies performed on football players as well as a study on patients diagnosed with Chronic Traumatic Encephalopathy. VA believes that there is currently an inadequate body of reliable research equating multiple mild TBI and moderate TBI. Concussion, or mild TBI, is a condition medically distinct from moderate or severe TBI. While the cited studies are suggestive, there are significant limitations in the applicability of the findings and conclusions. VA does not believe that multiple mild TBIs should be included within the scope of this rulemaking given the current state of research.

Two commenters urged VA to revise the rule to address the health effects of multiple mild brain injuries incurred over time. One of these commenters noted that some veterans may sustain multiple traumas to the brain over time resulting in brain injury that initially might be perceived as mild to moderate but cumulatively are moderate to severe.

The IOM recognized the cumulative effect of multiple incidents of head trauma in its discussion of sports-related TBIs and Dementia Pugilistica. Studies have shown that there is a period following brain injury when the brain remains particularly vulnerable to damage from a subsequent injury. See, e.g., Prins ML et. al., ''Repeated Mild Traumatic Brain Injury: Mechanisms of Cerebral Vulnerability,'' Journal of Neurotrauma, 30(1):30–8) (2013).

The IOM also noted that in determining TBI severity, different methods have been used in the last three decades to measure the magnitude of brain damage and to predict its outcome. The most widely used tool for measuring severity is the Glasgow Coma Scale. Other methods specifically mentioned by the IOM are the Abbreviated Injury Scale and the International Classification of Diseases. In addition, clinical criteria have also been used to determine the severity of head injuries, including alteration of consciousness, loss of consciousness, CT scans, and the duration of post-traumatic amnesia. Each of these tools has its own limitations. However, the cumulative effect of multiple head trauma over a period of time is taken into account during the clinical evaluation process through a review of the patient's history, comparison to baseline readings, and diagnostic examination. This would be a case-by-case evaluation, not suitable for prescriptive application as a secondary service connection. We believe that existing rating procedures, which include consideration of the veteran's full medical history in rendering medical opinions and assigning disability ratings, ensures that due consideration will be given to the potential effects of multiple mild TBIs based on their number, proximity in time, and any other relevant factors.

Comment Suggesting Assessment of TBI Severity

In the proposed rule, we recognized that some veterans may not meet all of the criteria within a particular severity level (as described above) or may not have been examined for all the severity factors at or shortly after the time of the incurrence of the TBI. We went on to note that the simplest, most efficient, and fairest way to rank such veterans was to apply two rules: (1) VA will not require that a TBI meet all the criteria listed under a certain severity level to classify the TBI under that severity level; and (2) If a TBI meets the criteria relating to loss of consciousness, post-traumatic amnesia, or Glasgow Coma Scale in more than one severity level, then VA will rank the TBI at the highest of those levels. We included these rules in proposed paragraph (d)(3)(ii).

One commenter asserted that ''the rating criteria [in the proposed rule] differ from those of established medical practice.'' The commenter noted that the joint DoD/VA guidelines on the evaluation of severity of TBI state that when the diagnostic criteria indicate different levels of severity, the highest level of any one criterion will be assigned. In the proposed regulation, however, raters will not apply a higher level when the higher level is indicated by the ''alteration of consciousness'' or ''structural imaging of the brain'' criterion.

We note that the joint VA/DoD guidelines cited above state, ''The patient is classified as mild/moderate/severe if he or she meets any of the criteria below within a particular severity level. If a patient meets criteria in more than one category of severity, the higher severity level is assigned.'' These principles are not limited to certain factors. We agree with the principle of applying the higher of two potentially applicable severity levels. However, literal application of the above-quoted statements would yield illogical and unintended results. The ''structural imaging of the brain'' criterion identifies ''Normal structural imaging'' as a feature of mild TBI and ''Normal or abnormal structuring'' as a feature of both moderate and severe TBI. If a claimant need only meet any single criterion of the ''severe TBI'' classification, then all TBIs would be evaluated as severe, because all TBIs would involve ''Normal or abnormal structural imaging.'' Similarly, the ''alteration of consciousness'' criterion indicates that both moderate and severe TBI involve alteration of consciousness for a period exceeding 24 hours and that differentiation between moderate and severe TBI should, therefore, be ''based on other criteria.'' It would be inconsistent with that stated direction to conclude that a patient's TBI was severe solely because it met the criterion of alteration of consciousness exceeding 24 hours. Accordingly, we decline to adopt the unqualified principle that meeting any single criterion for a specific severity level will result in assignment of that severity level. In considering this comment, however, we recognized that the criteria for alteration of consciousness and structural imaging of the brain do provide meaningful distinctions between mild and moderate TBI. We believe that a TBI that meets the criterion for moderate TBI under either of those categories should be evaluated as moderate, even if it meets none of the other criteria for moderate TBI. Accordingly, we have revised (d)(3)(ii) of the proposed regulation to read, in pertinent part, ''If a TBI meets the criteria in more than one category of severity, then VA will rank the TBI at the highest level in which a criterion is met, except where the qualifying criterion is the same at both levels.'' This language is intended to clarify that VA generally will assign the highest applicable level of severity, but will not treat ''Normal or abnormal structural imaging'' or alteration of consciousness exceeding 24 hours, standing alone, as establishing that the TBI is severe rather than moderate.

The commenter also noted that because medical science on TBI is evolving ''it is likely that medical practice will change and that it will diverge from whatever criteria are published in this regulation.'' The commenter, therefore, suggested that VA insert the following language in § 3.310(d): ''(i) For diagnoses of the severity of TBI, this regulation adopts the nomenclature of the Department of Defense Assistant Secretary for Health Affairs, 'Traumatic Brain Injury: Definition and Reporting,' October 1, 2007. Medical diagnoses of the severity of TBI must be made in accordance with those standards, or with updated versions of the same standards.''

For two reasons, we decline to adopt this suggestion. First, it would make the regulation difficult to use. It would require anyone using this regulation to

find and read the DoD document referenced. It would cause confusion because the reader would not know whether DoD has published an ''updated version'' or where to find it. Second, it would bind VA to apply unknown future standards that may not be usable in the adjudication of veterans' disability claims.

Another commenter suggested that we clarify paragraph (3)(ii) to state that the severity of TBI is based on contemporaneous documentation not subsequent testimony or witness statements. Proposed paragraph (3)(ii) stated that ''[t]he determination of the severity level under this paragraph is based on the TBI symptoms at the time of injury or shortly thereafter, rather than the current level of functioning.'' Although contemporaneous evidence ordinarily will be the most probative evidence of the TBI symptoms at the time of injury or shortly thereafter, we cannot rule out the possibility that subsequent statements may also be probative evidence that VA must consider. We, therefore, make no change based on this comment.

Comment Alleging That Medical Determinations Will Be Made by VA Adjudication Staff

Under the proposed rule, VA would determine eligibility for secondary service connection based in part on the severity of the initial TBI. VA would rate the severity of the TBI in one of three categories (mild, moderate, and severe) in conformity with joint VA/DoD guidance on the assessment of TBI severity. Department of Defense Assistant Secretary for Health Affairs, ''Traumatic Brain Injury: Definition and Reporting'' 2, October 1, 2007. This guidance considers the following factors: structural imaging of the brain, the Glasgow Coma Scale, and the durations of any loss of consciousness, alteration of consciousness/mental state, or post-traumatic amnesia.

One commenter asserted that this provision in the proposed rule would improperly ''permit raters to make medical diagnoses.'' The commenter cites the seminal case *Colvin* v. *Derwinski,* 1 Vet. App. 171, 174 (1991), for the principle that VA adjudication staff ''are prohibited from relying on their own lay judgment to decide medical questions.'' The commenter goes on to assert that, ''[b]ecause the criteria that define the levels of severity are individual physiological responses rather than external factual circumstances, determining the severity of a TBI is a medical diagnosis.'' The commenter concluded that, ''[t]he fact that the protocol for determining the severity of TBI appears to be relatively mechanical does not mean that laypersons are competent to make that determination.''

As a preliminary matter, we note that the commenter misstates the concept of diagnosis. As stated in Dorland's Illustrated Medical Dictionary, diagnosis means, ''1. the determination of the nature of a case of disease'' or ''2. the art of distinguishing one disease from another.'' Dorland's Illustrated Medical Dictionary 507 (30th ed. 2003). Assessment of the severity of an injury is not a diagnosis.

Furthermore, it is well within the authority of a VA adjudicator to determine the nature and severity of an injury based on the available medical and lay evidence. For example, in 38 CFR 4.56, ''Evaluation of muscle disabilities,'' VA regulations refer to various types of ''[t]hrough and through'' gunshot wounds. In such cases, the VA adjudicator reviews the relevant medical evidence and then makes a determination whether the gunshot passed through the veteran's body. He or she can make this determination even if the medical records do not explicitly address this point. The adjudicator is merely overlaying the medical and lay evidence onto the regulatory criteria to reach a factual determination. There is no medical judgment required to do this. Similarly, a VA adjudicator is empowered under 38 CFR 4.120, ''Evaluations by comparison'' to determine the ''site and character of the injury. Likewise, in 38 CFR 4.41, ''History of injury,'' VA instructs its adjudicators, ''In considering the residuals of injury, it is essential to trace the medical-industrial history of the disabled person from the original injury, considering the nature of the injury and the attendant circumstances . . .''

The table in proposed § 3.310(d)(3) simply requires a VA adjudicator to apply certain objective criteria to the medical and lay evidence of record regarding the TBI symptoms at the time of the injury or shortly thereafter. Nothing in the proposed rule would prohibit a VA adjudicator from obtaining a medical opinion if he or she requires more precise medical information to properly determine in which of the three severity levels the veteran's TBI belongs. In fact, under VA's duty to assist (38 U.S.C. 5103A(d)), VA is required to obtain a medical examination or a medical opinion ''when such an examination or opinion is necessary to make a decision on the claim.''

If VA were to adopt the commenter's implied suggestion that we obtain a medical opinion regarding severity of the TBI in every case, we would be needlessly delaying many veterans' claims which could otherwise be granted without such an opinion. This would not only delay the claims of veterans seeking service connection for the secondary effects of their TBI, but the claims of other veterans who would be forced to wait longer for their medical exam or opinion. For these reasons, we make no change based on this comment.

Comment Suggesting Clarification on the Rating of the Secondary Condition

One commenter expressed concern that the proposed rule did not address cases in which ''a veteran with an existing rating for a secondary illness is higher than the [TBI] rating they would receive under the new rule, which could result in a reduction in the veteran's compensation and schedular rating from the application of this rule.'' The commenter further stated, ''This could also result in situations where a veteran is not adequately compensated for the severity of the secondary illness and its impact on quality of life/functioning.'' This same commenter also alleges that the proposed rule does not address the rule's applicability to prior determinations made by VA regarding service connection for TBI and the severity of the secondary condition in relation to the TBI rating. This commenter states that ''the rule only provides for a service connection for [TBI] that do not have the necessary medical documentation to be assessed under the new section proposed if there are also secondary illnesses that may warrant a rating greater than under the new rule.'' He further asserts that ''[T]his could result in veterans receiving a lower schedular rating and subsequent reduction in category grouping for treatment of their illness than previously received.''

VA does not believe that this rulemaking could result in a lower disability rating for any veteran. This rule does not govern how VA determines the degree of disability caused by any service-connected illness, but only provides a mechanism for establishing service connection for certain illnesses. If a veteran were already service connected for one of the five illnesses listed in the rule, then this rule would have no impact on his or her status or rating. Regarding prior claims for service connection of a TBI, this rule would have no impact on those either. This rule does not alter the requirement to first prove that a TBI is service connected in order for VA to consider

what conditions may be service connected as secondary to that TBI.

Comment Suggesting Inclusion of Acquired Brain Injuries

One commenter urged VA to include all acquired brain injuries in the coverage of this rule, such as damage caused by anoxia or hypoxia when the body is subjected to blast or pressure waves following an explosion. The IOM noted at page 14 of its report that TBI can be caused not only by a blow or by jolt to the head or penetrating head injury, but also by exposure to an external energy source. VA agrees with that observation, and we did not limit the scope of this rulemaking to only TBI incurred as a result of a blow to the head. Acquired brain injuries that meet the criteria for service-connected TBI would be covered by this rule. Acquired brain injuries that are not categorized as TBI were not studied in the IOM report and are outside of the scope of this rulemaking. We make no change based on this comment.

Comments Regarding Specific Conditions Secondarily Service-Connected to TBI

1. Parkinsonism and Parkinson's Disease

We received two comments urging VA to amend proposed paragraph (d)(1)(i), that states that parkinsonism shall be held to be the proximate result of service-connected moderate or severe TBI, in the absence of clear evidence to the contrary. One commenter urged VA to clearly indicate that Parkinson's disease is included in the definition of parkinsonism. In support, the commenter cites the definition of parkinsonism found on VA's Parkinson's Disease Research, Education, and Clinical Centers (PADRECC) Web site, which can be interpreted to exclude Parkinson's disease from that definition. In addition, the commenter cited definitions of parkinsonism found on the Web sites of the Michael J. Fox Foundation and the National Parkinson's Foundation.

Another commenter referred to an earlier IOM report, Veterans and Agent Orange: Update 2008. Institute of Medicine of the National Academies, Veterans and Agent Orange: Update 2008, The National Academies Press (Washington, DC, 2009); available online at *http://www.nap.edu/openbook.php?record-id=12662&page=515* (accessed June 24, 2013) (hereinafter ''Veterans and Agent Orange: Update 2008''). The commenter asserts that parkinsonism and other similar diseases are not the same disease as Parkinson's disease, citing the IOM's statement in that earlier report that ''[Parkinson's disease] must be distinguished from a variety of parkinsonian syndromes, including drug-induced parkinsonism and neurodegenerative diseases, such as multiple systems atrophy, which have parkinsonian features combined with other abnormalities.'' Veterans and Agent Orange: Update 2008, 515–16.

The commenter is correct in the assertion that Parkinson's disease is not the same as parkinsonism. The earlier report that the commenter is referring to—Veterans and Agent Orange: Update 2008—evaluated the correlation between Parkinson's disease and certain herbicide exposures. In Veterans and Agent Orange: Update 2008, the IOM specifically limited its study to the relationship between herbicide exposure and Parkinson's disease and cautioned readers, as the commenter correctly noted, that Parkinson's disease ''must be distinguished from a variety of parkinsonian syndromes, including drug-induced parkinsonism and neurodegenerative diseases.'' Agent Orange: Update 2008 at 515–16. The IOM included this caution because it wanted to be clear that it was not evaluating the correlation between parkinsonism and certain herbicide exposure; rather, its evaluation was explicitly limited to correlations between certain herbicide exposure and Parkinson's disease. Veterans and Agent Orange: Update 2008 was the subject of an earlier VA rulemaking in which VA amended 38 CFR 3.309(e) to establish presumptive service connection for Parkinson's disease based on exposure to certain herbicide agents. 38 CFR 3.309(e); *see* Diseases Associated with Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease), 75 FR 53202–53204 (Aug. 31, 2010); *see also* Diseases Associated with Exposure to Certain Herbicide Agents (Hairy Cell Leukemia and Other Chronic B-Cell Leukemias, Parkinson's Disease and Ischemic Heart Disease), 75 FR 14391–14392 (Mar. 25, 2010). Based on the limited scope of the IOM report, VA amended § 3.309(e) to only include Parkinson's disease while clarifying in its Final Rule that ''Parkinson's disease'' does not include parkinsonism because the IOM report specifically did not opine regarding parkinsonism. In the Final Rule, VA stated, ''Update 2008 only evaluated the correlation between certain herbicide exposures and Parkinson's disease. Parkinsonism, and other similar diseases, is not the same disease as Parkinson's disease''.

On page 246 of the IOM report at issue in this rulemaking—Gulf War and Health, Volume 7: Long-Term Consequences of Traumatic Brain Injury—the IOM clearly affirms the commenter's assertion that parkinsonism is not the same as Parkinson's disease. The IOM notes that although Parkinson's disease is the primary underlying cause of parkinsonism ''other factors have been associated with [parkinsonism].'' The IOM committee clearly considered Parkinson's disease to be the primary underlying cause of parkinsonism, and symptoms of Parkinson's disease to be within the constellation of symptoms that comprise parkinsonism and we agree with that assessment. In essence, Parkinson's disease is a form of parkinsonism; therefore, all Parkinson's disease is parkinsonism. However, the reverse relationship is not true: not all parkinsonism is Parkinson's disease. Therefore, it is not contradictory for VA to include Parkinson's disease as a part of parkinsonism in this rulemaking while maintaining that Parkinson's disease does not include parkinsonism with regard to 38 CFR 3.309(e). Furthermore, in the present report, the IOM evaluated parkinsonism while in Veterans and Agent Orange: Update 2008 referred to by the commenter the IOM limited its evaluation only to Parkinson's disease; therefore, VA is justified in using the broader term ''parkinsonism'' in § 3.310(d)(i) while maintaining the use of the more limited term ''Parkinson's disease'' in § 3.309(e). However, VA understands that, due to the limited scope of the term ''Parkinson's disease'' in 38 CFR 3.309(e), there exists the potential for confusion concerning the scope of the term ''parkinsonism'' as used in 38 CFR 3.310(d)(i). Therefore, we are adding '', including Parkinson's disease,'' following Parkinsonism in paragraph (d)(1)(i) to provide clarity.

Numerous commenters urged ''VA to continue to review research to assess whether it supports extending eligibility for these benefits to veterans who experience any TBI, not just those classified as moderate or severe.'' One commenter specifically urged VA to amend paragraph (d)(1)(i) to include veterans with parkinsonism following mild TBI with loss of consciousness (LOC). The commenter relied on the two primary studies considered by the IOM. In one of the cited studies, the authors examined a history of TBI as a risk factor for Parkinson's Disease (PD) in a case–control study. Bower JH, et. al., ''Head trauma preceding PD: A case-

control study,'' Neurology, 60(10):1610–1615 (2012). Mild head trauma was defined in this study as the absence of skull fracture and an LOC or post-traumatic amnesia lasting less than 30 minutes. The authors considered the association between PD and a history of mild TBI with LOC, moderate TBI, or severe TBI and found a significant association. The reported data did not further differentiate between mild TBI with LOC, moderate TBI, or severe TBI, so it is unclear how many of the identified patients had mild TBI with LOC. The authors noted that the ''results suggest an association between head trauma and the later development of [Parkinson's disease] that varies with severity.'' The IOM noted several possible study limitations.

In the second study, the authors conducted a case-control study of 93 male twin pairs discordant for Parkinson's disease, identified through the National Academy of Science's World War II veteran twins cohort. Goldman SM, et al, ''Head Injury and Parkinson's Disease Risk in Twins,'' Annals of Neurology, 60(1):65–72 (2006). The authors concluded that there was an association between TBI and parkinsonism, and an increased risk of Parkinson's disease in patients that had TBI with LOC or post-traumatic amnesia. They found no significant association between duration of LOC and Parkinson's disease.

The IOM concluded that there is ''limited/suggestive evidence of an association'' between mild TBI with LOC and parkinsonism, which means that ''[e]vidence is suggestive of an association between TBI and a specific health outcome in human studies but is limited because chance, bias, and confounding could not be ruled out with reasonable confidence.'' Based on our independent review and analysis of these two research studies, we agree with the IOM's conclusion. In the Bower study, there was insufficient differentiation of data to determine how many subjects had mild TBI with LOC, and the study has limited utility for our purposes because of broad confidence intervals and the possibility that mild TBI could not be identified based solely on a review of the medical records. The Goldman study concluded solely that there was an increased risk of Parkinson's disease in patients that had TBI with LOC or post-traumatic amnesia and no association between duration of LOC and Parkinson's disease. VA does not believe that the available scientific evidence warrants expanding the list of conditions in paragraph (d)(1)(i) to include mild TBI with LOC, and so we make no changes based on this comment.

2. Seizures

One commenter asserted that we misquoted study results regarding when seizures occur following a TBI. The commenter asserted that the study stated that seizures may occur at any time following a TBI. In the proposed rule at paragraph (d)(1)(ii), we stated that unprovoked seizures following moderate or severe TBI shall be held to be the proximate result of the service-connected TBI, in the absence of clear evidence to the contrary. We placed no limitation on when the unprovoked seizure must manifest during the veteran's life, and so we make no change based on this comment.

3. Dementias

Two commenters recommended amending paragraph (d)(1)(iii) to remove any time limit on when dementias must manifest in order for the establishment of service connection secondary to TBI to apply. Dementias are very common, with many patients without a history of TBI over the age of 60 being diagnosed annually with dementia. Given the prevalence of the condition in the general population, VA believes it appropriate to require development of dementia within a certain time period following a TBI for this rulemaking to apply. The available medical research indicates that TBI increases the risk of dementia and accelerates the timeline for developing that condition. In cases where dementia develops more than 15 years after a TBI, the link between the two conditions becomes less clear as the intervening time period becomes more attenuated. We make no changes to the rulemaking as a result of these comments.

One commenter recommended that the definition of dementia in paragraph (d)(1)(iii) be amended to include frontotemporal dementia and dementia with Lewy bodies. VA agrees. The research studies cited in support of this recommendation are persuasive and consistent with the body of research considered by the IOM. In addition, VA has continued to review the definition of dementia in this rulemaking and has determined that post-traumatic dementia should be removed from the definition. Post-traumatic dementia is not a recognized ICD–9 diagnosis, and including the condition in this rulemaking could result in confusion, uncertainty, and inconsistent application of the establishment of service connection secondary to TBI. We are, therefore, revising the regulation at (d)(1)(iii) to read, ''Dementias of the following types: Presenile dementia of the Alzheimer type, frontotemporal dementia, and dementia with Lewy bodies, if manifest within 15 years following moderate or severe TBI.'' This change is not intended to suggest that dementia noted by a physician as being ''post-traumatic'' or otherwise related to a TBI would be outside the scope of this rule. Rather, it reflects that clinicians generally do not use that term as a diagnostic classification and are not required to do so for purposes of this rule. The purpose of this change is to ensure that the text of the rule accurately reflects recognized diagnostic categories and will, therefore, be easier to apply.

One commenter urged VA to continue to review research on the relationship between Alzheimer's disease and TBI and to emphasize the importance of early diagnosis of Alzheimer's disease. While matters of medical research and treatment are outside the scope of this rulemaking, we will continue to review the emerging research literature on TBI and dementia. In addition, we will continue our efforts to improve dementia recognition, diagnosis, and care.

4. Depression

The proposed rule suggested that VA establish service connection secondary to TBI for depression if manifest within 3 years of the incurrence of a moderate or severe TBI or within 12 months of the incurrence of a mild TBI. One commenter stated that we misquoted study results and that there was no limitation on when the depression manifests following a TBI. It is unclear whether the commenter meant that VA had misquoted the IOM report itself or the research studies referenced in that report.

As a preliminary matter, we note that the proposed rule concerning secondary service connection for depression does not preclude a claim for direct service connection of depression, or a claim for service connection of depression secondary to TBI under § 3.310(a) for a condition that manifests outside the prescribed time periods. Paragraph (d)(2) provides that if a claim does not meet either the time of manifestation or severity of TBI, or both, VA will develop and decide the claim under generally applicable principles of service connection without regard to these rules concerning secondary service connection.

Moreover, we believe that the scientific literature supports the proposed rule's time and severity limitations for depression. The IOM

reviewed four primary and five secondary studies of major depression manifesting following TBI. The studies showed a higher rate of major depression 6 months or more after TBI when compared to appropriate comparison groups. For example, one 2004 study showed that in the first year after a moderate to severe TBI, 49% of the patients had evidence of psychiatric illnesses compared with 34% in the mild-TBI group and 18% in the comparison group. Fann JR, et. al., ''Psychiatric illness following traumatic brain injury in an adult health maintenance organization population,'' Archives of General Psychiatry, 61(1):53–61 (2004). The authors found the risk of psychiatric illness to be greatest in the period 6 to 12 months after the TBI and the risk was higher for moderate or severe TBI than for mild TBI. For depression that is first manifest after this identified period of significant increased risk, the available studies provide no reliable basis for concluding as a general matter that the depression is linked to the TBI rather than other causes. In such cases, we believe it is necessary to evaluate the medical evidence concerning the particular veteran's illness, under ordinary procedures, to determine whether the depression is related to TBI or is otherwise service connected. We, therefore, make no change based on this comment.

One commenter stated that paragraph (d)(1)(iv) should be amended to either exclude depression if manifested within 12 months of mild TBI, or to include only those veterans with mild TBI diagnosed on the basis of LOC, not on the basis of altered mental state. The commenter believes that there is not sufficient evidence to assume that mild TBI diagnosed on the basis of altered mental status is the proximate cause of depression that develops within 12 months post-injury. The IOM concluded that there was sufficient evidence of an association between TBI (mild, moderate, and severe) and depression based on its review of four primary and five secondary studies. In making a distinction between mild TBI with LOC and mild TBI diagnosed based on altered mental status, the commenter relies on a recent study of mild TBI in US soldiers that saw a high level of combat during a year-long deployment in Iraq. Hoge CW, et. al., ''Mild traumatic brain injury in U.S. soldiers returning from Iraq,'' New England Journal of Medicine, 358(5):453–463) (2008). This research was also considered by the IOM. In this study, soldiers were given a questionnaire which included questions regarding TBI. Soldiers were deemed to have mild TBI if they answered yes to any of three questions about losing consciousness, being dazed or confused, or not recalling the injury. Answers to these questions were used to form two subgroups within the mild-TBI group to determine whether LOC or altered mental status was a strong predictor of various conditions, including depression. A total of 124 soldiers were identified with mild TBI with LOC, and 260 soldiers were identified with mild TBI and altered mental status. This is the only study identified by the IOM that distinguished between how mild TBI was diagnosed, whether because of LOC or altered mental state. Limitations of this study include the fact that the researchers relied on information self-reported by study participants, and the study included only a small number of soldiers who were identified as having mild TBI.

In contrast, the greater preponderance of studies upon which the IOM based its findings showed that groups with TBI (mild, moderate, or severe) had higher rates of major depression 6 months or longer after TBI than did appropriate comparison and control groups. As noted by the commenter, these studies (as with Hoge and colleagues) also had limitations. The limitations identified in these studies include a lack of differentiation in severity of TBI in one study, and another study being conducted on the general population rather than solely veterans. However, the results of these research studies viewed as a whole support the IOM's conclusion that led to the conclusion that there is sufficient evidence of an association between TBI and depression. VA has reviewed the supporting research, as well as the IOM's analysis, and accepts the committee's conclusion. VA has determined that the proper course of action is to include all levels of severity of TBI in the rulemaking regarding depression. While the research relied on by the commenter is intriguing and suggestive, given the limitations in the study and the absence of any follow up studies confirming the results, we do not believe the data at this time is strong enough to justify a decision to limit the scope of this rulemaking.

5. Diseases of Hormone Deficiency

The proposed rule suggested that VA establish procedures for establishing secondary service connection for ''Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI.'' VA received one comment asking us to clarify which hormone deficiencies or disorders will be presumed to be the proximate result of service-connected TBI in the absence of clear evidence to the contrary. The IOM noted at page 227 of its report that clinical data suggest that TBI can lead to acute and chronic hypopituitarism as a result of hypothalamo-pituitary changes. (Hypopituitarism is the decreased secretion of one or more of the eight hormones normally produced by the pituitary gland).

The IOM identified eight primary studies and four secondary studies that assessed the relationship between various endocrine disorders and TBI. The studies, viewed together, evaluate the possible relationship between TBI and deficiencies in hormones produced in both the anterior and posterior pituitary gland. Based on these studies, the IOM concluded that there is sufficient evidence of an association between moderate or severe TBI and endocrine dysfunction, particularly hypopituitarism. VA agrees with that conclusion. The scientific evidence supports a finding that moderate or severe TBI can produce changes in the pituitary gland and hypothalamus that can lead to pituitary hormone deficiencies, i.e., hypopituitarism. We believe it is unnecessary to list in the regulation the various diseases of hormone deficiency that result from hypothalamo-pituitary changes. There are various mechanisms by which a TBI may cause the hypothalamus and/or the pituitary gland to malfunction. Describing them individually would not add any clarity for the reader and would make the regulation more technical and difficult to read, understand, and apply. Further, although current research supports a finding that some diseases of hormone deficiency are associated with TBI, this does not preclude the possibility that future research could find an association between TBI and other diseases of hormone deficiency that result from hypothalamo-pituitary changes. Listing specific diseases here would limit VA's ability to make determinations based on the most current peer reviewed research, and would require VA to continually update this rule based on that research. We, therefore, decline to make any changes based on this comment.

Other Comments

Other commenters asked for VA to include additional focuses in this rulemaking, such as extending eligibility to veterans overexposed to radiation and suffering from Parkinson's disease, extending benefits to veterans with sealed service records, providing

name-brand prescription medication to veterans with Parkinson's disease, supporting funding for Parkinson's research, and improving rural veterans' access to hospitals. As previously stated, this rulemaking focuses on the secondary service-connected conditions that are a proximate result of TBI; therefore, these comments are outside the scope of this rulemaking.

Numerous comments requested additional research. VA agrees that further research on the health effects of TBI is warranted and we note that VA/DoD have recently invested $62.2 million to begin a research consortium ''Chronic Effects of Neurotrauma Consortium—CENC'' to study the chronic effects of TBI.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will directly affect only individuals and will not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulatory action 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). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.109, Veterans Compensation for Service-Connected Disability, and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on August 23, 2013, for publication.

List of Subjects in 38 CFR Part 3

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

Dated: December 12, 2013.

William F. Russo,

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

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.310 by adding paragraph (d), to read as follows:

§ 3.310 Disabilities that are proximately due to, or aggravated by, service-connected disease or injury.

* * * * *

(d) *Traumatic brain injury.* (1) In a veteran who has a service-connected traumatic brain injury, the following shall be held to be the proximate result of the service-connected traumatic brain injury (TBI), in the absence of clear evidence to the contrary:

(i) Parkinsonism, including Parkinson's disease, following moderate or severe TBI;

(ii) Unprovoked seizures following moderate or severe TBI;

(iii) Dementias of the following types: presenile dementia of the Alzheimer type, frontotemporal dementia, and dementia with Lewy bodies, if manifest within 15 years following moderate or severe TBI;

(iv) Depression if manifest within 3 years of moderate or severe TBI, or within 12 months of mild TBI; or

(v) Diseases of hormone deficiency that result from hypothalamo-pituitary changes if manifest within 12 months of moderate or severe TBI.

(2) Neither the severity levels nor the time limits in paragraph (d)(1) of this section preclude a finding of service connection for conditions shown by evidence to be proximately due to service-connected TBI. If a claim does not meet the requirements of paragraph (d)(1) with respect to the time of manifestation or the severity of the TBI, or both, VA will develop and decide the claim under generally applicable principles of service connection without regard to paragraph (d)(1).

(3)(i) For purposes of this section VA will use the following table for determining the severity of a TBI:

Mild	Moderate	Severe
Normal structural imaging LOC = 0–30 min	Normal or abnormal structural imaging LOC > 30 min and < 24 hours	Normal or abnormal structural imaging. LOC > 24 hrs.
AOC = a moment up to 24 hrs	AOC > 24 hours. Severity based on other criteria.	
PTA = 0–1 day GCS = 13–15	PTA > 1 and < 7 days GCS = 9–12	PTA > 7 days. GCS = 3–8.

Note: The factors considered are:

Structural imaging of the brain.

LOC—Loss of consciousness.

AOC—Alteration of consciousness/mental state.

PTA—Post-traumatic amnesia.

GCS—Glasgow Coma Scale. (For purposes of injury stratification, the Glasgow Coma Scale is measured at or after 24 hours.)

(ii) The determination of the severity level under this paragraph is based on the TBI symptoms at the time of injury or shortly thereafter, rather than the current level of functioning. VA will not require that the TBI meet all the criteria listed under a certain severity level in order to classify the TBI at that severity level. If a TBI meets the criteria in more than one category of severity, then VA will rank the TBI at the highest level in which a criterion is met, except where the qualifying criterion is the same at both levels.

(Authority: 38 U.S.C. 501, 1110 and 1131)

[FR Doc. 2013–29911 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0141; FRL–9904–14–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. The SIP revision (also referred to herein as ''the attainment plan'') demonstrates Delaware's attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) (the 1997 $PM_{2.5}$ NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA-NJ-DE) nonattainment area (Philadelphia Area). The SIP revision includes Delaware's attainment demonstration for the Philadelphia Area and motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for New Castle County, Delaware. The attainment plan also includes an analysis of reasonably available control measures (RACM) and reasonably available control technology (RACT), a base year emissions inventory, and contingency measures. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This final rule is effective on January 16, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0141. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

By letter dated April 3, 2008, Delaware submitted the SIP revision at issue to EPA. By letter dated April 25, 2012, Delaware submitted revisions to the portion of the SIP revision relating to the MVEBs. The April 25, 2012 MVEBs revised submittal replaced the previously submitted 2009 MVEBs with a budget that is based on the Motor Vehicle Emissions Simulator (MOVES) model and included MVEBs for 2012. On November 19, 2012 (77 FR 69399), EPA published a notice of proposed rulemaking seeking comment on EPA's proposed approval of this SIP revision, including the portion relating to the 2009 and 2012 MVEBs for transportation conformity purposes for New Castle County, Delaware (hereinafter referred to as ''the NPR''). In response to the NPR, EPA received a single comment dated November 30, 2012. A summary of the November 30, 2012 comment and EPA's response is provided in Section III (Summary of Public Comment and EPA Response) of this final rulemaking action.

On March 4, 2013, EPA took final rulemaking action on the portion of the attainment plan relating to the base year emissions inventory. *See* 78 FR 10420. As a result of this March 2013 final rulemaking action, no further action needs to be taken on such portion of the April 3, 2008 SIP revision. Therefore, this final rulemaking action relates to the remaining portions of the attainment plan, including: (1) An attainment demonstration for the Delaware portion of the Philadelphia Area; (2) 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware; (3) an analysis of RACM and RACT; and, (4) contingency measures.

On September 19, 2013 (78 FR 57473), EPA published a supplemental NPR that revised and expanded the basis for proposing approval of Delaware's attainment plan for the 1997 annual $PM_{2.5}$ NAAQS in light of the developments since EPA issued its initial proposal on November 19, 2012 (hereinafter referred to as ''the supplemental NPR''). Principally, the supplemental NPR addressed the potential effects of a January 4, 2013 decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) remanding to EPA two final rules implementing the 1997 $PM_{2.5}$ NAAQS. In the supplemental NPR, EPA also revised its proposed approval of Delaware's

attainment plan for the 1997 $PM_{2.5}$ NAAQS to clarify that EPA was not relying upon certain regulations which were part of the attainment plan, because such regulations were not necessary to demonstrate attainment of the 1997 $PM_{2.5}$ NAAQS. As part of this supplemental NPR, EPA also proposed to approve the 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware. EPA did not receive any comments on the September 19, 2013 supplemental NPR.

II. Summary of SIP Revision

The portions of the SIP revision that are subject to this action demonstrate Delaware's attainment of the 1997 $PM_{2.5}$ NAAQS and includes: (1) Delaware's attainment demonstration for the Delaware portion of the Philadelphia Area and (2) the 2009 and 2012 MVEBs used for transportation conformity purposes for New Castle County, Delaware. The remaining portion of the attainment plan also includes an analysis of RACM/RACT and contingency measures. The attainment plan does not include a Reasonable Further Progress (RFP) plan; however, for reasons explained in the November 19, 2012 NPR and the supplemental NPR, EPA proposed to make a determination that an RFP plan is not required, because Delaware demonstrated that attainment with the 1997 $PM_{2.5}$ NAAQS occurred in the Delaware portion of the Philadelphia Area by the attainment date of April 2010. The rationale for EPA's proposed action is explained in the NPR and the supplemental NPR and will not be restated here.

III. Summary of Public Comment and EPA Response

Comment: The commenter endorsed EPA's proposed approval and stated that EPA should approve Delaware's attainment plan and the MVEBs included in the attainment plan. The commenter stated his belief that the reduction of $PM_{2.5,}$ sulfur dioxide (SO_2) and nitrogen oxides (NO_X) emissions in Delaware's attainment plan will allow the Area to reach an overall particulate attainment level. Further, the commenter supported approval of the MVEBs because the MVEBs are consistent with Delaware's plan for attaining the 1997 $PM_{2.5}$ NAAQS. However, the commenter expressed some concerns about Delaware's approach to attaining the 1997 $PM_{2.5}$ NAAQS without regulating ammonia (NH_3) and volatile organic compounds (VOCs). While the commenter noted that Delaware has achieved attainment of the 1997 $PM_{2.5}$ NAAQS, the commenter also included a broad statement that New Castle County has not achieved attainment with unspecified ''air quality standards prescribed by EPA's regulations.''

Response: EPA thanks the commenter for endorsing the approval of the Delaware attainment plan and the MVEBs included in the attainment plan and appreciates that the comments submitted also fulfilled an academic writing assignment. EPA agrees with the commenter's conclusion that the attainment plan submitted by Delaware adequately addresses emissions of $PM_{2.5}$ and the $PM_{2.5}$ precursors SO_2 and NO_X in order to provide for attainment of the 1997 $PM_{2.5}$ NAAQS. Moreover, EPA notes that the Agency has specifically reexamined the issue of whether the attainment plan addresses the correct $PM_{2.5}$ precursors in the supplemental NPR. As indicated in the supplemental NPR, EPA has concluded that regulation of emissions of VOC and NH_3 from sources in Delaware was not necessary in order to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area.

As to the commenter's divergent opinions that: (1) Delaware has achieved attainment with the NAAQS at issue and (2) New Castle County has not achieved attainment with some unspecified EPA air quality regulations, it is important to note that the SIP revision at issue pertains to the Delaware's attainment plan for the 1997 annual $PM_{2.5}$ NAAQS. The record presented clearly supports EPA's approval of this attainment plan for this purpose. Additionally, EPA refers the commenter to EPA's May 16, 2012 determination that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable date, April 5, 2010, and EPA's issuance of a clean data determination for the Philadelphia Area. *See* 77 FR 28782. The administrative record for today's final rulemaking action, in conjunction with EPA's May 16, 2012 final rulemaking action, clearly supports the finding that Delaware has achieved the NAAQS at issue. Due to a lack of specificity on the commenter's part, EPA is unable to further respond to the commenter's concerns relating to New Castle County's attainment with unspecified EPA air quality regulations.

IV. Final Action

As the base year emissions inventory portion of the SIP revision was previously approved through a separate action (*see* 78 FR 10420), EPA is approving the remaining portions of the SIP revision, which was submitted by the State of Delaware on April 3, 2008, and amended on April 25, 2012, and includes: (1) The attainment plan for the 1997 $PM_{2.5}$ NAAQS for the Delaware portion of the Philadelphia Area and (2) the 2009 and 2012 MVEBs for transportation conformity purposes for New Castle County, Delaware. The portions of the attainment plan which are subject to this final rulemaking action include Delaware's attainment demonstration, an analysis of RACM/RACT and contingency measures. Through this rulemaking action, EPA is making a final determination that Delaware's attainment plan meets the applicable requirements of the CAA. For reasons explained in the supplemental NPR, EPA revised its original proposed approval of the attainment plan to propose approval of Delaware's 1997 $PM_{2.5}$ attainment plan as meeting the requirements for attainment plans for the 1997 $PM_{2.5}$ NAAQS, without reliance on the following measures identified in the attainment plan: (1) Regulation 1142 Section 2.0 for NO_X emissions at petroleum refineries; (2) certain control measures for VOC emissions; and, (3) the Clean Air Interstate Rule (CAIR). As discussed in the supplemental NPR, these measures are not necessary for the purposes of meeting the requirements for RACM, RACT, section 189(e) or the attainment demonstration.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Delaware's SIP revision which demonstrates attainment of the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 29, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart I— Delaware

■ 2. In § 52.420, the table in paragraph (e) is amended by adding the entry for the 1997 Annual $PM_{2.5}$ Attainment Plan for Delaware and the Motor Vehicle Emissions Budget for 2009 and 2012 at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
1997 Annual $PM_{2.5}$ Attainment Plan for Delaware and the Motor Vehicle Emission Budgets for 2009 and 2012.	Delaware—Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area.	4/3/08 4/25/12	12/17/13 [*Insert page number where the document begins*].	See § 52.427(c).

■ 3. Section 52.427 is amended by adding paragraph (c) to read as follows:

§ 52.427 Control strategy: Particulate matter.

* * * * *

(c) EPA approves the attainment plan for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware nonattainment area submitted by the Secretary of the Delaware Department of Natural Resources and Environmental Control on April 3, 2008, as amended on April 25, 2012. The attainment plan includes the attainment demonstration and motor vehicle emission budgets in tons per year (tpy) used for transportation conformity purposes for New Castle County, Delaware. The attainment plan also includes an analysis of reasonably available control measures and reasonably available control technology, contingency measures and the 2002 base year emissions inventory. The 2002 base year emissions inventory was approved in a separate rulemaking action on March 4, 2013 (78 FR 10420).

DELAWARE'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS

Type of control strategy SIP	Year	VOC	NO_X
Attainment Plan (Milestone Year)	2009	257	8,448
Attainment Plan (Out Year)	2012	199	6,273

[FR Doc. 2013–29803 Filed 12–16–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 147, 155 and 156

[CMS–9945–IFC]

RIN 0938–AS17

Patient Protection and Affordable Care Act; Maximizing January 1, 2014 Coverage Opportunities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule amends the date by which a qualified individual must select a qualified health plan (QHP) through any Exchange for an effective coverage date of January 1, 2014. This rule generally allows consumers to select a QHP until December 23, 2013, which is a change from the previously stated regulatory date of December 15, 2013, but permits State Exchanges to select a different date. It also establishes a related policy regarding the date by which a consumer needs to pay any applicable initial premium to ensure timely effectuation of coverage. This rule pertains to the individual market and Small Business Health Options Program in both the Federally-facilitated Exchanges and State Exchanges. This rule does not change the plan selection or premium payment dates for coverage offered outside of the Exchanges.

DATES: *Effective date:* These regulations are effective on December 15, 2013.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 23, 2013.

ADDRESSES: In commenting, please refer to file code CMS–9945–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed)

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9945–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9945–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Devon Trolley, (301) 492–4404, for questions related to this rule.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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I. Background

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this interim final rule, we refer to the two statutes collectively as the ''Affordable Care Act.''

As of October 2013, for coverage starting as soon as January 1, 2014, qualified individuals and qualified employers have been able to enroll in QHPs—private health insurance that has been certified as meeting certain standards—through competitive marketplaces called ''Exchanges'' or ''Health Insurance Marketplaces.'' The word ''Exchanges'' refers to both State Exchanges, also called State-based

Exchanges, and Federally-facilitated Exchanges, or ''FFEs.'' In this interim final rule, we use the terms ''State Exchange'' or ''FFE'' when we are referring to a particular type of Exchange. When we refer to ''FFEs,'' we are also referring to State Partnership Exchanges, which are a form of FFE. We use the term ''State-based SHOPs'' to refer to Small Business Health Options Programs (SHOPs) operated by a state and ''FF–SHOPs'' to refer to a SHOP operated by CMS.

On March 27, 2012, we published a final rule entitled Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310),[1] hereinafter referred to as the Exchange Establishment Rule. Section 155.410(c) of the Exchange Establishment Rule established the effective coverage dates with respect to the date by which a qualified individual selects a QHP, and outlined basic enrollment processes for issuers. For a January 1, 2014 effective coverage date, § 155.410(c) provides that a qualified individual must select a QHP on or before December 15, 2013. Through cross references in § 155.725(a)(2) to § 156.260(a)(1) to § 155.410(c), the same coverage effective dates are applied to the SHOP. Through cross references in § 147.104, the coverage effective dates are extended to all non-grandfathered health insurance coverage offered in the individual and small group markets.[2] Section 156.265 establishes enrollment processes that QHP issuers must follow for qualified individuals, and requires QHP issuers to follow the premium payment process established by the Exchange. However, this section did not establish a date by which a premium must be paid to effectuate enrollment.

We issued a draft guidance document titled ''Federally-facilitated Marketplace Enrollment Operational Policy and Guidance''[3] (''Draft Enrollment Guidance'') on October 3, 2013, that specifies procedural guidance for the FFE regarding the enrollment process, including the premium payment process, some of which is impacted by this interim final rule and is referenced as appropriate throughout the preamble.

Since the publication of the Exchange Establishment Rule and the Draft Enrollment Guidance, there have been unforeseen barriers to enrollment in the Exchanges. This interim final rule includes policy changes aimed at allowing additional enrollment opportunities for qualified individuals and qualified employers seeking January 1 coverage. Policy clarifications regarding premium payment are also included.

II. Provisions of the Interim Final Rule

A. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

The Exchange Establishment Rule outlined an initial open enrollment period from October 1, 2013 through March 31, 2014 and coverage effective dates based on when a plan is selected. Through the Market Reform Rule, published in the February 27, 2013 **Federal Register** (78 FR 13406), the coverage effective dates established in § 155.410(c) of the Exchange Establishment Rule apply to the entire individual and small group health insurance markets (except for grandfathered health plans). Since the provisions of this interim final rule are specifically designed to address unforeseen barriers to enrollment in QHPs offered through the Exchange, we do not believe it is necessary to extend the plan selection date for coverage purchased outside of the Exchange.

Accordingly, this rule adds regulatory text at § 147.104(b)(1)(iii) to make clear that, for coverage offered outside an Exchange or SHOP, for plan selections received on or before December 15, 2013, coverage must take effect on January 1, 2014 and that for plan selections received between December 16th and December 31st, 2013, coverage generally must become effective February 1, 2014. These amendments maintain for individual and small group market coverage outside of an Exchange or SHOP the plan selection and coverage effective dates originally finalized in the Exchange Establishment Rule. However, we also permit issuers to align their plan selection and corresponding coverage effective dates with those in the applicable Exchange.

We note that for ease of reference to the coverage effective dates in the SHOP, we have amended the cross reference in § 147.104(b)(1)(i) to refer to § 155.725(a)(2) rather than § 155.725(h).

B. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

Section 155.410(c) of the Exchange Establishment Rule specifically provides that an Exchange must ensure a January 1, 2014 effective date of coverage for any QHP selected by a qualified individual on or before December 15, 2013. As noted above, the reference in § 155.725(a)(2) applies the same timeframe to QHPs selected in the SHOP. The following changes are made to paragraph (c) in this interim final rule to amend the dates by which a plan must be selected for the individual market Exchanges and the SHOPs for coverage to be effective January 1, 2014.

In § 155.410(c)(1)(i), this rule amends the regulation text to specify that an Exchange must ensure a January 1, 2014 coverage effective date for plan selections received on or before December 23, 2013, in contrast to the previous regulatory date of December 15, 2013. This policy applies to the various types of plans sold through the Exchanges, including SHOP QHPs, multi-State plans, and stand-alone dental plans. While we do not expect to do so, we will consider moving this deadline to a later date should exceptional circumstances pose barriers to consumers enrolling on or before December 23, 2013. We note that, if a consumer is not able to enroll in a QHP with a coverage effective date of January 1, 2014 due to an error made by the Exchange, it would warrant a special enrollment period as previously stated in § 155.420(d)(4).

In § 155.410(c)(1)(iii), a conforming amendment is made to the regulatory text so that standard coverage effective dates apply only to plan selections starting after January 16, instead of the previously stated December 16. This means that the schedule of coverage effective dates based on plan selection will generally resume as previously established in § 155.410 in the Exchange Establishment Rule starting for plan selections made on December 24, 2013 or later. For example, if a plan selection is made between December 24, 2013 and January 15, 2014, the coverage effective date will be no later than February 1, 2014, unless the issuer elects to make the coverage effective earlier. If a plan selection is made between January 16 and January 31, of 2014, the coverage effective date will be March 1, 2014. We note that, generally, the dates by which an Exchange must ensure coverage based on the date of plan selection are considered the latest date for effectuation; nothing prohibits an issuer from establishing coverage effective

[1] Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 FR 18310 (March 27, 2012).

[2] Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review, 78 FR 13406 (February 27, 2013), hereinafter referred to as the Market Reform Rule.

[3] Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ENR_OperationsPolicyandGuidance_5CR_100313.pdf.*

dates earlier than those listed in § 155.410(c).

In § 155.410(c)(1)(iv), this interim final rule permits a State Exchange or a State-based SHOP to establish later plan selection dates for coverage that must be effective on January 1, 2014. Given the varying experiences of State Exchanges and SHOPs, we believe that this flexibility would avoid any inconsistencies with those states that may have already extended the plan selection date and that may have different procedural requirements regarding the consumer payment date from those applicable in the FFEs and FF–SHOPs. Section 155.410(c)(1)(iv) also provides that a SHOP can require plan selection by as early as December 15, 2013 to ensure coverage effective January 1, 2014, as we understand that some State-based SHOPs have already established their own deadlines for QHP selection or may wish to align plan selection dates with the rest of the small group market.

The FF–SHOPs will require issuers to ensure a January 1, 2014 coverage date for plan selections received on or before December 23, 2013, which differs from date by which plan selections must be received in the small group market outside the FF–SHOPs to ensure a January 1, 2014 coverage effective date. In states with an FF–SHOP, we expect issuers to allow a small employer to enroll employees in a SHOP QHP on or before December 23, 2013 for a January 1, 2014 coverage effective date if the employer has indicated that it is seeking SHOP coverage. If the employer indicates that it is seeking SHOP coverage, the employer would need to ensure that issuer has received all employee enrollment forms for those employees not waiving coverage on or before December 23, 2013. Employers may indicate their desire to seek SHOP coverage by selecting a SHOP QHP, or by following any issuer guidance on how to make the indication.

In § 155.410(c)(1)(v), this rule states that the Exchange may allow issuers to provide for a coverage effective date of January 1, 2014 for plan selections received after December 23,2013 but on or before January 31, 2014, if a QHP issuer is willing to accept such enrollments. We note that if the QHP issuer allows enrollment in January for a January 1 coverage effective date, any services provided to the enrollee in January would need to be covered retroactively as if the enrollee had been enrolled from January 1. QHP issuers in an FFE will have this option, and while we understand that late enrollment may create challenges for issuers in processing the premium payments and providing retroactive coverage, we urge issuers to consider a January 1, 2014 coverage effective date for plan selections after December 23, 2013 for this year, given the newness of the enrollment process.

By moving the plan selection date later into December, we believe that clarifying the timing of a consumer's payment of premium becomes more critical. In the Draft Enrollment Guidance, we set forth a process for the FFEs that involved any applicable initial premium being paid on or before the day before the coverage effective date. However, given the shorter timeframe between plan selection and the coverage effective date established in this rule for coverage effective on January 1, 2014, we desire to both provide more flexibility to consumers and issuers regarding the payment date and to more firmly establish the way in which a payment date is established in the FFEs.

Accordingly, this interim final rule adds regulatory text at § 156.265(d)(2) to establish that a QHP issuer in an FFE must establish the date by which a qualified individual who has selected a QHP within the initial open enrollment period must make a premium payment in order to effectuate coverage by the applicable coverage effective date, provided that payment dates are no earlier than the last day before the coverage effective date and are consistently applied to all applicants in a non-discriminatory manner. We note that this payment date policy applies only for the initial open enrollment period; we intend to address payment policies applicable beyond the initial open enrollment period in future rulemaking. In addition, this policy applies specifically to the FFEs. State Exchanges can establish their own payment policies.

We note that QHP issuers in an FFE may accept premium payments after January 1, 2014 for coverage that would be effectuated with a retroactive effective date of January 1, 2014, to the extent permitted by applicable state law. With a later plan selection date, we believe that this flexibility will allow issuers additional time to process a payment and to effectuate enrollments, which we think may be helpful if consumer activity increases as the plan selection date for coverage effective January 1, 2014 nears. State Exchanges can elect to have the same policy or set a different policy for payment cutoff dates.

We recognize that, in the FFEs, the flexibility provided to issuers to establish premium payment dates and to accept payments after a coverage effective date of January 1, 2014 will require additional flexibility regarding the submission of enrollment confirmation transactions from QHP issuers to the FFEs. The Draft Enrollment Guidance outlines a procedural timeline that specifies that QHP issuers must send enrollment confirmation transactions to the FFE by the fifth calendar day of the effective month of coverage. Instead, the FFEs will accept enrollment confirmation transactions from QHP issuers for coverage beginning on January 1, 2014 throughout the month of January.

We note that this interim final rule also does not require the full premium to be paid to effectuate coverage. For example, the Draft Enrollment Guidance stated that, in the individual market FFEs, QHP issuers could implement a premium payment threshold policy. QHP issuers electing to establish such a policy may effectuate enrollment when the enrollee pays an amount less than the total amount owed by the enrollee but greater than the threshold amount established by the issuer. This rule provides flexibility to QHP issuers in the FFEs to set payment dates, which can include a single payment date for the full premium or an initial payment date for a threshold amount of the premium with subsequent payment dates for the remaining amounts. Payment dates and other enrollment procedures would need to be consistently applied in a non-discriminatory manner for all FFE enrollees. We note that, while issuers may permit less than full payment of the applicable premium prior to effectuating coverage, the grace period described in § 156.270(d) for enrollees receiving advance payments of the premium tax credit still requires that at least one full month's premium has been paid.

Even if an issuer sets a payment date for a January 1, 2014 coverage effective date beyond December 31, 2013, the coverage must take effect January 1, 2014 as long as the plan selection is made by the applicable date, as set forth in § 155.410(c) as amended by this interim final rule, and payment is made by the issuer-established date, regardless of when the enrollment confirmation transaction is sent to the FFE. For QHP issuers in the FFEs that accept payments after January 1 for a coverage effective date of January 1, 2014, we note that this rule does not establish specific standards related to the communication with consumers regarding the distribution of welcome materials and insurance cards and the way in which coverage for any services rendered before the enrollment is fully processed. However, we note that an

effective coverage date of January 1, 2014 means that the individual must receive coverage for any services received on or after that date, even if the payment and enrollment are not processed by that time.

C. Other Policies to Smooth Transitions

In addition to the change in coverage effective dates outlined in this interim final rule, we also strongly encourage issuers to take other approaches to ease the transition to QHPs for consumers who may be switching from other coverage. Two areas of focus for a smooth transition are access to providers and prescription drug coverage.

When shopping for coverage on an Exchange, prospective enrollees may base QHP selection decisions on whether their provider is considered in-network using the issuer's online provider directory. However, evolving provider networks may result in some issuer provider directories containing outdated information. As a result, an enrollee may later discover that his or her provider is considered out-of-network. We are concerned that this could cause hardship to new QHP enrollees in the early months of coverage and could disrupt what could otherwise be a more seamless transition into a QHP. We strongly encourage QHP issuers to take any steps possible to ease this transition.

In particular, we interpret the requirement at § 156.230(b) that issuers make their provider directories for QHPs available to the Exchange for publication online to mean that issuers must make current provider directories for QHPs available to the Exchange for publication online. Accordingly, issuers should ensure that provider directories listed with for the QHPs on Exchanges contain the most current listing of in-network providers so that consumers are relying upon accurate information to make enrollment decisions.

For those directories that cannot be maintained in a current status, we believe that it would be reasonable for issuers to consider services received out-of-network as having been received in-network (subject to in-network coverage and cost-sharing standards) with respect to any provider listed in the version of the provider directory as of the date of that enrollee's enrollment for the beginning months of coverage. We strongly encourage issuers to adopt this approach.

We also encourage issuers to adopt policies in January to prevent disruptions in treatment of episodes of care (for example, considering a provider as in the plan's network for an acute episode of care at the start of the plan year). Some states like Arkansas have adopted policies like this. We are considering factoring into the QHP renewal process, as part of the determination regarding whether making a health plan available is in the interest of qualified individuals and qualified employers, whether consumers have up-to-date provider directories and how QHPs ensure continuity of care during transitions.

Prescription drug coverage is another area where we strongly urge issuers to take steps to ensure a smooth transition for new QHP enrollees. In the Essential Health Benefits Final Rule [4] at § 156.122(c), we established that issuers providing EHB must have in place procedures that allow enrollees to request and gain access to clinically appropriate drugs not covered by the health plan. We believe that the standard for issuers to have a drug exceptions process, as established in § 156.122(c), will provide strong protections on an ongoing basis to enrollees with health needs that require drugs that are not on an issuer's formulary, particularly if issuers use the process outlined in the 2014 Letter to Issuers on Federally-facilitated and State Partnership Exchanges.[5]

However, we are also cognizant that new enrollees may be unfamiliar with what is covered in their new plan's formulary and the drug exceptions process. Also, some enrollees whose drugs are covered by a QHP issuer's formulary may need to obtain prior authorization or go through step therapy in order to have coverage for the drug. Since new QHP enrollees may need more immediate coverage for drugs they have been prescribed and are currently taking, we strongly urge QHP issuers to temporarily cover non-formulary drugs (including drugs that are on a QHP issuer's formulary but require prior authorization or step therapy) as if they were on formulary (or without imposing prior authorization or step therapy requirements) during the first 30 days of coverage, starting on January 1, 2014. While not required, we encourage this approach because this policy would accommodate the immediate needs of QHP enrollees, while allowing the issuer and/or the enrollee sufficient time to go through the prior authorization and/or drug exception processes.

[4] Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation Final Rule, published in the February 25, 2013 **Federal Register** (78 FR 12834) (EHB Rule).

[5] Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf.*

III. Waiver of Proposed Rulemaking and Waiver of Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comments on the proposed rule, typically for 30 days, before publishing a final rule that responds to comments and sets forth final regulations that generally take effect at least thirty days later. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. CMS for good cause, under 5 U.S.C. 553(b)(B), finds that the notice-and-comment requirements of the Administrative Procedure Act (APA) would be impracticable and contrary to the public interest given the unforeseen nature of the barriers to enrollment in QHPs in the Exchanges and the time remaining for individuals to enroll in coverage that would be effective January 1, 2014, as further described below.

Additionally, section 553(d) of the APA (5 U.S.C. 553(d)) ordinarily requires that a final rule be effective not less than 30 days from the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if otherwise provided by an agency for good cause found and published with the rule. For the reasons set forth below, we also find good cause to waive the 30-day delay in effective date as unnecessary, impracticable and contrary to the public interest.

In this case, given the short timeframe under which this change must be implemented, delaying the promulgation and effectiveness of these rules would inhibit the ability of Exchanges and QHP issuers to effectuate the extended opportunity to enroll in a QHP. Exchanges may need to make system and process adjustments immediately, to ensure that consumers have the additional flexibility to submit applications and select a plan. We consider providing additional time to enroll to be a benefit to consumers. The need to provide additional opportunities for consumers to enroll was not clear until a date by which a 30-day comment period and 30-day delay of the effective date would make it impossible to implement on time. If we were to open the policy for 30 days of public comments and a 30-day delay of effective date, the policy would not be effective until well beyond January 1, 2014, which would be contrary to the public interest.

We note that the Exchange Establishment Rule at § 155.410(c)(2) provided that an Exchange could establish shorter coverage effective date timeframes (such as December 23 for coverage effective January 1) if, among other requirements, the Exchange can demonstrate that all participating QHP issuers agree to such timeframes. This condition would likely be an obstacle if CMS were seeking to establish the December 23, 2013 date under the current regulations. However, CMS has the legal authority to, by rulemaking, amend the regulation as necessary to impose the requirement that issuers accept enrollments as late as December 23 for coverage effective January 1. Further, this interim final rule does not introduce substantially different policies, but instead alters operational cutoff dates by about one week.

Given the unusual circumstances and for the reasons outlined above, CMS finds good cause under the APA, 5 U.S.C. 553(b)(B), to waive the 30 day comment period in notice-and-comment rulemaking and to waive the 30-day delay in effective date and proceed directly with the issuance of an interim final rule with an immediate effective date.

IV. Collection of Information Requirements

This rule does not impose new or alter existing information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Analysis

We have examined the impact of this interim final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) and Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). It is CMS's belief that this interim final rule does not reach this economic threshold and thus is not considered a major rule.

Since the publication of the Exchange Establishment Rule, there have been unforeseen barriers to enrollment in Exchanges. This interim final rule provides flexibility to the regulations regarding plan selection and the effective date of coverage in order to allow additional opportunities for qualified individuals and qualified employers seeking coverage with an effective date of coverage on January 1, 2014. This rule also clarifies that QHP issuers in the FFEs can establish payment dates no earlier than the day before the effective date of coverage. We believe that this regulation will benefit potential enrollees by giving them more time to select a QHP and have their coverage become effective by January 1, 2014. We do not believe these actions would impose any significant new costs on issuers.

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the rule on small entities, unless the head of the agency can certify that the rule would not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as—(1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' CMS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Small businesses are those with sizes below thresholds established by the SBA. For the purposes of the regulatory flexibility analysis, we expect the following types of small entities to be affected by this interim final rule: (1) QHP issuers.

As discussed in Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements Under the Patient Protection and Affordable Care Act; Interim Final Rule,[6] few, if any, issuers are small enough to fall below the size thresholds for small business established by the SBA. In that rule, we used a data set created from 2009 NAIC Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, CMS used total Accident and Health earned premiums as a proxy for annual receipts. We estimated that there are 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical coverage.[7] However, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

Therefore, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this interim final rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a proposed rule (and subsequent final rule) that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. UMRA does not address the total cost of a rule. Rather, it focuses on certain categories of costs, mainly those ''federal mandate'' costs resulting from: (1) Imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the

[6] Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements Under the Patient Protection and Affordable Care Act; Interim Final Rule, 75 FR 74864, 74918–20 (December 1, 2010) (codified at 45 CFR part 158).

[7] According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for North American Industry Classification System (NAICS) Code 524114 (Direct Health and Medical Insurance Carriers). For more information, see ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective March 26, 2012, U.S. Small Business Administration, available at *http://www.sba.gov*.

stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

This interim final rule amends the date by which a QHP must be selected for an effective date of coverage of January 1, 2014. There may be minor additional costs for Exchanges to make system and process adjustments before December 16, 2013, to ensure that consumers have the additional flexibility to submit applications and select a plan. CMS has concluded that this rule does not place any mandates on state, local, or tribal governments or the private sector that exceed the threshold for 2013.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct costs on state and local governments, preempts state law, or otherwise has Federalism implications. There may be minor additional costs for States to make system and process adjustments before December 16, 2013, to ensure that consumers have the additional flexibility to submit applications and select a plan. This rule does not impose any costs on state or local governments not otherwise imposed by already-finalized provisions of the regulations implementing the Affordable Care Act.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy-making discretion of the states, CMS has engaged in efforts to consult with and work cooperatively with affected states, including participating in conference calls with and attending conferences of the NAIC, and consulting with state insurance officials on an individual basis. We believe that this rule does not impose substantial direct costs on state and local governments, preempt state law, or otherwise have federalism implications. We are amending the date by which a plan may be selected for coverage effective January 1, 2014.

Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department of Health and Human Services certifies that CMS has complied with the requirements of Executive Order 13132 for the attached interim final rule in a meaningful and timely manner.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

D. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We 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 interim final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Cost-sharing reductions, Advance payments of premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 147, 155, and 156 as set forth below:

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg–63, 300gg–91, and 300gg–92), as amended.

■ 2. Section 147.104 is amended by revising the last sentence of paragraphs (b)(1)(i) and (b)(1)(ii) and adding paragraph (b)(1)(iii) to read as follows:

§ 147.104 Guaranteed availability of coverage.

* * * * *

(b) * * *

(1) * * *

(i) * * * With respect to coverage in the small group market, and in the large group market if such coverage is offered in a Small Business Health Options Program (SHOP) in a state, coverage must become effective consistent with the dates described in § 155.725(a)(2) of this subchapter, except as provided in paragraph (b)(1)(iii) of this section.

(ii) * * * Coverage must become effective consistent with the dates described in § 155.410(c) and (f) of this subchapter, except as provided in paragraph (b)(1)(iii) of this section.

(iii) *Exception in certain effective dates of coverage.* Only with respect to coverage offered outside of an Exchange or SHOP, for a plan selection received by an issuer on or before December 15, 2013, the issuer must ensure a coverage effective date of January 1, 2014, and for a plan selection received by an issuer between the 16th and 31st of the month of December 2013, an issuer generally must ensure a coverage effective date of February 1, 2014. The preceding sentence does not prevent an issuer from aligning the plan selection and coverage effective dates with those required by the Exchange or SHOP, as applicable, in the applicable state, consistent with § 155.410(c) of this subchapter.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 3. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 4. Section 155.410 is amended by revising paragraph (c)(1) to read as follows:

§ 155.410 Initial and annual open enrollment periods.

* * * * *

(c) * * *

(1) *Regular effective dates.* For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

(iv) Notwithstanding the requirement of paragraph (c)(1)(i) of this section, an Exchange or SHOP operated by a State may require a January 1, 2014 effective date for plan selection dates later than December 23, 2013; a SHOP may also establish plan selection dates as early as December 15, 2013 for enrollment in SHOP QHPs for a January 1, 2014 coverage effective date.

(v) Notwithstanding the regular effective dates set forth in this section, an Exchange may allow issuers to provide for a coverage effective date of January 1, 2014 for plan selections received after December 23, 2013 and on or before January 31, 2014, if a QHP issuer is willing to accept such enrollments.

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 5. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 6. Section 156.265 is amended by revising paragraph (d) to read as follows:

§ 156.265 Enrollment process for qualified individuals.

* * * * *

(d) *Premium payment.* Regarding premium payment, a QHP issuer—

(1) Must, follow the premium payment process established by the Exchange in accordance with § 155.240.

(2) Must, for QHPs offered through a Federally-facilitated Exchange, establish the date by which a qualified individual that has selected a QHP within the enrollment period dates in § 155.410(b) of this subchapter must make a premium payment in order to effectuate coverage by the applicable coverage effective date, provided that:

(i) The payment date is no earlier than the day before the coverage effective date.

(ii) The payment date policy is applied consistently to all applicants in a non-discriminatory manner.

* * * * *

Dated: December 4, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: December 5, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–29918 Filed 12–12–13; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 13–135]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission (Commission) improves its ability to monitor problems with completing calls to rural areas, and enforce restrictions against blocking, choking, reducing, or restricting calls. The Report and Order applies the new rules to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates (referred to herein as ''covered providers''). In most cases, this is the calling party's long-distance provider. Covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. These rules do not apply to intermediate providers. Covered providers must file quarterly reports and retain the call detail records for at least six calendar months. The Report and Order also allows qualifying providers to certify that they meet the conditions for a Safe Harbor that would reduce reporting and retention obligations. In addition, the Commission has delegated to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to act on requests from qualified providers for waiver of these rules. The Report and Order also adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.

DATES: Effective January 16, 2014 except for § 64.2201 of the Commission's rules, which will become effective January 31, 2014, and §§ 64.2103, 64.2105, and 64.2107 and the information collection in paragraph 67 of this Report and Order, which contains information collection requirements that have not been approved by Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of §§ 64.2103, 64.2105, and 64.2107.

FOR FURTHER INFORMATION CONTACT: Gregory D. Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1191.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 13–39, FCC 13–135, released on November 8, 2013. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov.* This summarizes only the Report and Order in WC Docket No. 13–39; A summary of the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 13–39 is published elsewhere in this issue of the **Federal Register**.

Synopsis of Report and Order

I. Introduction

1. In this Order, we adopt rules to address significant concerns about completion of long-distance calls to rural areas. Doing so will help ensure that long-distance calls to all Americans, including rural Americans, are completed. The record in this proceeding leaves no doubt that completion rates for long-distance calls

to rural areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.

2. The rules that we adopt today are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as aiding consumers and industry by adopting a rule prohibiting false ring signaling. In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on additional measures that may help the Commission ensure a reasonable and nondiscriminatory level of service to rural areas.

II. Background

3. The Commission initiated this rulemaking in February 2013 to help address problems in the completion of long-distance telephone calls to rural customers. This followed a series of Commission actions to address rural call completion concerns over the past several years. As discussed in greater detail below, since 2007 the Commission has:

- Adopted the *USF/ICC Transformation Order,* which, among other things, reaffirmed the prohibition on call blocking; made clear that carriers' blocking of VoIP–PSTN traffic is prohibited; clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN; and adjusted over a period of time many terminating switched access charges as part of transition to a bill-and-keep regime;
- Issued two Declaratory Rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges, and clarifying the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic which may violate section 201 or 202 of the Communications Act of 1934, as amended (the Act);
- Established a Rural Call Completion Task Force to investigate the growing problems associated with calls to rural customers;
- Held a workshop to identify specific causes of rural call completion problems and discuss potential solutions with key stakeholders;
- Established dedicated avenues for rural consumers and carriers to inform the Commission about call completion problems; and
- Investigated and pursued enforcement of providers not complying with the statute and/or our rules, including a consent decree as well as an enforcement advisory regarding rural call completion problems.

We describe in greater detail the Commission's most significant actions, which inform the legal and policy actions that we take in this Order.

4. *USF/ICC Transformation Order.* On November 18, 2011, the Commission released the *USF/ICC Transformation Order,* which, among other things, established a number of new rules requiring carriers to adjust, over a period of years, many of their terminating switched access charges effective every July 1, as part of a transition to a bill-and-keep regime. The Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011. Price cap and rate-of-return carriers were required to make comparable reductions to certain intrastate switched access rates in 2012 and 2013 if specified criteria were met. Beginning in 2014, price cap and rate-of-return carriers begin a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep. The price cap transition occurs over six years and the rate-of-return transition over nine years.

5. The *USF/ICC Transformation Order* also re-emphasized the Commission's longstanding prohibition on call blocking. The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's communications network and that call blocking harms consumers. The Commission also made clear that the general prohibition on call blocking by carriers applies to VoIP-to-PSTN traffic. Finally, the Commission prohibited call blocking by providers of interconnected VoIP services as well as providers of ''one-way'' VoIP services. The Communications Act defines ''non-interconnected VoIP service'' as a service that enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service. 47 U.S.C. 153(36). Our use of the term ''one-way VoIP'' in this Order is consistent with the definition of ''non-interconnected VoIP service'' in the Communications Act, to the extent such service offers the capability to place calls to or receive calls from the PSTN.

6. In addition, the Commission adopted rules to address so-called ''phantom traffic,'' that is, traffic that terminating networks receive that lacks certain identifying information for calls. The lack of such basic information to accompany calls has also resulted in calls being delivered without the correct caller identification, which is a common call quality complaint in rural areas. In the *USF/ICC Transformation Order,* the Commission found that service providers in the call path were intentionally removing or altering identifying information to avoid paying the terminating rates that would apply if the call were accurately signaled and billed. The Commission adopted rules requiring telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and required intermediate providers to pass this signaling information, unaltered, to the next provider in a call path.

7. *2012 Declaratory Ruling.* In 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers. The *2012 Declaratory Ruling* made clear that practices used for routing calls to rural areas that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201 of the Act or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. The *2012 Declaratory Ruling* also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers. The Bureau stated that the practices causing rural call completion problems ''adversely affect the ubiquity and reliability of the nation's communications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network.''

8. *The NPRM.* In February 2013, the Commission adopted a Notice of

Proposed Rulemaking (*NPRM*) seeking comment on proposed reporting and data retention requirements. 78 FR 21891, April 12, 2013. The *NPRM* proposed rules requiring facilities-based originating long-distance voice service providers to collect, retain, and report to the Commission data on call answer rates. The *NPRM* also proposed rules requiring facilities-based originating long-distance voice service providers to collect and retain information on call attempts and to periodically analyze call completion data and report the results to the Commission. The *NPRM* proposed rules requiring facilities-based originating long-distance providers with more than 100,000 retail long-distance subscribers (business or residential) to file quarterly reports that measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during a calendar month, and to report on specific categories of call attempts. The *NPRM* also proposed requiring originating long-distance providers to measure the overall call answer rate for nonrural call attempts to permit comparisons between long-distance calls in rural versus nonrural local exchanges.

9. *Public Notice Seeking Comment on List of Rural OCNs.* On April 18, 2013, the Wireline Competition Bureau released a Public Notice seeking comment on which rural OCNs covered providers should include in the proposed quarterly reports on call completion performance. 78 FR 26572–01, May 7, 2013. The Public Notice invited comment on the completeness and suitability of a list of rural OCNs compiled by the National Exchange Carrier Association (NECA) and posted on NECA's Web site.

10. *Enforcement Activity.* The Commission's Enforcement Bureau is also actively responding to rural call completion problems. In March 2013, Level 3 Communications, LLC (Level 3) entered into a consent decree terminating the Enforcement Bureau's investigations into possible violations of sections 201(b) and 202(a) of the Act with respect to Level 3's call completion practices to rural areas, including its use and monitoring of intermediate providers. On July 19, 2013, the Enforcement Bureau issued an advisory to long-distance providers to take consumer complaints about rural call completion seriously. The advisory gave examples of plainly insufficient provider responses and warned that ''[g]oing forward, the FCC may take enforcement action against providers that submit such patently deficient responses to informal complaints.''

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to customers of rural incumbent local exchange carriers (LECs) is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A web-based complaint intake focuses on the rural call completion problems of residential and business customers, instructs such customers how to file complaints with the Commission, and links to the Commission's standard 2000B complaint form. Separately, a dedicated email intake provides a ''hot email line'' for rural telephone companies to alert the Commission of systemic problems receiving calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. Many key stakeholders acknowledge that call termination issues to rural service areas are serious and widespread and have collaborated to propose industry solutions. For example, in October 2011, stakeholders attended the Commission's Rural Call Completion Task Force's workshop to identify and discuss potential solutions. In 2012, the Alliance for Telecommunications Industry Solutions (ATIS) released the *Intercarrier Call Completion/Call Termination Handbook* outlining standards and practices of the industry relevant to ensuring call completion. In August 2013, ATIS and NECA announced a voluntary Joint National Call Testing Project offering providers the opportunity to test call completion issues identified on calls destined to many areas served by rural local exchange carriers. The testing project will facilitate cooperative trouble resolution efforts with originating, intermediate and terminating carriers. Finally, we note that some providers have devoted substantial time and resources to analyzing rural call completion performance. We applaud these and other efforts by stakeholders and encourage the continued support of the industry to undertake further efforts to diagnose problems in call routing, cooperate on finding solutions, and adopt best practices aimed at solving the rural call completion problem.

III. Discussion

13. Even with the significant Commission actions described above, the record leaves no doubt that the problems of completing calls to rural areas, particularly areas served by rural incumbent local exchange carriers (ILECs) continue to be frequent and pervasive throughout rural America. The inability to complete calls reliably threatens public safety and contravenes the public interest. We conclude that additional Commission action and enforcement are necessary to address these problems.

14. *Scope of the problems.* The record indicates that rural call completion problems are serious and widespread. NTCA has argued that ''the call completion epidemic results in 'dire consequences' to consumers, economic development, and public safety across the nation.'' The problems manifest themselves in lengthy periods of dead air on the calling party's end after dialing a number, audible ringing tones on the calling party's end when the called party's telephone never rings at all, false busy signals, inaccurate intercept messages, and the inability of one or both parties to hear the other when the call does go through. The record contains substantial evidence that these problems persist; some state that they are worsening. We also continue to receive information on the nature and extent of the rural call completion problem. For example, we have received examples of life-threatening call failures, including a situation where an on-call surgeon was unable to receive a call from a hospital for emergency surgery and a 911 call center was unable to do emergency call backs. We also continue to take in individual complaints from consumers and rural telephone companies affected by these issues.

15. Although some commenters question whether the problems are serious or widespread and whether there is a need for Commission action, these comments are largely unsubstantiated and are inconsistent with the significant evidence and real-world Commission experience to the contrary. We find the views of rural carriers and our state partners more persuasive, given their direct experience with complaints about call completion performance. We therefore find a sufficient basis for proceeding with the rules we adopt today, and can revisit these rules in the future as warranted by the data we will be collecting, which should provide evidence regarding the scope and extent of call completion problems over time.

16. *Causes of the Problems.* There appear to be multiple factors that cause rural call completion problems. Rural associations posit that the call completion problems may arise from the manner in which originating providers

set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers. They argue that least cost routing carriers offer terminating services at low rates, and that some least cost routing carriers may provide inferior service for a low rate.

17. One key reason for the increased problems in rural areas is that a call to a rural area is often handled by numerous different providers in the call's path. Given the particularly high rates long-distance providers incur to terminate long-distance calls to rural rate-of-return carriers, long-distance providers have additional incentives to reduce the per-minute cost of calls. For example, the disparity between interstate rates can be 5–6 cents per minute for rate-of-return areas and just over half a cent per minute for price cap areas. As a result, there is greater incentive for the long-distance provider to hand off the call to an intermediate provider that is offering to deliver it cheaply—and potentially less incentive to ensure that calls to rural areas are actually completed properly. The prevalence of these problems accords with providers' incentives to engage in blocking or degrading traffic, or similar behavior, in an effort to minimize their intercarrier compensation payments, which has been long recognized by the Commission. While the Commission's comprehensive reform of intercarrier compensation will alleviate some of these price differences in the long-term, it likely will continue to be more costly to complete calls to rate-of-return carriers while the transition to bill-and-keep is implemented over the next several years.

18. The Commission has determined that call blocking is an unjust and unreasonable practice under section 201(b) of the Act, and the Wireline Competition Bureau has made clear that carriers' rural call routing practices that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b) of the Act. In the *USF/ICC Transformation Order,* the Commission extended its longstanding prohibition on call blocking to providers of interconnected and one-way VoIP service. We emphasize that interconnected and one-way VoIP service providers may violate this prohibition if they block, choke, reduce, or restrict traffic on calls placed to customers of rural telephone companies.

A. Recording, Retention, and Reporting of Data

1. Scope

19. *Summary.* We adopt recording, retention, and reporting requirements to substantially increase our ability to monitor and redress problems associated with completing calls to rural areas. These rules will also enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. For the reasons set forth below, we find that the recording, retention, and reporting rules should apply to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates (referred to herein as ''covered providers''). In most cases, this is the calling party's long-distance provider. As discussed below, covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. The recording, retention, and reporting rules we adopt today apply to providers of interconnected VoIP service, as that term is defined in section 9.3 of the Commission's rules, 47 CFR 9.3, and to providers of VoIP service that permits users generally to terminate calls to the PSTN, but not to receive calls from the PSTN (one-way VoIP). For ease of reference, in this Order, the terms ''VoIP service'' or ''VoIP services'' are sometimes used to refer collectively to interconnected VoIP service and one-way VoIP service. Finally, we do not apply these rules to intermediate providers.

20. *Covered Providers.* The *NPRM* proposed to require facilities-based, originating long-distance voice service providers to comply with recording, retention, and reporting obligations. The *NPRM* proposed that if the originating long-distance voice service provider were not facilities-based, the first facilities-based provider in the call-delivery path would be subject to the rules. The Commission's proposal to limit application of the rules to facilities-based providers was premised on the belief that those providers would have the greatest access to call detail information. In response to the proposed categories of covered providers, several commenters urged the Commission to clarify or expand what is considered a covered provider, noting that the first facilities-based provider in a call path is not always the entity with the most direct access to call delivery data. Upon reviewing the record, we agree and conclude that the entity with the most direct access to call delivery data and the ability to control the call path (either directly or via contract) is the appropriate entity to record, retain, and report the relevant data. Accordingly, we conclude that these rules should apply to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, regardless of whether those providers are facilities-based. The 100,000-subscriber-line figure should include the total of all of a provider's business and residential fixed subscriber lines and mobile phones, aggregated over all of the provider's affiliates. By ''initial long-distance call path choice,'' we refer to the static or dynamic selection of the path for a long-distance call based on the called number of the individual call. For facilities-based providers, this decision may include choosing to deliver the call on the provider's own network. This approach will ensure that we impose data-related requirements on the providers that have the relevant information. Examples may illustrate how this rule would work in practice:

- If originating provider A hands all long-distance calls to a single IXC–1 under a 12-month contract, originating provider A is not a ''covered provider'' for purposes of these rules. If IXC–1 examines the number called in order to select among alternative downstream providers LCR–1, LCR–2, and LCR–3, then IXC–1 would be the covered provider because it is making the initial route selection decision. The intermediate providers LCR–1, LCR–2, and LCR–3 are not covered providers in this example.
- If originating provider B is allocating long distance calls between IXC–2 and IXC–3 based on geographic origination (*e.g.,* different LATAs), volume (*e.g.,* 50% to IXC–2 and 50% to IXC–3), or basic jurisdiction (*i.e.,* all intrastate to IXC–2, and all interstate and international to IXC–3), and IXC–2 and IXC–3 are making the initial route selection among downstream intermediate providers based on the called party number, then IXC–2 and IXC–3 are covered providers but originating provider B is not. Notably, a covered provider that also serves as an intermediate provider for other providers may—but need not—segregate its originated traffic from its intermediary traffic in its recording and reporting, given the additional burdens such segregation may impose on such providers.

• If originating provider C selects IXC–4 for all long-distance calls where the called number is east of the Mississippi River and selects IXC–5 for long-distance calls where the called number is west of the Mississippi River, then originating provider C is making the initial routing decision based on the called party's number and is a covered provider, and IXC–4 and IXC–5 are not covered providers with regard to traffic from originating provider C.

21. The *NPRM* proposed that the types of providers covered by these rules include LECs, IXCs, CMRS providers, and interconnected VoIP service providers. The Commission also sought comment on whether other types of providers, such as one-way VoIP service providers, should be subject to these rules. We conclude that long-distance voice service providers, including LECs, IXCs, CMRS providers, and interconnected and one-way VoIP service providers, must comply with these rules when they make the initial long-distance call path choice. In order for us to fulfill our statutory obligations, these providers must collect, retain, and report the information required by these rules.

22. Commenters generally support the application of the rules to LECs, IXCs, and CMRS providers. Although some commenters argue that the proposed rules should not apply to interconnected VoIP service providers, there is also significant record support for adopting the proposal to apply the rules to interconnected VoIP service providers. Commission data show that end users are increasingly obtaining service from interconnected VoIP providers, such as cable companies. For the Commission to address the serious public interest harms, we must include the providers that serve approximately one-third of residential customers. Indeed, if we do not apply these rules to providers of VoIP service, other providers could circumvent the rules by working with a VoIP service provider to ensure that the VoIP service provider makes the initial long-distance call path choice. Moreover, data and comments filed in the record indicate that calls that originated with VoIP service providers, like other originating providers, face significant rural call completion issues. Accordingly, interconnected VoIP service providers that make the initial long-distance call path choice must comply with the recording, reporting, and retention rules we adopt today.

23. For similar reasons, we see no basis for excluding one-way VoIP providers from the scope of our rules. The Commission has described one-way VoIP services as allowing users to receive calls from, or place calls to, the PSTN, but not both; here, where we are concerned about termination issues, we refer to VoIP services that allow users to place calls to the PSTN but not to receive them. One-way VoIP providers have significant numbers of subscribers to their services, and some data suggest that one-way VoIP usage is increasing. Indeed, there is no relevant distinction in our record between ''one-way'' VoIP and interconnected VoIP, as the rural call completion problem we are addressing here inherently is ''one way''—calls terminating to rural areas. The Commission needs data from one-way VoIP providers as well as interconnected VoIP providers in order to obtain a complete picture of the rural call completion problem and address it effectively.

24. *Affiliated Providers.* We note that covered providers may be affiliated with other covered providers. To minimize the burden on such providers, affiliated providers may record, retain, and report the information required herein individually or aggregated to the holding-company level. To the extent that covered providers choose to file individually by affiliate, they may do so in whatever arrangement they choose. For example, if three covered providers are affiliated, two of those providers may record, retain, and report data together, while the third does so individually. Furthermore, we do not consider affiliates of a covered provider to be ''intermediate providers'' of that covered provider for the purposes of these rules.

25. *Intermediate Providers.* The *NPRM* sought comment on whether we should impose recording, retention, and reporting requirements on intermediate providers and, if so, how. Some commenters argue that the Commission should impose these requirements on intermediate providers to provide the Commission with more data in its efforts to identify sources of call completion problems and incent intermediate providers to ensure high levels of call completion over their networks. Others disagree, questioning whether the benefits produced by these additional data would justify the burden associated with imposing recording, retention, and reporting requirements on a large number of intermediate providers.

26. At this time, we conclude that intermediate providers are not required to comply with the recording, retention, and reporting rules we adopt today. Because the rules extend to providers that make the initial long-distance call path choice, we expect the Commission will obtain the data we need to identify and analyze patterns of call completion problems. In addition, the Act provides that ''the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.'' Although we decline at this time to require intermediate providers to comply with these rules, the Enforcement Bureau continues to have the authority to investigate and collect additional information from intermediate providers when pursuing specific complaints and enforcement actions. We also remind intermediate providers that our rules already require, within thirty days of the commencement of providing services, telecommunications carriers, certain other providers of telecommunications, interconnected VoIP service providers, and certain non-interconnected VoIP providers to register with the Commission and designate agents for service of process in the District of Columbia. In the attached FNPRM, we seek comment on addressing intermediate providers going forward.

27. *Exception for Smaller Covered Providers.* Consistent with the *NPRM,* we require only providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates) to comply with the recording, retention, and reporting rules. Commenters generally supported this approach. Although some commenters argue that this threshold should be lower, doing so would burden many providers with new obligations without significantly improving the data that are filed with the Commission. Exclusion of smaller providers should not compromise our ability to monitor rural call completion problems effectively. A review of fixed and mobile subscription counts reported to the Commission via Form 477 reveals that the 100,000-subscriber-line threshold should capture as much as 95 percent of all callers. Additionally, many providers that have 100,000 or fewer subscriber lines are not covered providers because they are reselling long-distance service from other providers that make the initial long-distance call path choice. Providers that do not meet the 100,000-subscriber-line threshold continue to be subject to the prohibition against blocking calls,

the section 201 prohibition against unjust and unreasonable carrier practices, and the section 202 prohibition on unjust and unreasonable discrimination. Finally, although we exempt such providers at this time, the Enforcement Bureau continues to have the authority to investigate and collect additional information from such providers when pursuing specific complaints and enforcement actions. The Commission will continue to look into complaints from rural LECs and consumers and pursue enforcement action where warranted.

2. Legal Authority

28. The *NPRM* set out several sources of legal authority that support the proposals to require covered providers to retain and report call completion data, and sought comment on the conclusion that such authority was sufficient to adopt the proposals and ''any additional sources of possible authority.'' We conclude that we have ample direct authority to adopt this Order and the accompanying rules by virtue of sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Act. We also conclude that we have ancillary authority to apply the requirements adopted in this Order to VoIP service providers as discussed below, to the extent those providers are not otherwise subject to our direct authority under the Act.

29. *Direct Authority.* As an initial matter, call detail records are crucial to the Commission's ability to fulfill its responsibilities under section 201 of the Act. As we have previously made clear, blocking, choking, reducing, or restricting traffic in any way, including to avoid transport and termination charges, generally constitutes an unjust and unreasonable practice under section 201(b) of the Act. The recording, retention, and reporting rules we adopt today will help us identify instances in which long-distance providers or their agents may have violated section 201(b) by blocking or otherwise restricting or degrading calls placed to rural consumers. Once such instances have been identified, we can then intelligently marshal our resources. For example, we can use those data to evaluate provider performance and to inform enforcement actions, where necessary. We anticipate that this prospect of enforcement will help to further deter providers from engaging in unjust or unreasonable practices and hence reduce call completion problems to customers in rural America. Indeed, as providers collect data as required under this Order, many will have greater insight into their performance and that of their intermediate providers than they have had in the past. These data also will enable the Commission to evaluate the need for other steps, whether more specific requirements implementing section 201(b), such as specific standards regarding call completion performance, or other actions. For similar reasons, the records to be reported under our new rules also will aid the Commission's efforts to ensure that provider practices, facilities, or services do not unjustly or unreasonably discriminate against rural localities, which could violate section 202(a).

30. Our authority to adopt these rules also derives from section 251(a) because these rules will allow us to ensure that all Americans in rural and nonrural areas receive the benefits of interconnection. For example, the record reflects that some providers are purchasing voice termination services that are of low quality—both in terms of quality of service and in terms of the reliability of delivery to terminating carriers— and rely on indirect interconnection with rural carriers that is not always reliable. To identify the source of the problems in terminating calls—and to assess whether there is a potential failure of ''direct or indirect interconnection'' of the sort the Commission can address under section 251(a)(1)—the Commission needs relevant data. Likewise, insofar as individuals with disabilities live in rural areas experiencing call completion problems, these data are likely to be important tools in targeting investigations of whether long distance providers have configured their networks in ways that do not comply with the accessibility requirements adopted under section 255, as required by section 251(a)(2), and if so, what further actions are warranted.

31. Moreover, the Act provides the Commission with ample authority to: (1) Inquire into and keep itself apprised of carriers' business management practices; (2) obtain from carriers full and complete information necessary to enable the Commission to perform the duties for which it was created; and (3) prescribe the form for these records and reports. Adopting recording, retention, and reporting rules as described below will allow the Commission to better identify patterns of rural call completion problems and address them in fulfillment of our statutory obligations.

32. Our actions also advance the goals set out in other provisions of the Act. Section 1 of the Act makes clear that the Commission's purposes include ''to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.''

33. We disagree with the sole commenter who questioned our jurisdiction to apply recording, retention, and reporting requirements to intrastate long distance calls. Telephone services are jurisdictionally mixed services, and allowing providers to record, retain, and report only interstate information would provide an incomplete picture of the rural call completion problem and leave us poorly equipped to ensure that calls are being properly completed. Indeed, to the extent that our data collection will help us diagnose precisely where rural call failures occur in the network (and that network is used for both intrastate and interstate calls), collecting only a partial picture of rural call completion rates may prevent us from ensuring that interstate calls are properly being completed. In addition, as the Supreme Court has made clear, ''[section] 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies,'' which includes matters covered by section 251(a). We therefore have authority to adopt the data collection, retention, and reporting rules in this Order both for interstate and intrastate traffic.

34. Many commenters support applying the recording and reporting obligations to intrastate as well as interstate long-distance calls. Our state partners, in particular, strongly agree that we should apply our requirements to intrastate calls. We look forward to working with our state partners—some of whom may be strained for resources to address these problems themselves—to ensure that customers of rural carriers do not continue to suffer from poor termination rates.

35. *Ancillary Authority.* The Commission has ancillary authority to impose these rules on providers of interconnected and one-way VoIP services, to the extent that they are not already subject to the direct authority just described. Most commenters agree. Ancillary authority may be employed, at the Commission's discretion, when the Act ''covers the regulated subject'' and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [the Commission's] various responsibilities.'' Both predicates for ancillary authority are satisfied here.

36. First, the Act gives the Commission jurisdiction over interstate ''communication by wire or radio.'' VoIP service connected to the PSTN is clearly such communication, because it involves transmission of voice by aid of wire, cable, or other like connection and/or transmission of voice by radio. These services are therefore covered by the Commission's general jurisdictional grant under Title I.

37. Second, requiring providers of VoIP service to comply with these recording, retention, and reporting requirements is ''reasonably ancillary to the [FCC's] effective performance of its statutorily mandated responsibilities'' under sections 201(b), 202(a), and 251(a)(1). The problems that cause us to impose these requirements relate to terminating LECs—clearly common carriers providing interstate service—that are unable to provide satisfactory service to their customers due to the routing practices of other providers handling the call, thus leaving these terminating LECs susceptible to erroneous complaints that they are engaged in unjust, unreasonable, or otherwise unlawful charges or practices under sections 201(b), 202(a), or a combination thereof. These LECs offer their customers a telephone service that allows the customer to receive long-distance calls from anywhere, but due to other providers' routing practices, interconnection arrangements, and/or network configurations, calls to the rural LECs' customers have experienced significant problems with reliability. The rules we adopt in this Order will help clarify where the blame lies, alleviating the problem of erroneous complaints lodged against terminating rural LECs by helping resolve complaints in an expeditious manner and reducing the burden on all parties, including rural LECs and the Commission. VoIP service constitutes a significant and growing portion of the long-distance telephone market, and according to evidence in the record is also causing some terminating LECs to be unable to ensure their customers a reasonable quality of service. Absent the application of these rules to providers of VoIP service connected to the PSTN, terminating LECs may be suspected of causing rural customers to experience service problems that in fact were caused by VoIP providers or their intermediate providers (and the interconnection arrangements between and among these providers), and may unfairly be the subject of complaints. The prevention of this problem through the periodic reporting of relevant data is reasonably ancillary to the effective performance of our duties under sections 201(b) and 202(a).

38. In addition, if we do not apply these requirements to providers of VoIP service, telecommunications carriers could evade the rules by partnering with a VoIP provider in a way that allows the VoIP provider to make the initial call routing decision, thereby allowing the carrier to circumvent the requirements we adopt today and undermine the purpose of those rules. Such a carrier could therefore arrange for low-cost, low-quality terminations of its customers' calls to the customers of rural LECs without the threat of enforcement action from the Commission. For example, there is evidence on the record that, in at least one instance, a non-facilities-based reseller makes the initial long-distance call path choice. If that reseller making the initial long-distance call path choice uses VoIP technology, in the absence of recording, retention, and reporting requirements for VoIP providers, both it and the customers for which it makes the initial long-distance call path choice would avoid these rules, and the Commission would receive no data on retail long-distance call attempts made by the customers of the providers using the reseller's services. Such circumvention would prevent ''the effective performance of [our] statutorily mandated responsibilities'' under sections 201(b) and 202(a); therefore extending our rules to cover VoIP long-distance providers and eliminating this opportunity for circumvention is ''reasonably ancillary'' to the effective performance of our duties for this reason as well.

39. The recording and reporting requirements will also aid the Commission in ensuring that VoIP providers fulfill their obligations pursuant to the call blocking ban extended to one-way and interconnected VoIP service providers in the *USF/ICC Transformation Order,* and the application of the rules we adopt today to providers of VoIP service connected to the PSTN is therefore reasonably ancillary to the same statutory authority that provided the basis for the relevant Commission action in the *USF/ICC Transformation Order.* For these reasons, we conclude that imposing the recording, retention, and reporting requirements meets the second predicate for ancillary authority.

3. Recording and Retention Requirements

40. The *NPRM* proposed to require covered providers to record and retain the following information for each long-distance call attempt: Calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN; whether the call is interstate; and whether the call attempt was answered. We sought comment on this approach and on the degree to which providers typically retain this information in the ordinary course of business. We now conclude that these data—as well as certain cause code information—are necessary to permit us to identify and redress call completion problems.

41. Covered providers must begin recording the required data on the first day of the calendar month that is at least 20 days after the effective date of the information collections in these rules, which will be announced in the **Federal Register** upon approval of the collections by the Office of Management and Budget (OMB). Thus, for example, if the effective date of the information collections as announced in the **Federal Register** is on January 5, providers must begin recording the required data on February 1; if the effective date as announced is on January 20, providers must begin recording their data on March 1. The Wireline Competition Bureau will also issue a public notice announcing when providers must begin recording data.

a. Data To Be Recorded and Retained

42. On balance, the record supports the categories of call attempt data proposed in the *NPRM.* The Rural Associations argue that ''this information is or should be readily available to providers since it is typically used to calculate bills and [for] call verification as well as to confirm charges assessed by other providers for transport and termination.'' Although some commenters claim that most carriers do not currently retain the proposed call detail information, or retain only some of the information, we find that the proposed categories of call data are necessary for the Commission to monitor rural call completion problems. Having access to call detail records (CDRs) is essential for carriers to identify patterns of problems and develop effective, targeted solutions. If, for example, these CDRs reveal a particularly low call completion rate to a specific rural OCN, this might indicate an inaccuracy in that provider's routing tables or the presence of a downstream intermediate provider engaged in call blocking. Identifying such patterns would be significantly more difficult without recording and retaining call

detail records at the level of granularity required by the rules we adopt today. While we are mindful of the burdens, particularly on providers that do not already collect or retain this information, we find that the information we require is narrowly tailored to give the Commission data necessary to analyze the issue and take action to address call completion problems.

43. We also agree with those commenters that encourage the Commission to require covered providers to record and retain certain signaling cause code information. The information would allow providers and the Commission to calculate and evaluate the statistical significance of a provider's call answer rate, which is the ratio of the number of calls answered to the number of calls attempted. The call answer rate provides valuable information for identifying problem areas but does not distinguish among categories of calls that are not answered. To have a better understanding of the rural call termination problems, having cause codes for unanswered calls will allow us to distinguish among calls that generate busy signals, calls that ring but are not answered, and calls to unassigned numbers, and to identify calls that never reach the intended destination. We recognize that these data are imperfect—we understand, for example, that user busy signaling may in reality reflect network problems—but they will improve our ability as well as that of providers to monitor performance and narrow in on specific problems. As such, in addition to the eight data points proposed in the *NPRM,* we require covered providers to record an indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. For most providers, this indication is likely to take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt.

44. In contrast, we disagree with commenters that encourage the Commission to require covered providers to record and retain post-dial delay. Because the retention and reporting of average post-dial delay information is of limited utility, and the accumulation and reporting of useful post-dial delay data by rural OCN is complex, we decline to add this category of call detail information to the recording and retention requirements.

45. *Interstate and Intrastate Call Data.* We require covered providers to record data for all domestic long-distance calls, regardless of whether the calls are interstate or intrastate, and to report data on interstate and intrastate calls separately. To identify the source of problems and take appropriate action, we need complete data. Indeed, several state entities support the Commission's collection of interstate and intrastate call data as a positive step for monitoring rural call completion problems.

46. While we considered providing greater flexibility to providers to choose whether to record and report data for interstate and intrastate call attempts separately or together, we decide that having consistent data sets across providers is necessary to a clear analysis of rural call completion problems. For example, if we were to compare the performances of various providers in completing calls to a particular rural destination, it would be important to know that the performances we were comparing included the same types of calls (*e.g.,* interstate, intrastate, or both). In addition, inconsistent data could potentially mask problems that consumers are actually experiencing, if the call volume for one category is substantially higher than the other. We will also be better able to advise our state partners of relevant problems within their states. While the record suggests that distinguishing between interstate and intrastate calls may require some providers to make adjustments to their systems, we believe these adjustments are warranted so that we can quickly and efficiently identify and pursue any problems.

47. One commenter suggests that the Commission should limit the requirements to interstate calls so that intrastate long-distance providers will not be burdened by duplicative or conflicting state requirements. While some states are acting to address rural call completion problems, we are not aware of any overlap or conflict with the rules we adopt today. Indeed, we believe that these rules will help states monitor and address rural call completion problems too, and also enable them to address rural call completion problems with us jointly. Thus, we disagree that collecting intrastate call information will be duplicative of state requirements. To the extent that covered providers identify areas where the requirements we adopt today duplicate or conflict with state commission regulation, we will consider those specific circumstances when they are brought to our attention.

b. Categories of Call Attempts To Be Recorded

48. The *NPRM* proposed to categorize long-distance call attempts by type of originating and terminating provider. The *NPRM* proposed that the data collection requirements cover, at a minimum, the following categories of long-distance call traffic: Originating provider to rural telephone company (including rural CLEC), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). The NPRM sought comment on whether all these proposed categories are necessary and whether other categories of calls should also be included.

49. We conclude that the only call attempts that need to be retained are those to incumbent LECs that are rural telephone companies, as identified by OCN. Evidence indicates that the rural call completion problems are largely confined to such carriers; one reason may be that rate-of-return carriers have terminating access rates tend to be higher than those of other carriers. In addition, we note that originating providers process substantially more calls to nonrural areas than to rural areas each day—according to Verizon, 89.5 percent of long-distance calls may be to nonrural destinations. Thus requiring covered providers to retain records only for calls to rural incumbent LECs may substantially reduce the burden of compliance. Finally, we are unaware of any complaints that the list of proposed rural OCNs on which the Commission sought comment did not include rural competitive LECs. Indeed, NTCA agrees that so long as we retain the data for calls to rural incumbents, there is no need to maintain that same data for calls to nonrural carriers.

50. We disagree with the commenter that argues we should include calls that terminate to CMRS subscribers. Evidence indicates that calls to CMRS customers are unlikely to suffer from the completion problems affecting long-distance calls to rural wireline telephone subscribers because calls to CMRS subscribers normally do not incur high termination access charges in rural areas. Moreover, calls that terminate to CMRS customers have not been the subject of the same or similar volume of complaints as have calls to rural LECs. Therefore, we decline to include calls that terminate to CMRS subscribers in the categories of call attempts to be recorded and retained.

51. *Calls delivered on-network.* One commenter asserts that intraLATA toll traffic and interLATA traffic carried on its own network and handed off directly by the originating provider to the terminating LEC should be excluded

because this traffic would not likely cause call completion issues. Even if this traffic would incur fewer call completion issues, we decline to exclude this traffic because it provides an important benchmark for issue-free performance. This is especially true in instances where a provider may be using both on-net and off-net routes to deliver calls to the same terminating provider.

52. *Autodialer Traffic.* The *NPRM* acknowledged that some providers may handle substantial amounts of autodialer traffic on behalf of business customers who may have call completion expectations and capacity requirements that differ from those of residential and business callers. The Commission noted, for example, that an autodialer may be programmed to hang up before a call attempt can be answered by voicemail or an answering machine. We thus sought comment on whether such traffic can be reliably identified and, to the extent that it can be identified, whether it should be excluded from the recording and retention requirements.

53. Some commenters indicate that they can reliably identify retail autodialer traffic because it is delivered on a dedicated connection. Another commenter, however, argues that such traffic cannot be reliably identified. To the extent that it can be identified, several commenters suggest that autodialer traffic should be excluded because it has the potential to skew call completion results. One commenter suggests that the Commission should only allow covered providers to exclude autodialer traffic to the extent that they can identify and segregate emergency autodialer call attempts, while another commenter argues that all autodialer traffic should be included in the recording and retention requirements, particularly given concerns about completion of important autodialed emergency alert calls.

54. While we agree that there are characteristics unique to autodialer traffic that may make it likely to skew call completion performance results, the record in this proceeding is unclear on the degree to which providers can reliably identify and segregate this traffic when recording their long-distance call attempts. We are confident that the impact of autodialer traffic can be accounted for and will not undermine the reliability of the data for our purposes. For these reasons, we require covered providers to include autodialer traffic in their recording, retention and reporting. Covered providers may, however, submit separate calculations in their reports to the Commission that segregate autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. This approach should help the Commission examine the effects of autodialer traffic on call completion rates and the degree to which those effects are magnified in more sparsely populated rural numbering blocks, as well as to identify more effective means of segregating this traffic.

c. Inclusion or Exclusion of Certain Call Attempt Types

55. The *NPRM* sought comment on the feasibility and appropriateness of including or excluding certain types of call attempts from the recording and retention requirements. For the reasons set forth below, we include call attempts of very short duration and exclude call attempts handed back to an upstream provider and call attempts to toll-free numbers.

56. *Calls of Short Duration.* The *NPRM* sought comment on whether calls of very short duration, such as those lasting for less than two seconds, should be excluded from the recording and retention requirements. Some commenters encourage the Commission to include these calls while others contend that we should exclude these calls ''because they are often wrong numbers, are made by mass dialers, and/or do not provide the called party ample time to answer.'' We find that it is appropriate to include calls of short duration. While there are myriad reasons why a call may be very brief, a short call could reflect an inability to complete a call to the intended called party, a dropped call, poor call quality, or that the calling party hung up just as the called party answered, all of which are relevant to the issues the Commission is attempting to address. We thus conclude that calls of very short duration should be included in the recording and retention requirements. Covered providers may submit an explanation for any apparent anomalies when they submit their reports.

57. *Calls Handed Back.* The *NPRM* proposed to exclude call attempts that are handed back to the upstream provider in order to avoid double-counting of the same phone call, and sought comment on the feasibility and appropriateness of doing so. The record strongly supports the proposal and several commenters contend that it is ''easily achievable,'' while CTIA claims that excluding these attempts will require the development of new systems to identify these calls.

58. We find that excluding call attempts handed back to the upstream provider is both appropriate and practicable. To obtain a fair measure of total call attempts, we find it appropriate to exclude call attempts handed back to the upstream provider from the recording and retention requirements if the upstream provider makes further attempts to complete the call, whether on its own network or through a different intermediate provider. Covered providers should confirm that they have excluded such hand backs when reporting their results. Inteliquent observes that some providers, especially CMRS providers, are ''unable to take back a call that an intermediate provider is unable to complete.'' Our understanding is that calls are not handed back to originating providers in such cases, and these rules would not apply as there are no calls that are handed back and no new systems for detecting calls handed back would be required. Under those circumstances, there is no risk of double counting a single call attempt, so there is no need for CMRS providers to develop new systems to properly account for such calls.

59. *Toll-Free Numbers.* The *NPRM* sought comment on whether calls to toll-free numbers can be reliably identified and excluded. Some commenters argue that calls to toll-free numbers should be excluded, noting that in many instances it is the toll-free service provider, and not the originating service provider, that controls the routing of those call attempts. However, other commenters contend that calls to toll-free numbers should not be excluded from the recording and retention requirements.

60. We conclude that calls to toll-free numbers should be excluded. In many instances, the originating provider has no control over the routing or the quality of call attempts to toll-free numbers, and to include these call attempts in the recording and retention requirements would require covered providers to include data on call attempts for which they can take no remedial steps in the event of completion problems. We thus exclude call attempts to toll-free numbers from the recording and retention requirements.

d. Retention Period

61. The *NPRM* proposed that covered providers retain call detail records in a readily retrievable form for at least six calendar months. We find that the six-month retention period best balances the Commission's need for access to these data in support of its efforts to

eliminate rural call completion problems, including enforcement actions, with the burden on providers associated with compliance. Some commenters support the six-month retention period, emphasizing the utility of the recording and retention requirements in the Commission's efforts to identify patterns of rural call completion problems and take enforcement action where appropriate. Others urge us to adopt a longer or shorter retention period.

62. A six-month retention period is consistent with our decision to require quarterly reporting to the Commission. If we were to adopt a shorter retention period, such as the three months suggested by some commenters, the records underlying the first month reflected in the report might have been purged before the Commission had a reasonable opportunity to review the quarterly report. Alternatively, if the Commission adopted a shorter retention period, it likely would need to require more frequent reporting to provide time to review reports before covered providers purged call records summarized in the report. This increased reporting frequency, in turn, would increase the burden on covered providers. Thus we conclude that a six-month retention period (and quarterly reporting requirements) strikes the appropriate balance between the benefit of better ensuring satisfactory levels of call completion to rural areas and any associated burdens on covered providers.

63. Some commenters argue that the proposed six-month retention period is too burdensome, both in terms of up-front software and hardware costs required to develop the capability to retain this volume of data in a readily retrievable form, and in terms of ongoing personnel and systems costs associated with administering a data retention program. These commenters characterize these up-front and ongoing costs as exceeding any benefits associated with a six-month retention period. As other commenters point out, however, covered providers already collect, in the ordinary course of business, much if not all of the call data to be retained.

64. We disagree with those commenters who contend that the development, storage, and personnel costs associated with the six-month retention period are too burdensome relative to any benefits resulting from the data retained. A number of potentially covered providers appear to already have in place the capability of complying with these rules. We also note that Sprint's unsubstantiated contention that the proposed rules will cost billions of dollars industry-wide is based on several erroneous assumptions. For example, Sprint's assertion that the rules will apply to ''hundreds or thousands of other originating carriers'' does not reflect the fact that our rules will apply only to providers that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines. In addition, the retention obligation applies only to call attempts to incumbent LECs that are rural telephone companies, which reduces the burden on covered providers. We therefore find that imposing a six-month retention period is not unduly burdensome, relative to the significant harm of call completion problems and the expected benefits of retaining the data and having access to the data underlying the periodic reports.

4. Reporting Requirements

65. We require covered providers to submit a certified report to the Commission once per calendar quarter that includes for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. Using these data, we will calculate the percentage of calls answered (the call answer rate) and the percentage of calls completed to the terminating provider regardless of whether answered or unanswered by the user (the network effectiveness ratio). We will also calculate the totals and values for the rural OCNs in the aggregate. The categories of call attempts and what constitutes a call attempt are addressed above in section III.A.3. As proposed in the *NPRM,* the reports will be submitted in electronic form using a template specified by the Commission.

66. In Appendix C, attached to the Report and Order, we provide a template of the mandatory report in the form of an electronic spreadsheet that will be filed with the Commission each quarter. As noted above, covered providers must include autodialer traffic in their reports, but they may submit separate calculations that segregate autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. Before any reports are due, the Wireline Competition Bureau will release a public notice that explains the filing mechanism in detail. Bureau staff will work with providers to ensure that the providers have the tools they need to complete and file the form in the least burdensome manner possible. Because the reporting requirements are an information collection, no reports will be required until the collection has been approved by OMB under the Paperwork Reduction Act. The effective date of the information collections in these rules will be announced in the **Federal Register**, and covered providers must begin recording the data included in the reports they file with the Commission on the first day of the calendar month that is at least 20 days after the effective date.

67. Originating long-distance voice service providers that do not make the initial long-distance call path decision for more than 100,000 domestic retail subscriber lines are not required to comply with these recording and reporting requirements. Rather, the entity or entities that make the initial long-distance call path decision for calls from those providers' end-user customers must record and report data for those calls. To address rural call completion problems, it is important to ensure that call attempts from all originating long-distance providers that have more than 100,000 domestic retail subscriber lines but do not make the initial long-distance call path choice are accounted for in the reports we receive. Accordingly, we require all originating long-distance voice service providers that have more than 100,000 domestic retail subscriber lines but that, for reasons set forth in this paragraph, are not required to file quarterly reports to file a one-time letter in WC Docket No. 13–39 explaining that they do not make the initial long-distance call path choice for more than 100,000 long-distance voice service subscriber lines and identifying the long-distance provider or providers to which they hand off their end-user customers' calls. This letter must be submitted to the Commission by the date on which recording and retention is required to begin, and a copy must be submitted simultaneously to each provider identified in the letter as having reporting responsibility.

5. Call Answer Rate and Related Information

68. The *NPRM* proposed to require that providers report the call answer

rate for each rural OCN, for all rural OCNs in the aggregate, and for nonrural OCNs in the aggregate, and report the call answer rates separately for interstate and intrastate calls. After reviewing the record, we require covered providers to report data that will allow the Commission to calculate the call answer rate, rather than requiring them to report the call answer rate itself. We also require covered providers to report data regarding unanswered calls. Specifically, we require covered providers to report, for each rural OCN and for nonrural OCNs in the aggregate but separated by interstate and intrastate call attempts: (a) The total number of call attempts; (b) the number of answered calls; (c) the number of call attempts that result in ''busy'' code; (d) the number of call attempts that result in a ''ring no answer'' code; and (e) the number of call attempts for which the called number was reported to be unassigned. Collecting these data points individually will enable the Commission to calculate—for each rural OCN, for all rural OCNs in the aggregate, and for nonrural OCNs in the aggregate—both the call answer rate and the network effectiveness ratio (NER), and will provide the Commission with better insight into the reasons why calls are not answered or not reaching their destinations. We emphasize that because the report includes data for both rural and nonrural call attempts, covered providers must file reports even if they deliver no calls to rural OCNs.

69. The call answer rate that the *NPRM* described, which divides the number of calls answered by the total number of call attempts, is similar to the answer/seizure ratio (ASR), the analogous TDM voice network metric, which is often ''used as a means of identifying possible changes in performance of a service.'' Using these data, we can calculate call answer rates, and thus the data are a valuable metric in assisting the Commission in comparing performance across providers to uncover the source of rural call completion problems. Indeed, the call answer rate is a reasonably reliable measure because, for many users, the answer signaling message generates a billing record.

70. Several commenters urge the Commission to require covered providers to report the NER in addition to the call answer rate. One commenter notes that call answer rates may differ based on local adoption rates of voice-mail service, answering machines, and fax machines and observes that because ''ring no-answer'' and ''end user busy'' calls are treated the same as answered calls in calculating the NER, it may be superior to the call answer rate. Some commenters go further to propose that we require providers to report only the NER, instead of the call answer rate. Other commenters disagree and assert that the Commission should not require covered providers to report the additional call data that has been suggested because it would be too burdensome and potentially inaccurate.

71. After reviewing the record, we agree with commenters that we should require providers to report information beyond the call answer rate. As noted above, we require providers to retain certain cause code information from which providers and the Commission can calculate the NER as well as certain specific percentages regarding unanswered calls, such as the percent of call attempts that resulted in a busy signal. While we agree that additional data will be useful in identifying the causes of rural call completion problems, we do not agree with commenters who suggest that we should require reporting of the NER in lieu of the call answer rate. First, the call answer rate is the data point least susceptible to variations in data reporting or to differences in the quality or accuracy of signaling: The called party either answered the call or did not answer the call. The NER, by contrast, standing alone and viewed only from the originating provider's perspective, does not similarly validate whether the call ultimately reached its destination. For example, the NER calculation is dependent on reliable signaling—because it treats ''user'' cause code signals the same as a completed call, any incorrect or falsified signals could mask problems such as looping or intentional blocking within the network while maintaining a high NER. For instance, busy signals are sometimes injected by intermediate providers, rather than handing back the call when they cannot find a route. Accordingly, we require covered providers to report data that will allow us to calculate the NER in addition to the call answer rate. In Appendix C, attached to the Report and Order, we provide a specific template that covered providers will use in reporting their data, which will capture the information described above while accommodating differences in the specific cause codes or other data that providers may have, to give them flexibility to report such data based on their own network configurations.

72. ''*Answered call.*'' The *NPRM* defined the term ''answered call'' to mean ''a call that is answered by the called party, including by voicemail service, facsimile machine or answering machine.'' One commenter recommends that we expand the definition of ''answered call'' to mean ''a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that cause the network to register that the terminating party has gone off hook).'' We adopt this recommendation, with some modification, because we conclude it is more comprehensive. Thus the term ''answered call'' means a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system), causing the network to register that the terminating party is prepared to receive information from the calling user.

a. Reporting by Operating Company Number

73. We require each covered provider to report monthly information for each rural OCN to which the provider attempted to deliver calls. As the *NPRM* explained, it is necessary to measure performance at the individual rural incumbent LEC level, as identified by OCN, to ensure that poor performance to any individual rural incumbent LEC is not masked, as it otherwise would be by averaging together calls to all rural incumbent LECs, or averaging call data for rural and nonrural areas. Some commenters support reporting the data for each rural operating company as proposed, and several covered providers state that they can readily satisfy a requirement of reporting for each rural operating company. As noted above, the Commission proposed a list of rural OCNs, to be maintained by NECA, for which call completion performance must be recorded, retained, and reported, and it sought comment on the completeness of the list and its suitability for use upon adoption of the rules proposed in the *NPRM.* We received no comment opposing the use of this list or arguing that it was overinclusive or underinclusive in any way, and we believe that the proposed list will provide the Commission with the data we need to achieve the objectives identified in this Order. Therefore, we conclude that covered providers must use the rural OCN list as proposed in the *List of Rural OCNs Public Notice.* To further improve administration of the recording and reporting process, the Wireline Competition Bureau will release a

public notice shortly after release of this Order providing a list, also compiled and maintained by NECA, of OCNs associated with incumbent LECs that are not rural telephone companies; covered providers must use this list to compile the data for nonrural call attempts that must be recorded and reported to the Commission under these rules. Once the information collections in the Order become effective, we direct NECA to update the lists of rural and nonrural OCNs annually and provide them to the Wireline Competition Bureau in time for the Bureau to publish the lists no later than November 15. For purposes of complying with the recording and reporting rules adopted herein, those lists will define the rural OCNs and nonrural OCNs at issue for the following calendar year.

74. Other commenters support the proposed reporting while suggesting that additional data should also be reported. We find that the data that will be reported under this Order should be sufficient to enable the Commission to analyze and address rural call completion problems, and thus we do not expect the benefits of reporting the proposed additional data to outweigh the burdens of doing so.

75. Some commenters indicate that they do not categorize calls by terminating OCN and that to do so would be burdensome. We are not convinced that the requirement is unreasonable or overly burdensome. To make the routing selection for a call, a provider typically begins with the same level of identification of the called number. As we have noted, several originating providers already categorize calls by OCN in order to analyze their performance to rural areas. Indeed, these data seem essential to providers for distinguishing rural and nonrural calls and performance, the very problem we seek to address through this proceeding. We understand that there are several commercial reference databases available for identifying the OCNs for all domestic telephone numbers. We thus find that any burden to these covered providers is outweighed by the importance of this information to meeting our statutory obligations.

b. Reporting for OCNs With 100 Attempts or More

76. The *NPRM* proposed that covered long-distance providers be required to report the call answer rate for those rural OCNs to which 100 or more calls were attempted during the month, and also the call attempt and answer data on which the calculation is based. Some commenters have proposed that we increase the threshold to as many as 1,000 attempts per month to limit the number of OCNs being reported, and others proposed substantially reducing the threshold, including removing the threshold completely.

77. We agree with the commenters who recommend that we eliminate the minimum calls per month threshold for reporting by rural OCN. As some commenters observe, all attempts have to be counted by OCN before a provider can then exclude those below a threshold from the submitted report and it is less burdensome to simply report complete results for all OCN results than it is to take the additional step of applying a threshold before doing so. In addition to being less burdensome on covered providers, this adjustment will permit the Commission to more reliably study data aggregated across all providers for an individual OCN. The Commission will weigh the statistical significance of the data on OCNs with small numbers of call attempts per month that it will likely receive from covered providers in their individual reports.

c. Reporting for Peak Periods Only

78. The *NPRM* asked whether reports should cover all call attempts or just those attempted in some peak period, such as between noon and 6:00 p.m. Eastern time. Commenters generally opposed limiting call attempts to those made during a peak period. The Rural Associations observe that ''[l]imiting reporting to peak hours suggests call failures are attributable solely to network congestion.''

79. We conclude that we will obtain the most informative data by collecting data on all call attempts, rather than attempts during a peak period. While we recognize that a disproportionate percentage of call failures may be attributable to intermediate providers whose facilities are poorly engineered or inadequately sized for loads occurring during peak hours, there is little support in the record for limiting reporting to peak periods and strong support for requiring reporting that covers all call attempts. To the extent that a covered provider requires data on peak periods data to analyze call completion problems, the provider can extract that information from the data it collects on all calls.

d. Reporting Monthly Measurements

80. The *NPRM* proposed that the call answer rates for rural OCNs be calculated over a month-long period, asked if a different measurement period would be more appropriate, and asked whether the nature of chronic call routing failures might be such that measurement data analyzed monthly masks problems that, for example, a weekly measurement period would better capture.

81. Comments vary widely on the approach to take. One carrier states that it can gain significant insight from a one-day snapshot while another recommends that the measurement period should be the whole quarter. Other commenters propose collecting data over a three-day period each month or a peak-period measurement during one sample week each month. One commenter asserts that a weekly measurement period would be more likely to capture intermittent problems. Other commenters accept the month-long measurement period and some oppose reducing the reporting interval to less than a calendar month. Two commenters state that they are comfortable with using a monthly measurement period initially, while noting that the Commission could reduce the period in the future if one month proves inadequate.

82. We adopt the proposed monthly measurement interval. As we develop experience, we may reconsider this decision. At present, the record indicates that monthly measurements are reasonably calculated to provide a reasonable snapshot of performance. We again note that for problem identification and analysis purposes, providers can extract data for smaller time spans, such as weekly figures, from the complete set of data they collect.

e. Timing and Frequency of Reports

83. We proposed in the *NPRM* that reports be filed quarterly with the Commission and asked on what dates they should be filed. Several commenters support reporting no more frequently than quarterly if reporting rules are adopted. Other commenters recommend that call attempt data be reported monthly in the interest of timely reporting of problems. Another commenter concerned about the timeliness of reporting recommends that covered providers submit three ''rolling'' months of data once a month.

84. Some parties raise concern that reporting more frequently than quarterly would be unduly burdensome. To minimize the burden while providing the Commission with sufficient information, we adopt a quarterly reporting interval. Concerning when the reports should be filed, we agree with commenters that assert that once reporting systems and procedures are deployed, they should be able to produce the quarterly electronic spreadsheet submission before the end

of the following calendar month. Therefore, we conclude that quarterly reports will be due on February 1 (reflecting monthly data from October through December), May 1 (reflecting monthly data from January through March), August 1 (reflecting monthly data from April through June), and November 1 (reflecting monthly data from July through September) of each year.

6. Safe Harbors

85. The *NPRM* proposed two safe harbors by which providers could reduce their obligations under the data reporting and retention obligations. The first safe harbor was described as the ''Managing Intermediate Provider Safe Harbor.'' Under this safe harbor, as proposed, a provider could have no more than two intermediate providers in a given call path before the call reaches the terminating provider. The second safe harbor, described as the ''Monitoring Performance Safe Harbor,'' would provide some relief from the proposed rules to providers meeting certain performance standards. We adopt the Managing Intermediate Provider Safe Harbor in part, and to create incentives for providers to improve their rural call completion performance immediately, we provide a means for providers that have taken significant steps and adopted measures to ensure calls to rural areas are being completed, such as adoption of industry best practices, to seek a waiver of these data-related obligations. We do not adopt the Monitoring Performance Safe Harbor.

86. *Managing Intermediate Provider Safe Harbor.* We adopt the Managing Intermediate Provider Safe Harbor in part, to reduce a qualifying provider's reporting obligations and reduce the data retention obligations from six months to three months. Qualifying covered providers must comply with the reporting requirements for one year and must retain the call detail records described above in a readily retrievable form for only three calendar months, but must have three full months of data available at all times. To qualify, a provider must certify on an annual basis either that it uses no intermediate providers, or that all of its contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider (that is, a total of no more than two intermediate providers in the call path) before the call reaches the terminating provider or terminating tandem. The provider must further certify that any nondisclosure agreement with an intermediate provider permits the covered provider to reveal the identity of the directly connected intermediate provider and any additional intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by intermediate provider performance. Finally, the provider must certify that if it uses intermediate providers, it has a process in place to monitor the performance of its intermediate providers. Providers may utilize the safe harbor by filing a certification on any of the four quarterly filing dates throughout the year (and filings are due annually thereafter). Thus, a provider does not need to wait until the next annual certification to take advantage of the safe harbor. At the same time, a provider must comply with our full data retention and reporting obligations for any quarter in which it no longer qualifies for the safe harbor (*i.e.,* its business practices cease to comply with the terms of its certification).

87. Several commenters oppose this safe harbor, expressing skepticism about its efficacy in preventing rural call completion problems. NARUC and the rural associations describe the safe harbor as premature until it can be validated by a history of reporting. We disagree. Our experience in investigating and resolving rural call completion complaints suggests that problems with routing calls to rural areas typically arise where more than two intermediate providers are involved in transmitting a call. An originating provider that limits the intermediate providers in the call path to two is better able to manage performance to rural destinations than an originating provider that sends calls through numerous intermediate providers, the identities of which the originating provider may not even know. We agree that ''[l]imiting the number of intermediate providers that may handle a call limits the potential for lengthy call setup delays and looping.''

88. Moreover, our examination of carrier practices during enforcement proceedings and when responding to complaints has revealed that the proliferation of rural call completion problems in recent years has coincided with the proliferation of intermediate providers, the use of which appears to contribute to call completion problems and often results in nearly untraceable call routes. This situation has arisen after decades of uncontroversial, well-functioning use of intermediate providers for least-cost routing. This suggests that a provider that has a manageable network with few intermediate providers in a call path will provide better performance.

89. We do, however, modify the proposed safe harbor by requiring the same reporting for a period of one year as for providers not invoking the safe harbor and requiring the same recording requirements, but limit the retention period to three full calendar months rather than six. One year of reporting will provide the Commission with data on completion rates from safe-harbor qualifiers to ensure that such providers are achieving satisfactory rural call completion performance. Furthermore, the recording requirements ensure that the providers have the data available should there be a need to initiate investigation. And, we believe that, absent any retention requirements, providers may have an incentive to purge data quickly to avoid having relevant information for any possible investigation.

90. Even so, we reduce the burden by limiting reporting to one year and retention to three months of data for several reasons. First, we want to encourage providers to take advantage of the safe harbor and expect fewer rural call completion issues, if any, to arise regarding providers that qualify for the safe harbor. Several providers encouraged the Commission to adopt a three-month retention period to reduce the burden. Second, the Enforcement Bureau is already able to require providers to retain these records for a longer period of time and may revoke a provider's use of this safe harbor if that provider fails to comply with the safe harbor requirements. Third, because we expect rural call completion to be less of a problem for safe-harbor qualifiers, our concern that six months of record retention is necessary to ensure that the first month of data reflected in any report has not been purged before the Commission has had a reasonable opportunity to review the quarterly report is mitigated here.

91. Some commenters seek clarification on whether, if a provider other than the terminating rural ILEC operates the terminating tandem switch, that provider counts as an intermediate provider for purposes of eligibility for this safe harbor. We clarify that it does not. Our experience in investigating rural call completion complaints indicates that when a call does reach the terminating tandem, regardless of ownership, it is completed by the rural ILEC with a very high degree of reliability. Accordingly, if a provider merely operates a terminating tandem that delivers traffic to a rural ILEC, delivering traffic to the terminating tandem operated by that provider does

not count as using an additional intermediate provider for purposes of this safe harbor.

92. One commenter seeks clarification concerning the categorization of an intermediate provider that operates a comprehensive network of organizationally separate affiliates. We agree that an intermediate provider at either the first or second level includes all of the intermediate provider's affiliates.

93. Finally, the *NPRM* proposed that originating providers maintain a self-certified monitoring process to qualify for this safe harbor. Many commenters indicate that they monitor the performance of their first-level intermediate providers using a variety of key performance measures including but not limited to overall answer-seizure ratio (ASR), network effectiveness ratio (NER), and post-dial delay. One interexchange carrier requested additional guidance. Because we want to encourage providers covered by the safe harbor to analyze their own performance and that of any intermediate providers, we do not require qualifying providers to use any particular process. Instead, we require that they describe the process they use to monitor their intermediate providers in their annual filings certifying compliance with the safe harbor.

94. We note that this safe harbor decreases reporting and data retention obligations for a covered provider, but is not a safe harbor from the Commission's normal investigatory processes. For example, the Commission will continue to serve rural call completion complaints from consumers and rural carriers on service providers that invoke the safe harbor. Furthermore, we delegate authority to the Enforcement Bureau to revoke a provider's use of the safe harbor if the Bureau finds that the provider is not in compliance with the safe harbor requirements. At any time, the Bureau may request copies of the provider's contracts or agreements with intermediate providers as well as other evidence regarding the covered provider's processes for monitoring the performance of its intermediate providers. If the Bureau determines that evidence warrants revocation of the provider's safe harbor protection, the Bureau shall notify the service provider of such revocation by letter. The provider's safe harbor protection shall terminate 30 days after the revocation letter is mailed. Accordingly, any provider taking advantage of the safe harbor should be prepared to begin complying with the additional data retention requirements and the reporting requirements within 30 days. A service provider that loses safe harbor protection in this manner may seek reconsideration or review of the Bureau's decision in accordance with the Commission's rules. While we anticipate that the need to revoke a provider's use of the safe harbor will not occur often, we must remain prepared to assess and address rural call completion issues involving providers that use the safe harbor.

95. *Waivers of Data Collection and Retention Requirements.* Although the safe harbor encourages providers to take steps to reduce the rural call completion problem, we note that the industry through the *ATIS Handbook* and other means has identified other significant steps providers can take to ensure calls to rural areas are completed. We seek comment in the FNPRM about imposing additional requirements to take advantage of the safe harbor in the future. While the FNPRM is pending, we adopt a waiver process to enable providers that have taken steps in addition to satisfying the requirements for the Managing Intermediate Provider Safe Harbor to ensure calls to rural areas are being completed to receive a waiver of the data retention obligations.

96. To encourage providers to take immediate and decisive action to redress rural call completion problems, we will consider requests for waiver of the specific reporting and data retention rules as described herein. We delegate to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to act on such waiver requests. In evaluating a provider's waiver request, the Bureau should consider not only whether a provider has demonstrated that it qualifies for the Managing Intermediate Provider Safe Harbor, but also whether it persuasively demonstrates that it has processes in place to ensure that call attempts to rural incumbent LECs successfully reach their destinations, such as by adopting industry best practices. The Bureau should also consider whether the provider has demonstrated that it has capabilities and processes to monitor its own performance by the OCN of the called party's ILEC (rather than just at an aggregate level). The Bureau shall require, as a condition of a waiver, that a provider report information about rural call completion for a one-year period, and such a report may be based on a statistically valid sample of calls. In addition, the Bureau may require, as a condition of a waiver, that a provider collect and retain some data, such as data reflecting a statistically valid sample of calls to rural and non-rural areas.

97. By adopting this waiver process, we hope to encourage providers to adopt practices and processes to prevent rural call completion problems from occurring in the first place, thus benefitting rural consumers and avoiding the need for enforcement. Providers are free to file such waiver requests before the Commission receives OMB approval for the data retention and reporting obligations. We also encourage the Bureau to act upon such requests on an expedited basis.

98. *Monitoring Performance Safe Harbor.* The *NPRM* proposed a second safe harbor that would subject a provider to a reduced call completion data retention obligation and relieve the provider of all reporting obligations if the provider certified that it had met the following performance standards. The average call answer rate for all rural carriers (*i.e.,* not weighted by call volume) to which the provider attempted more than 100 calls in a month could be no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month. Additionally, the call answer rates for 95 percent of those rural carriers to which the provider attempted more than 100 calls could be no more than 3 percent below the average rural call answer rate.

99. Some commenters objected to the suggestion implicit in this safe harbor that a small differential between rural and nonrural average call answer rates is acceptable. Other commenters suggested that the proposed differential (no more than 2 percent) may be too small to be of practical or statistical significance. One large carrier notes that the requirement that 95 percent of all rural sites be no more than 3 percent below the average rural call answer rate presupposes an abnormally narrow distribution and suggests the Commission needs to do analysis to establish permissible variance.

100. After reviewing the record, we decline to adopt the Monitoring Performance Safe Harbor at this time. We agree with commenters that we should not adopt a performance-based safe harbor before we receive any call completion data from providers.

7. Duration of Rules

101. In the *NPRM,* the Commission sought comment on whether any recording and reporting requirements adopted in this proceeding should expire at the end of the intercarrier compensation transition to bill-and-keep or some other point. As discussed more fully above, the *USF/ICC Transformation Order* adopted rules that should address the root causes of

many rural call completion problems. In particular, the Commission adopted a bill-and-keep methodology for all intercarrier traffic, and adopted a transition plan to gradually reduce most termination charges, which, at the end of the transition, should eliminate the financial incentive that appears to be contributing significantly to rural call completion problems.

102. Many carriers comment that the rules should expire before the transition to bill-and-keep is complete. They argue that ''systemic problems with rural call completion resulting from the current access regime should disappear as the incentives to avoid high, rural terminating rates decrease,'' thus the Commission should sunset the rules in this order prior to the completion of a transition to bill-and-keep. Commenters propose that targeted enforcement, scheduled reviews of the continuing need for these rules, or hard expiration deadlines will provide ''more than sufficient time to determine whether a call completion issue exists in particular rural destinations or with particular intermediate carriers.''

103. Other commenters urge the Commission to refrain from setting an expiration date until these rules are clearly unnecessary. Many commenters suggest that terminating access charges and reciprocal compensation are not the only incentives for certain originating and intermediate carriers to avoid completing calls to rural customers. For example, there may be unique incentives for carriers to not complete calls in rural versus nonrural areas, because many of the calls to rural LEC exchanges ''must be carried over lengthy transport and transit routes operated by third parties, to whom compensation must be paid by toll service providers,'' and that ''[i]n the highly competitive, low-margin long-distance toll service market, LCR providers will still be tempted to reduce their transit/transport costs by taking networking shortcuts or blocking calls to such RLEC service areas even after [many intercarrier compensation] charges go to bill-and-keep.'' Further, as one commenter suggests, ''[w]ith the sunset of the rules, any short term solutions could unravel the progress made, because the factors not directly linked to the ICC reform transition could trigger a relapse in the performance by the industry in completing calls to rural customers.'' Other commenters note that while terminating access rates have declined, the number of call completion problems to rural areas have actually increased. Some comments suggest that any rules should not expire because the impact of VoIP providers on rural call completion is unclear, stating that ''because VoIP providers are applying less rigorous call completion standards than the rest of the PSTN, then there will continue to be a need for the rules adopted in this proceeding regardless of the level of terminating rates.''

104. Based on the record before us, we decline at this time to adopt a sunset date for the rules we adopt today. We believe that these rules will provide relief to rural consumers who are receiving inferior telephone service. The Commission must also ensure that it has the data necessary to adopt a long-term solution regarding the disparity in call completion rates between rural and nonrural areas. While the bill-and-keep transition should, to a large extent, eliminate the financial incentive structure that contributes to rural call completion problems, we agree with commenters that rural call completion problems may not be solely attributable to terminating charges.

105. Although we decline to adopt a specific sunset date, we anticipate that our need for these rules will decrease, particularly as the transition to a bill-and-keep regime continues. To assist with that examination, we direct the Wireline Competition Bureau to analyze the eight sets of reports submitted during the first two years of the data collection's effectiveness (as well as any other information the Commission receives during that period regarding the causes of and solution to rural call completion) and to publish for public comment a report on the effectiveness of the rules, whether data collection and reporting should be reduced or eliminated for certain providers or classes of providers (including those that meet a performance-based standard over four consecutive quarters), whether the Commission should extend data collection and reporting requirements to certain intermediate providers, and how the Commission can incorporate industry best practices, such as those developed through ATIS, into its work. The Bureau shall publish that report no more than 90 days after the last reports are due for that two-year period.

106. Furthermore, to ensure that the data collection and reporting rules we adopt today do not last without review in perpetuity, the Commission shall complete a proceeding in which we reevaluate whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective. That time should be sufficient for the Commission and the public to review the data collected herein, as well as the report of the Wireline Competition Bureau, and determine whether the rules adopted today remain in the public interest going forward.

8. Voluntary Reporting by Rural Incumbent Local Exchange Carriers

107. One commenter proposes that terminating rural incumbent LECs file quarterly reports documenting the number of incoming long-distance call attempts received and the number answered on their network. We agree that a terminating rural ILEC's call answer rate for incoming calls would be an important benchmark that could be responsive to speculation about local rural user behavior and local rural service distinctions, both among individual rural ILECs and between rural and nonrural terminating ILECs generally. It would also be an important benchmark against which to evaluate the number of call attempts that covered providers report as having reached a rural ILEC's terminating switch or tandem, and the number that covered providers report as having been answered.

108. We think that it is in the terminating rural ILECs' own interest to report this information on a voluntary basis. We therefore encourage, but do not require, rural ILECs to report quarterly on the number of incoming long-distance call attempts received, the number answered on its network, and the call answer rate calculation for each of the previous three months, by the reporting dates for covered providers. In the FNPRM we seek comment on whether we should mandate reporting by rural ILECs.

9. Disclosure of Reported Data

109. The *NPRM* sought comment on whether the information that will be provided pursuant to the reporting requirements should be treated as confidential or be open to public inspection. After reviewing the record, we conclude that covered providers filing these reports may request confidential treatment of all or portions of the data they submit without filing the detailed confidentiality justification required by section 0.459 of our rules. If the Commission receives a request for, or proposes disclosure of, the information contained in the report, the provider will be notified and required to make the full showing under section 0.459 as to why confidentiality is warranted. Taking into consideration that covered providers must submit these reports quarterly, as well as the unique and relatively homogenous nature of this data collection, these streamlined procedures for requesting nondisclosure should greatly improve the ability of providers to request

confidential treatment of their data in a timely manner while minimizing the burden of doing so. The Commission will release information to states upon request, if those states are able to maintain the confidentiality of this information. The Commission imposes similar confidentiality requirements on state commissions seeking to gain access to broadband subscription data filed pursuant to our Form 477. The Commission also expects to make aggregated data available to states and the public.

110. We recognize that there may be benefits to providing public access to the information in these reports. Some commenters argue that the public and/or other entities should have access to this information because this would provide an incentive to correct call completion problems, would be effective in deterring and resolving call blocking, and would provide valuable data for rural LECs to identify the cause of uncompleted calls. We further recognize that information submitted may be confidential. Some commenters assert that the reports should not be publicly disclosed because they could result in public misperception of the nature of the call completion problem, could result in the misuse of information taken out of context, and may prove difficult to compare fairly across providers due to potentially differing abilities of providers, for example, to identify autodialer traffic or account for call attempts that are handed back to be retried using a different intermediate provider. For now, we find that the approach we adopt today appropriately balances the filers' disclosure concerns with the public need for access to this information.

B. Rules To Address Ring Signaling

111. *False Audible Ringing.* One of the rural call completion problems that parties have identified is ''false audible ringing.'' False audible ringing occurs when an originating or intermediate provider prematurely triggers audible ring tones to the caller before the call setup request has actually reached the terminating rural provider. That is, the calling party believes the phone is ringing at the called party's premises when it is not. An originating or intermediate provider may do this to mask the silence that the caller would otherwise hear during excessive call setup time. As a result, the caller may often hang up, thinking nobody is available to receive the call. False audible ringing can also make it appear to the caller that the terminating rural provider is responsible for the call failure, instead of the originating or intermediate provider. Once an intermediate provider provides a ringing indication to an originating provider while still processing the call, the call cannot be handed back to the preceding provider for an alternate route.

112. In the *NPRM,* the Commission proposed to mandate that audible ringing be provided to callers only after the terminating provider affirmatively signals that the called line is free and the called party is being alerted. The record overwhelming supports the adoption of the proposed rule. False audible ringing departs from longstanding and well-established telephony signaling practices. Indeed, many commenters urge the Commission to simply codify the industry standard prohibiting false audible ringing, stating that ''numerous industry signaling standards and definitions . . . unambiguously establish that an audible ringing indication should be provided to the caller only after the terminating provider signals that the called line is free and the called party is being alerted.'' Some commenters support prohibiting false audible ringing broadly across the industry, stating that our prohibition ''should be applied across all providers that allow end users to make voice calls regardless of license, function, or authority,'' because such a practice ''is not likely to harm just consumers in rural areas; the harm could just as well fall on customers in nonrural areas, in the absence of an industry-wide rule.'' Because the proposed rule simply codifies long-standing industry practice, the majority of commenters do not believe such a rule is unduly burdensome.

113. Only two commenters opposed a rule prohibiting false ring signaling. The VON Coalition argues that the adoption of such a rule that could potentially thwart enhanced functionalities that VoIP providers may develop and possibly make these providers ''limit their end user services in order to conform to 'traditional' call flows would be contrary to the Commission's settled deregulatory approach to VoIP.'' Vonage, on the other hand, argues the real underlying issue ''is not 'false' ringing per se. Rather, the root issue is excessive post-dial delay in connecting a call to the terminating switch (*i.e.,* post-dial delay that is sometimes filled by 'false' ringing) . . . which may simply be used by providers to ensure that the calling party does not hang up before the call is answered because the calling party hears a relatively prolonged silence.'' They further argue that ''[p]rohibiting false ringing could have unintended consequences such as extended silence after the call is placed. This could lead to confusion and increased hang-ups by the calling party, which would increase (rather than reduce) the incidence of call completion problems.'' By contrast, another commenter responds that Vonage's argument ''is tantamount to an argument that phone users are properly deceived into thinking that the called party's phone is ringing when in fact it is not. Deception is not sound public policy.''

114. We find many benefits to adopting the proposed rule prohibiting false ring signaling, as set forth in the *NPRM.* We find that this rule will benefit both consumers and industry and avoid unnecessary confusion that may occur today about whether the call was actually delivered to the called party. Consumer expectation is simple: if a calling party hears audible ringing, the calling party believes the called party's phone is ringing or otherwise being alerted in the same timeframe. As a result of this rule, consumers will no longer prematurely hang up when the call has not even rung on the caller's side, nor will consumers mistakenly believe that the terminating rural provider is responsible for the call failure. Industry will benefit from this rule because intermediate providers will now hand back calls that have excessive set-up time to the preceding provider to find an alternate route, so that the call can ultimately be completed. Originating providers will be able to better identify (and compare) intermediate providers with patterns of service failures and, if they choose, elect other intermediate providers. Because this rule codifies a long-standing industry standard, it should not be unduly burdensome. We expect that this rule will improve the call completion rates to rural areas, therefore benefiting consumers and industry alike.

115. Accordingly, we adopt a rule prohibiting false audible ringing. More specifically, all originating and intermediate providers are prohibited from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. We clarify that alerting the called party includes alerting devices, services or parties that can answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that can cause the network to register that the terminating party has gone off hook. As we proposed in the *NPRM,* originating and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. We apply this rule

prohibiting false audible ringing to all originating providers and intermediate providers, including local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, interconnected VoIP, and one-way VoIP providers. These rules apply to both interstate and intrastate calls, as well as to both originating and terminating international calls while they traverse U.S. networks.

116. *Legal Authority.* Our authority for prohibiting false audible ringing to all originating and intermediate providers lies in section 201(b) of the Act. It is an unreasonable practice to send misleading ring sounds to customers making long-distance calls, as it may cause them to believe that the called party is not answering when in fact the call has not yet been connected, or has been connected for a shorter time than the ring sounds would lead the calling party to believe. The majority of the comments assert that false audible ringing contributes to the disparity between rural and nonrural call completion rates. Adopting a rule that prohibits false audible ringing therefore aids in the Commission's efforts to ensure that provider practices are not unjust or unreasonable.

117. We also apply this rule to interconnected and one-way VoIP providers that send calls to terminate on the PSTN, as well as intermediate providers that are not common carriers, as ''reasonably ancillary to the effective performance of [our] statutorily mandated responsibilities'' under section 201(b). The purpose of the rule is to address the problem of calls failing to complete to rural PSTN customers. Given the substantial role that VoIP service connected to the PSTN plays in the retail long-distance telephone market, and the potential for intermediate providers to be non-carriers, excluding such providers from the prohibition against false audible ringing would undermine the effectiveness of the rule, as well as the Commission's ability to ensure that carrier practices are both just and reasonable. Specifically, if VoIP customers or callers being indirectly served by non-carrier intermediate providers receive misleading ring sounds, leading them to mistakenly believe that the called party is not answering when in fact the called party has not been alerted, the terminating carrier may be erroneously subject to complaints regarding its perceived failure to terminate calls to its customers. Indeed, it is not ''just and reasonable'' for customers of rural terminating carriers not to be alerted to incoming calls or to be alerted for less time than the calling parties believes. The Commission has previously applied ring signaling rules to interconnected VoIP service providers, including intermediate providers in a call path. For the same reasons that the Commission has authority to prohibit intermediate providers from altering the calling number, the Commission has authority to apply the false audible ringing rule to intermediate providers. The problem would not be adequately addressed without addressing the practices of VoIP service and intermediate providers.

118. Adopting a prohibition against false ring signaling will help the Commission isolate problems that are the responsibility of carriers subject to section 201(b), and help us uncover and better understand call completion issues which could otherwise be obfuscated. If we did not do so, callers would continue to think that calls were being completed that in fact had never made it to the rural LEC or its customer. Likewise, if false ring signaling were not prohibited, originating providers and some intermediate providers would treat calls passed to a downstream intermediate provider as having been answered when in fact they were not being completed. The prevention of such problems by prohibiting all originating and intermediate carriers, interconnected VoIP providers, and one-way VoIP providers from transmitting false audible signaling is therefore reasonably ancillary to the effective performance of our duties in enforcing section 201(b).

119. Finally, we apply this false audible ringing rule to all traffic, including intrastate traffic. The *USF/ICC Transformation Order* expanded the scope of our call signaling rules to encompass jurisdictionally intrastate traffic. Where providers previously were required to include the Calling Party Number (CPN) on interstate calls, the Commission required such information to be included on intrastate calls as well. The Commission noted that CPN-based services are jurisdictionally mixed services and it would be impractical and uneconomic to require the development and implementation of systems that would permit separate federal and state call signaling rules to operate. We conclude here, as we did in the *USF/ICC Transformation Order,* that it would be infeasible to have separate federal and state rules regarding false audible ringing because, *inter alia,* there would be significant confusion among consumers and long-distance providers if the presence or absence of a ring signal had a different meaning on interstate versus intrastate calls, thus exacerbating the problems that we have seen to date. We conclude, therefore, that we have authority to extend the false audible ringing rule to intrastate traffic.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

120. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. 3507. Prior to submission to OMB, the Commission will publish a notice in the **Federal Register** seeking public comment on the information collections. In addition, that notice will also seek comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The information collections contained in this Report and Order will not go into effect until OMB approves the collections and the Commission has published a notice in the **Federal Register** announcing the effective date of the information collections.

B. Congressional Review Act

121. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. Final Regulatory Flexibility Analysis

122. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 13–39. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

123. This Report and Order (Order) continues the Commission's efforts to identify the causes of—and potential remedies for—the ongoing and widespread problems with the completion of long-distance telephone calls to rural areas. In the Order, the Commission adopts rules to address significant concerns about completion

of long distance calls to rural areas. Doing so will help ensure that long distance calls to all Americans, including rural Americans, are completed. Completion rates for long-distance calls to rural telephone company service areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas. The rules adopted in the Order are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as by aiding consumers and industry by adopting a rule prohibiting false ring signaling.

124. Adopting recording, retention, and reporting requirements will substantially increase our ability to monitor and redress problems associated with completing calls to rural areas. These rules will also enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. The recording, retention, and reporting rules should apply to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates (referred to herein as ''covered providers''). In most cases, this is the calling party's long-distance provider. As discussed below, covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. Finally, we do not apply these rules to intermediate providers.

125. The Order requires covered providers to record and retain the following information for each long-distance call to a local exchange carrier that is a rural telephone company: Calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its operating company number (OCN); whether the call is interstate; whether the call attempt was answered; and whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. For most providers, this indication is likely to take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt. While covered providers need not retain data for calls to nonrural OCNs, they must nonetheless record such data to the extent that it is necessary to comply with the reporting obligations described below. The Order also concludes that the most useful comparison of call completion rates is between rural and nonrural incumbent LECs, and thus excludes calls terminating to CLECs, CMRS providers, or VoIP services providers from the recording, retention, and reporting requirements. The Order also requires filers to include autodialer traffic in their recording, retention and reporting but allows them file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the used to identify the autodialer traffic. In addition, recording, retention, and reporting requirements set forth in the Order apply to call attempts of very short duration, while excluding call attempts handed back to an upstream provider and call attempts to toll-free numbers. The Order requires covered providers to retain the call detail records described above for calls to rural OCNs in a readily retrievable form for at least six calendar months, except as described in the discussion of the safe harbor, below.

126. The reporting obligations adopted in the Order require covered providers to submit a certified report to the Commission once per calendar quarter that includes, for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. These data permit calculation of the percentage of calls answered (the call answer rate) and the percentage of calls completed to the terminating provider regardless of whether answered or unanswered by the user (the network effectiveness ratio). Collecting these data points will provide the Commission with better insight into the reasons why calls are not answered or not reaching their destinations. The Order defines the term ''answered call'' to mean ''a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that cause the network to register that the terminating party has gone off hook).'' The Order requires each covered provider to report monthly information for each rural OCN to which the provider attempted to deliver calls and decline to adopt a minimum calls per month threshold for reporting by rural OCN. The Order also concludes that the Commission will obtain the most informative data by collecting data on all call attempts, rather than attempts during a peak period, and adopts a monthly measurement interval and quarterly reporting interval for covered providers. The Order also encourages rural ILECs to voluntarily report their own call answer rates by terminating rural OCN, which we believe would be an important benchmark that could be responsive to speculation about local rural user behavior and local rural service distinctions both among individual rural ILECs and between rural and nonrural terminating ILECs generally.

127. The Order adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted, and clarifies that ''alerting the called party'' includes alerting devices, services or parties that can answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that can cause the network to register that the terminating party has gone off hook. Originating and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. The rule prohibiting false audible ringing applies to all originating providers and intermediate providers, including LECs, IXCs, CMRS providers, interconnected VoIP, and one-way VoIP providers.

128. The rules adopted in the Order will help the Commission, our state partners, and the reporting providers

monitor call completion performance and address problem areas. At the same time, we are mindful of the potential burdens and take actions to minimize them, particularly on smaller entities. The Order therefore limits the application of the recording, retention, and reporting requirements to providers with more than 100,000 retail customers. We also target our regulations to address the source of the problem. Because the problems appear to increase significantly when a call is handed off among multiple providers, the Order adopts a safe harbor to encourage providers to limit the number of hand offs. Specifically, providers that restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path will be relieved of the reporting obligation after one year and have a reduced record retention period, although such providers may be required to comply with those requirements at the discretion of the Enforcement Bureau. Similarly, covered providers adhering to industry best practices and other measures intended to ensure robust call completion performance may apply for a waiver of these recording, retention, and reporting requirements. Our regulations are carefully targeted to help address the problems with completing calls in rural areas while minimizing the burdens of compliance for all covered providers, including small entities. We also note that the ring signaling integrity requirements adopted in the Order may have an economic impact on small entities, but believe that the benefits to the functioning of the PSTN and to consumers outweigh any burdens.

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

129. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

130. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

131. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

132. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

133. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

134. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

135. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

136. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

137. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to

Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

138. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

139. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

140. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

141. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

142. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

143. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

144. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

145. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable

operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

146. All Other Telecommunications. The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

147. The Order requires covered providers to submit a certified report to the Commission once per calendar quarter that includes, for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as (a) busy, (b) ring no answer, or (c) unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. The Order requires covered providers to record and retain the following information for each long-distance call to a local exchange carrier that is a rural telephone company: Calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its operating company number (OCN); whether the call is interstate; whether the call attempt was answered; and whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. The Commission requires covered providers to retain these records for a period including the six most recent calendar months for call attempts to rural ILECs; for those call attempts to nonrural ILECs, the rules do not require covered providers to retain records for any length of time. Compliance with these recordkeeping and retention obligations may affect small entities, and may include new administrative processes.

148. In the Order, the Commission adopts a rule prohibiting all originating and intermediate providers—including LECs, IXCs, CMRS providers, interconnected VoIP, and one-way VoIP providers—from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. Compliance with these ring signaling integrity requirements may affect small entities, and may include new administrative processes.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

149. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

150. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the Order includes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

151. First, the recording, reporting, and retention rules adopted in the Order apply only to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates. Accordingly, smaller providers are not required to comply with these rules.

152. Additionally, the rule requiring retention of call detail records applies only to call attempts to rural incumbent LECs, a relatively small percentage of total call attempts; call attempts to nonrural incumbent LECs need not be retained. This approach should reduce the burden of compliance for smaller entities by reducing the costs of data storage that the rule proposed in the *NPRM* would have required, according to one estimate by as much as 90 percent. The Order also permits affiliated providers to record and report the information required individually or aggregated to the holding-company level, which should make it easier for smaller entities to record and report data in ways that are less burdensome to them.

153. The rules adopted in the Order also include a safe harbor provision that could reduce the economic impact on small entities. The safe harbor relieves covered providers of their reporting obligations after one year and reduces their retention obligations if they certify that: They restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider; any nondisclosure agreement with an intermediate provider permits the covered provider to reveal the intermediate provider's identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider's performance; and they have a process in place to monitor the performance of their intermediate providers.

154. The Order delegates to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to consider applications for waiver of the recordkeeping, retention, and reporting

requirements adopted in the Order. If approved, these waivers will reduce or eliminate a covered provider's recordkeeping, retention, or reporting obligations. In evaluating a provider's waiver request, the Bureau may consider: Whether a provider has demonstrated that it qualifies for the safe harbor; whether it persuasively demonstrates that it has processes in place to ensure that calls to rural incumbent LECs successfully reach their destinations, such as by adopting industry best practices; and whether the provider has demonstrated that it has capabilities and processes to monitor its own performance by the OCN of the called party's LEC. As a condition of a waiver, the Bureau will require a provider to report information about rural call completion for a one-year period, and such a report may be based on a statistically valid sample of calls. In addition, the Bureau may require, as a condition of a waiver, that a provider collect and retain some data, such as data reflecting a statistically valid sample of calls to rural and nonrural areas.

155. The Commission considered the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. In declining to adopt a sunset date for the rules, the Commission considered whether the rules should expire on a particular date to account for the possibility that reforms to the intercarrier compensation rules may alleviate many rural call completion problems. However, the Commission must ensure that it has the data necessary to adopt a long-term solution regarding the disparity in call completion rates between rural and nonrural areas. Moreover, while the bill-and-keep transition should, to a large extent, eliminate the financial incentive structure that contributes to rural call completion problems, we conclude that rural call completion problems may not be solely attributable to terminating charges. Although declining to adopt a sunset provision could have an ongoing economic impact on both small and large entities, the Commission believes that any such impact is outweighed by the benefit of ensuring that the Commission continues to obtain the data necessary to address the rural call completion problem should the intercarrier compensation reforms alleviate only some of the issues plaguing long-distance call attempts to rural areas. Furthermore, to ensure that the data collection and reporting rules do not last without review in perpetuity, the Order states that the Commission shall complete a proceeding in which it reevaluates whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective. That time should be sufficient for the Commission and the public to review the data collected herein and determine whether the rules adopted today remain in the public interest going forward.

156. The proposed ring signaling integrity requirements in the NPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

F. Report to Congress

157. The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403, the Report and Order IS ADOPTED.

It is further ordered that part 64 of the Commission's rules *is amended* as set forth in Appendix A of the Report and Order.

It is further ordered that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this Report and Order *shall be effective* January 16, 2014, except for § 64.2201 of the Commission's rules, which will become effective January 31, 2014, and §§ 64.2103, 64.2105, and 64.2107 and the information collection in paragraph 67 of this Report and Order, which contains information collection requirements that have not been approved by Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

it is further ordered that the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Add subpart V to part 64 to read as follows:

Subpart V—Recording, Retention and Reporting of Data on Long-Distance Telephone Calls to Rural Areas and Reporting of Data on Long-Distance Telephone Calls to Nonrural Areas

Sec.

64.2101 Definitions.
64.2103 Retention of call attempt records.
64.2105 Reporting requirements.
64.2107 Reduced retention and reporting requirements for qualifying providers under the Safe Harbor.
64.2109 Disclosure of data.

§ 64.2101 Definitions.

For purposes of this subpart, the following definitions will apply:

Affiliate. The term ''affiliate'' has the same meaning as in 47 U.S.C. 153(2).

Call attempt. The term ''call attempt'' means a call that results in transmission by the covered provider toward an incumbent local exchange carrier (LEC) of the initial call setup message, regardless of the voice call signaling and transmission technology used.

Covered provider. The term ''covered provider'' means a provider of long-distance voice service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all

business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates. A covered provider may be a local exchange carrier as defined in § 64.4001(e), an interexchange carrier as defined in § 64.4001(d), a provider of commercial mobile radio service as defined in § 20.3 of this chapter, a provider of interconnected voice over Internet Protocol (VoIP) service as defined in 47 U.S.C. 153(25), or a provider of non-interconnected VoIP service as defined in 47 U.S.C. 153(36) to the extent such a provider offers the capability to place calls to the public switched telephone network.

Initial long-distance call path choice. The term ''initial long-distance call path choice'' means the static or dynamic selection of the path for a long-distance call based on the called number of the individual call.

Intermediate provider. The term ''intermediate provider'' has the same meaning as in § 64.1600(f).

Long-distance voice service. The term ''long-distance voice service'' includes interstate interLATA, intrastate interLATA, interstate interexchange, intrastate interexchange, inter-MTA interstate and inter-MTA intrastate voice services.

Operating company number (OCN). The term ''operating company number'' means a four-place alphanumeric code that uniquely identifies a local exchange carrier.

Rural OCN. The term ''rural OCN'' means an operating company number that uniquely identifies an incumbent LEC (as defined in § 51.5 of this chapter) that is a rural telephone company (as defined in § 51.5 of this chapter). The term ''nonrural OCN'' means an operating company number that uniquely identifies an incumbent LEC (as defined in § 51.5 of this chapter) that is not a rural telephone company (as defined in § 51.5 of this chapter). We direct NECA to update the lists of rural and nonrural OCNs annually and provide them to the Wireline Competition Bureau in time for the Bureau to publish the lists no later than November 15. These lists will be the definitive lists of rural OCNs and nonrural OCNs for purposes of this subpart for the following calendar year.

§ 64.2103 Retention of call attempt records.

(a) Except as described in § 64.2107, each covered provider shall record and retain information about each call attempt to a rural OCN from subscriber lines for which the covered provider makes the initial long-distance call path choice in a readily retrievable form for a period that includes the six most recent complete calendar months.

(b) Affiliated covered providers may record and retain the information required by this rule individually or in the aggregate.

(c) A call attempt that is returned by an intermediate provider to the covered provider and reassigned shall count as a single call attempt.

(d) Call attempts to toll-free numbers, as defined in § 52.101(f) of this chapter, are excluded from these requirements.

(e) The information contained in each record shall include:

(1) The calling party number;

(2) The called party number;

(3) The date;

(4) The time;

(5) An indication whether the call attempt was handed off to an intermediate provider or not and, if so, which intermediate provider;

(6) The rural OCN associated with the called party number;

(7) An indication whether the call attempt was interstate or intrastate;

(8) An indication whether the call attempt was answered, which may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt; and

(9) An indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. This indication may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt.

§ 64.2105 Reporting requirements.

(a) Except as described in § 64.2107, each covered provider shall submit a certified report to the Commission in electronic form on the following quarterly schedule: February 1 (reflecting monthly data from October through December), May 1 (reflecting monthly data from January through March), August 1 (reflecting monthly data from April through June), and November 1 (reflecting monthly data from July through September). An officer or director of each covered provider must certify to the accuracy of each report.

(b) The information contained in the certified report shall include the following information about subscriber lines for which the covered provider makes the initial long-distance call path choice, reported separately for each month in that quarter:

(1) For each rural OCN:

(i) The OCN;

(ii) The State;

(iii) The number of interstate call attempts;

(iv) The number of interstate call attempts that were answered;

(v) The number of interstate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number;

(vi) The number of intrastate call attempts;

(vii) The number of intrastate call attempts that were answered; and

(viii) The number of intrastate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number.

(2) For nonrural OCNs in the aggregate:

(i) The number of interstate call attempts;

(ii) The number of interstate call attempts that were answered;

(iii) The number of interstate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number;

(iv) The number of intrastate call attempts;

(v) The number of intrastate call attempts that were answered; and

(vi) The number of intrastate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number.

(c) In reporting the information described in paragraph (b) of this section, a covered provider may disaggregate calls originated by automatic telephone dialing systems (as defined in § 64.1200(f)) if it includes an explanation of the method used to identify those calls.

(d) Affiliated covered providers may report this information individually or in the aggregate.

§ 64.2107 Reduced retention and reporting requirements for qualifying providers under the Safe Harbor.

(a)(1) A covered provider may reduce its retention and reporting obligations under this subpart if it files one of the following certifications, signed by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13–39 on any of the four quarterly filing dates established in § 64.2105 and annually thereafter.

I _____ (name), _____ (title), an officer of _____ (entity), certify that _____ (entity) uses no intermediate providers;

or

I _____ (name), _____ (title), an officer of _____ (entity), certify that

_____ (entity) restricts by contract any intermediate provider to which a call is directed by _____ (entity) from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem. I certify that any nondisclosure agreement with an intermediate provider permits _____ (entity) to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent local exchange carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. I certify that _____ (entity) has a process in place to monitor the performance of its intermediate providers.

(2) Covered providers that file the second certification must describe the process they have in place to monitor the performance of their intermediate providers.

(b) A covered provider that meets the requirements described in paragraph (a) of this section must comply with the data retention requirements in § 64.2103 for a period that includes only the three most recent complete calendar months, so long as it continues to meet the requirements of paragraph (a) of this section. A covered provider that ceases to meet the requirements described in paragraph (a) of this must immediately begin retaining data for six months, as required by § 64.2103.

(c) A covered provider that meets the requirements described in paragraph (a) of this section must comply with the reporting requirements in § 64.2105 for a period of one year commencing when it first filed the certification described in paragraph (a) of this section, so long as it continues to meet those paragraph (a) of this section requirements. A covered provider that ceases to meet the requirements described in paragraph (a) of this section must begin filing the reports required by § 64.2105 on the next filing deadline.

(d) Affiliated covered providers may meet the requirements of paragraph (a) of this section individually or in the aggregate.

§ 64.2109 Disclosure of data.

(a) Providers subject to the reporting requirements in § 64.2105 of this chapter may make requests for Commission nondisclosure of the data submitted under § 0.459 of this chapter by so indicating on the report at the time that the data are submitted.

(b) The Chief of the Wireline Competition Bureau will release information to states upon request, if the states are able to maintain the confidentiality of this information.

■ 3. Add subpart W, consisting of § 64.2201, to read as follows:

Subpart W—Ring Signaling Integrity

§ 64.2201 Ringing indication requirements.

(a) A long-distance voice service provider shall not convey a ringing indication to the calling party until the terminating provider has signaled that the called party is being alerted to an incoming call, such as by ringing.

(1) If the terminating provider signals that the called party is being alerted and provides an audio tone or announcement, originating providers must cease any locally generated audible tone or announcement and convey the terminating provider's tone or announcement to the calling party.

(2) The requirements in this paragraph apply to all voice call signaling and transmission technologies and to all long-distance voice service providers, including local exchange carriers as defined in § 64.4001(e), interexchange carriers as defined in § 64.4001(d), providers of commercial mobile radio service as defined in § 20.3 of this chapter, providers of interconnected voice over Internet Protocol (VoIP) service as defined in 47 U.S.C. 153(25), and providers of non-interconnected VoIP service as defined in 47 U.S.C. 153(36) to the extent such providers offer the capability to place calls to or receive calls from the public switched telephone network.

(b) Intermediate providers must return unaltered to providers in the call path any signaling information that indicates that the terminating provider is alerting the called party, such as by ringing.

(1) An intermediate provider may not generate signaling information that indicates the terminating provider is alerting the called party. An intermediate provider must pass the signaling information indicating that the called party is being alerted unaltered to subsequent providers in the call path.

(2) Intermediate providers must also return unaltered any audio tone or announcement provided by the terminating provider.

(3) In this section, the term ''intermediate provider'' has the same meaning as in § 64.1600(f).

(4) The requirements in this section apply to all voice call signaling and transmission technologies.

(c) The requirements in paragraphs (a) and (b) of this section apply to both interstate and intrastate calls, as well as to both originating and terminating international calls while they are within the United States.

[FR Doc. 2013–29867 Filed 12–16–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 369

[Docket No. FMCSA–2012–0020]

RIN–2126–AB69; Formerly RIN 2126–AB48

Rescission of Quarterly Financial Reporting Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This paperwork burden is removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries. The annual reporting requirements remain.

DATES: *Effective Date:* January 16, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202–366–2974; email *Vivian.Oliver@dot.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary

This action is in response to a recommendation received from the public and in response to Executive Order 13563, ''Improving Regulation and Regulatory Review,'' which required Agencies, among other things, to prepare plans for reviewing existing rules.

The rule eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property and for-hire motor carriers of passengers. This paperwork burden can be removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.

FMCSA estimates that eliminating these reporting requirements reduces the burden to industry by about 200 hours and $9,900 annually. There is no cost associated with this action. Table ES–1 displays the average annual net costs and benefits of the rule.

TABLE ES–1—ESTIMATED ANNUAL COSTS AND BENEFITS FOR IMPLEMENTING THIS FINAL RULE

[2013 Dollars rounded]

	Annual impact
Costs	$0
Benefits	9,900
Net Benefits	9,900

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 insert ''FMCSA–2012–0020'' in the ''Search'' box and then click on ''Search.'' Click on the ''Open Docket Folder'' link and all the information for the notice, and the list of comments will appear with a link to each one. Click on the comment you would like to read. If you do not have access to the Internet, you may also 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. e.t., Monday through Friday, except Federal holidays.

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).

Background

Annual Financial Reporting Requirements

Section 14123 of title 49 of the United States Code (U.S.C.) requires certain for-hire motor carriers of property, household goods, and passengers to file annual financial reports. Annual financial reports are filed on Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers). FMCSA has continued to collect carriers' annual reports and to furnish copies of the reports requested under the Freedom of Information Act. These requirements remain in effect. Section 14123(d) requires FMCSA to streamline and simplify, to the maximum extent practicable,'' any reporting requirement under this section.

Quarterly Financial Reporting

Section 14123(a)(2) of 49 U.S.C. allows, but does not require, the Agency to require for-hire property and passenger carriers to file quarterly financial reports. These requirements are in 49 CFR part 369 and apply to Class I (average annual gross transportation operating revenues of $10 million or more) and Class II (average annual gross transportation operating revenues of $3 million dollars or more, but less than $10 million) for-hire motor carriers of property. The requirements also apply to Class I (average annual gross transportation operating revenues of $5 million or more) for-hire motor carriers of passengers. This information is submitted on Form QFR for property carriers and Form MP–1 Quarterly for passenger carriers.

E.O. 13563 Improving Regulation and Regulatory Review

On January 18, 2011, the President issued Executive Order (E.O.) 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), which required agencies, among other things, to prepare plans for reviewing existing rules. On February 16, 2011, DOT published a notice requesting comments on its regulatory review plan (76 FR 8940). One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or motor carrier industry.

Direct Final Rule

On June 27, 2012, FMCSA published a direct final rule that would have eliminated the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1 Quarterly) if no adverse comments were received by July 27, 2012 (77 FR 38211). One entity, SJ Consulting Group, submitted adverse comments and stated that it uses the quarterly financial information to advise motor carriers, shippers, and persons interested in buying motor carriers. It stated that the quarterly report filings provide useful insight into the U.S. trucking industry, such as operating statistics that are not available from other public sources, particularly for private carriers. Although SJ Consulting acknowledged that some data on general demand and pricing trends are available from other sources, it believed that quarterly data on the profitability of carriers are essential in providing safe and timely service to shippers, estimating future growth rates, and assessing opportunities for profitable investment in the trucking industry. SJ Consulting has used Form QFR quarterly report filings for these purposes for many years. FMCSA considered this an adverse comment and the Agency withdrew the direct final rule on August 27, 2012 (77 FR 51705).

Although FMCSA considered SJ Consulting's comment adverse for the direct final rule, it continues to believe the quarterly financial reporting requirements for certain for-hire motor carriers of property (on Form QFR) and for-hire motor carriers of passengers (on Form MP–1 Quarterly) can be eliminated without an adverse impact on safety. The information collected does not currently support any Agency regulatory function, nor does it have practical utility for the Agency or for those carriers who must comply with the reporting requirement.

Notice of Proposed Rulemaking (NPRM)

On May 24, 2013, FMCSA published the NPRM for comment with a 60-day comment period under Regulatory Identification Number (RIN) 2126–AB48. The NPRM proposed to amend 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4 (78 FR 31475). In addition, FMCSA proposed making other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11. A new RIN 2126–AB69 was assigned for this final rule.

Discussion of the Comments

Three comments were received. Two industry associations (American Trucking Associations, Inc. (ATA) and National Motor Freight Traffic Association, Inc.) filed comments in support of the proposal to eliminate the quarterly financial report. A third commenter, a private citizen from Florida, supported eliminating the reporting requirement, noting the change will save motor carriers significant time. ATA requested that FMCSA expand the proposal to include elimination of the Form M annual report as well, given the fact that the Agency has not had any staff working on compiling or analyzing the for-hire motor carrier financial reports for many years.

As FMCSA explained in the June 27, 2012, direct final rule and the May 24, 2013, NPRM, 49 U.S.C. 14123 requires certain for-hire motor carriers of

property and household goods to file annual financial reports. Congress has given FMCSA no discretion to rescind or repeal annual financial reports. In its 2011 reauthorization technical drafting assistance, the Agency proposed a repeal of the annual reporting requirement, but the repeal provision was omitted from the final version of the bill that became the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141 (MAP–21). FMCSA, however, has lessened the burden of annual reporting by eliminating the requirement to file Form MP–1 report in duplicate. Form M filers for property carriers have not been required to file in duplicate since 1999 (64 FR 13916, March 23, 1999). A single copy of Form MP–1 will now be required. This is consistent with our mandate to ''streamline and simplify'' reporting requirements under 49 USC 14123(d).

FMCSA received a letter from SJ Consulting on July 23, 2013, requesting the Agency to extend the NPRM comment period, but FMCSA denied the request on August 14, 2013. The Agency believes all interested parties were provided ample opportunity to respond to the NPRM, especially since the Agency provided for a 60-day comment period in its June 27, 2012, direct final rule and also the 60-day comment period for the NPRM. FMCSA also said in its denial of SJ Consulting's request that it would consider late comments to the extent practicable. The Administrative Procedure Act requires only 30 days for public comment. 5 U.S.C. 553(d).

Discussion of the Rule

For the reasons discussed in the Background section, above, FMCSA amends 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4. In addition, FMCSA makes other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11. This final rule does not affect the annual reporting requirements, which still must be completed and filed as required by statute (49 U.S.C. 14123(a)(1)). In accordance with 49 USC 14123(d), the final rule does simplify and streamline the reporting requirement by eliminating in 49 CFR 369.4 the requirement to submit the annual report in duplicate.

Regulatory Analyses

Regulatory Planning and Review

FMCSA has determined that this action does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866, as supplemented by Executive Order 13563, or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). This rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rulemaking will not have a significant economic impact. In fact, elimination of the reporting requirement will have a beneficial, albeit non-significant, economic impact on the motor carrier industry through reduced reporting costs. Consequently, the OMB has not reviewed this rule under that Order.

Small Entities

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), when an agency issues a rulemaking, the RFA requires the agency to ''prepare and make available for public comment a final regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities'' (5 U.S.C. 603(a)) or certify the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605).

FMCSA has determined that the impact on entities affected by this final rule will not be significant. In fact, the existing burden from quarterly reporting will be eliminated. FMCSA expects the impact of the rule will be a reduction in the paperwork burden for for-hire motor carriers. FMCSA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small for-hire motor carriers. As can be seen below under section C., Paperwork Reduction Act, FMCSA estimates that eliminating these reporting requirements will reduce the burden to the for-hire motor carrier industry by about 200 hours and $9,900 annually.

Courts have held that ''a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.'' [1] The RFA does not require FMCSA to consider the effect of this rule on entities that are not subject to the rule.[2] Although SJ Consulting Group filed an adverse comment to the FMCSA's June 27, 2012, direct final rule, it is not a for-hire motor carrier and, therefore, not subject to the current financial reporting rule. In any event, FMCSA has determined that this rule will not have an impact on a substantial number of small entities that are subject to the requirements of the rule.

Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This rule directly affects 112 for-hire motor carriers that prepare and file quarterly financial reports under 49 CFR part 369. FMCSA estimates that approximately 10 percent of these 112 for-hire motor carriers are small entities with average annual gross transportation operating revenues of no more than $23.5 million. The current requirement to file quarterly financial reports applies only to for-hire motor carriers of property with average annual gross transportation operating revenues of $3 million dollars or more, and $5 million or more for passenger carriers.

Accordingly, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking eliminates two quarterly reporting requirements that are currently reported to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520).

Quarterly Report for 110 Property Carriers

Form QFR Quarterly for property carriers, authorized by OMB under information collection 2126–0033, is two pages long and takes approximately 27 minutes for each of the approximately 110 carriers to complete. This report is filed 4 times per year, so the total burden-hour impact per filer per year is $4 \times 27/60 = 1.8$ hours. Multiplying this figure by the 110 carriers that file quarterly reports yields a total burden estimate of 198 hours.

FMCSA assumes that completion and submission of Form QFR is performed by an accountant designated by the business entity. The median salary of an accountant in the truck transportation industry is $25.90 per hour (BLS, May 2010).[3] Two adjustments are made to

[1] E.g., *Mid-Tex Electric Cooperative, Inc.* v. *Federal Energy Regulatory Commission (FERC)*, 773 F.2d 327, 342 (D.C. Cir. 1985).

[2] *Id.* See also ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,'' Small Business Administration (2010), retrieved February 13, 2013, from *http://archive.sba.gov/advo/laws/rfaguide.pdf.*

[3] Bureau of Labor Statistics, ''Occupational Employment Survey,'' May 2010, retrieved

Continued

this hourly compensation estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[4] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[5] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $49.34 in hourly compensation for the accountant ($25.90 × (1 + 0.50) × (1 + 0.27) = $49.34). The total annual salary cost burden associated with the filings is $9,770 rounded up ($49.34 × 198 hours = $9,769.32).

Quarterly Report for Two Passenger Carriers

The Class I passenger carrier financial quarterly survey (Form MP–1 Quarterly), which is two pages long and takes about 18 minutes to complete for the estimated 2 participating carriers, is authorized by OMB under information collection 2126–0031. Since this report is also filed 4 times per year, the total burden hours associated with the requirement are 4 × 18/60 × 2 = 2.4 hours.

FMCSA believes the completion and submission of Form MP–1 Quarterly is typically performed by a business and financial operations expert designated by the business entity because of the level of detail in the financial reports. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is $26.41 per hour (BLS, May 2010).[6] Two adjustments are made to this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[7] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[8] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $50.31 in hourly compensation for the business and financial operations expert ($26.41 × (1 + 0.50) × (1 + 0.27) = $50.31). The total annual salary cost burden associated with the filings is $121 ($50.31 × 2.4 hours = $120.74, rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 200.4 hours and $9,891 annually, rounded to 200 hours and $9,900, respectively.

The PRA requires that each agency ''shall certify . . . that each collection of information . . . is necessary for the proper performance of the functions of the agency, including that the information has practical utility'' (44 U.S.C. 3506(c)(3)(A); 5 CFR 1320.5(d)(1)(iii)). FMCSA can no longer certify that the quarterly requirements are ''necessary for the proper performance of the functions of the agency.'' Therefore, FMCSA is discontinuing the quarterly reporting requirements.

Federalism

A rule has implications under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rulemaking under that Order and has determined that it does not have federalism implications.

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 $143.1 million (which is the value of $100,000,000 in 2010 after adjusting for inflation) or more in any 1 year. This rulemaking would not result in such an expenditure.

Taking of Private Property

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

Civil Justice Reform

This rulemaking 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.

Protection of Children

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

Energy Effects

FMCSA analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency 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 will not 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.

National Technology Transfer and Advancement Act

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 OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. The Agency is not aware of any technical standards relating to FMCSA's quarterly financial reporting and has concluded that this requirement does not apply.

Environment

The Agency analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and determined under the Agency's environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is excluded from further environmental documentation under two categorical exclusions (CEs). These are found in Appendix 2, paragraph 4, which covers data and information gathering, and Appendix 2, paragraph 6(y)(2),

December 15, 2011, from *http://www.bls.gov/oes/current/naics3_484000.htm.* North American Industry Classification System (NAICS) 484000, Truck Transportation, Standard Occupational Classification (SOC) 13–2011, Accountants and Auditors.

[4] FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages (0.500 = $8.01/$16.03). From ''Employer Costs for Employee Compensation—September 2010,'' retrieved August 23, 2011, from *http://www.bls.gov/news.release/pdf/ecec.pdf.*

[5] Berwick, Farooq. ''Truck Costing Model for Transportation Managers.'' Upper Great Plains Transportation Institute, North Dakota State University (2003), retrieved January 9, 2013, from *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.*

[6] Bureau of Labor Statistics, ''Occupational Employment Survey,'' May 2010, retrieved December 15, 2011, from *http://www.bls.gov/oes/current/naics4_485200.htm.* North American Industry Classification System (NAICS) 485200, Interurban and Rural Bus Transportation, Standard Occupational Classification (SOC) 13–2000, Business and Financial Operations Occupations.

[7] FMCSA estimates this 50 percent employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. See footnote 5, above.

[8] Berwick ''Truck Costing Model for Transportation Managers.''

concerning reports provided by motor carriers. The action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement. The Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c), as amended (42 U.S.C. 7401, *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). This action merely eliminates a reporting requirement.

Additionally, FMCSA evaluated the effects of this rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. As noted above, this rule is exempt from analysis under the National Environmental Policy Act due to two categorical exclusions. This final rule simply eliminates a paperwork requirement and would not result in high and adverse environmental impacts.

List of Subjects in 49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends part 369 in 49 CFR chapter III, subchapter B, as follows:

PART 369—REPORTS OF MOTOR CARRIERS

■ 1. The authority citation for part 369 continues to read as follows.

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

■ 2. Amend § 369.1, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows.

§ 369.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.

* * * * *

(b) *Where to file report.* Carriers must file the annual report with the Federal Motor Carrier Safety Administration at the address in § 369.6. You can obtain blank copies of the report form from the Federal Motor Carrier Safety Administration Web site *http://www.fmcsa.dot.gov/forms/reporting/mcs_info.htm#fos.*

■ 3. Revise § 369.4 to read as follows.

§ 369.4 Annual reports of Class I carriers of passengers.

(a) All Class I motor carriers of passengers shall complete and file Motor Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1).

(b) *Accounting period.* (1) Motor Carrier Annual Report Form MP–1 shall be used to file annual selected motor carrier data.

(2) The annual accounting period shall be based either:

(i) On the 31st day of December in each year, or

(ii) An accounting year of 13 4-week periods ending at the close of the last 7 days of each calendar year.

(3) A carrier electing to adopt an accounting year of 13 4-week periods shall file with the FMCSA a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the FMCSA.

(c) The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed with the Federal Motor Carrier Safety Administration at the address in § 369.6. Copies of Form MP–1 may be obtained from the FMCSA.

■ 4. Amend § 369.8 by revising paragraphs (a) and (d) to read as follows.

§ 369.8 Requests for exemptions from filing.

(a) *General.* This section governs requests for exemptions from filing of the report required under § 369.1.

* * * * *

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 369.9(d). For Annual Form M, both the report and the request are due by March 31 of the year following the year to which it relates.

* * * * *

■ 5. Amend § 369.9 by removing paragraph (d)(4) and revising paragraphs (a) and (e)(4) to read as follows.

§ 369.9 Requests for exemptions from public release.

(a) *General.* This section governs requests for exemptions from public release of the report required under § 369.1.

* * * * *

(e) * * *

(4) FMCSA will grant or deny each request no later than 90 days after the request's due date as defined in paragraph (d) of this section. The decision by FMCSA shall be administratively final. For Annual Form M, both the report and the request are due by March 31, and the decision is due by June 30.

* * * * *

§ 369.11 [Removed]

■ 6. Remove § 369.11.

Issued under the authority delegated in 49 CFR 1.87 on: November 26, 2013.

Anne S. Ferro,

Administrator.

[FR Doc. 2013–29936 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XD029

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2013 Greenland turbot initial total allowable catch (ITAC) in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 12, 2013, through 2400 hrs, A.l.t., December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 Greenland turbot ITAC in the Bering Sea subarea of the BSAI is 1,369 metric tons (mt) as established by the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 Greenland turbot ITAC in the Bering Sea subarea of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,319 mt, and is setting aside the remaining 50 mt as incidental catch. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Greenland turbot in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 11, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 12, 2013.

Sean Corson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29924 Filed 12–12–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XD028

Fisheries of the Exclusive Economic Zone Off Alaska; Several Groundfish Species in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Bering Sea Greenland turbot and Bering Sea and Aleutian Islands (BSAI) Alaska plaice and the total allowable catch of BSAI sculpins and BSAI skates in the BSAI management area. This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI management area.

DATES: Effective December 12, 2013, through 2400 hrs, Alaska local time, December 31, 2013. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, December 27, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2012–0210 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0210*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 initial total allowable catch (ITAC) of Bering Sea (BS) Greenland turbot in the BSAI was established as 1,369 metric tons (mt), the 2013 ITAC of BSAI Alaska plaice was established as 17,000 mt, the 2013 total allowable catch (TAC) of BSAI sculpins was established as 5,600 mt, and the 2013 TAC of BSAI skates was established as 24,000 mt by the final 2013 and 2014 harvest specifications for groundfish of the BSAI (78 FR 13813, March 1, 2013). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITACs for Bering Sea Greenland turbot and Bering Sea and Aleutian Islands (BSAI) Alaska plaice and the total allowable catch of BSAI sculpins and BSAI skates in the BSAI need to be supplemented from the non-specified reserve to

promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 69 mt to the BS Greenland turbot ITAC, 4,571 mt to the BSAI Alaska plaice ITAC, 300 mt to the BSAI sculpins TAC and 1,500 mt to the BSAI skates TAC in the BSAI. These apportionments are consistent with § 679.20(b)(1)(i) and do not result in overfishing of any target species because the revised ITACs and TAC are equal to or less than the specifications of the acceptable biological catch in the final 2013 and 2014 harvest specifications for groundfish in the BSAI (78 FR 13813, March 1, 2013).

The harvest specification for the 2013 ITACs included in the harvest specifications for groundfish in the BSAI are revised as follows: 1,610 mt for BS Greenland turbot, 21,571 mt for BSAI Alaska plaice, 5,900 mt for BSAI sculpins, and 25,500 mt for BSAI skates.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the BS Greenland turbot, BSAI Alaska plaice, BSAI sculpins, and BSAI skates fisheries in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 3, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until December 27, 2013.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: December 12, 2013.

Sean F. Corson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29916 Filed 12–12–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 242
Tuesday, December 17, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0896; Notice No. 25–13–27–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Side Stick Controller

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. These airplanes will have a novel or unusual design feature associated with side stick controllers which require limited pilot force because they are operated by only one hand. 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 January 31, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–0896 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: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1178; 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 airplane has a conventional layout with twin wing-mounted Rolls-Royce Trent XWB 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.

The Airbus Model A350–900 series airplane is equipped with two side stick controllers instead of the conventional control columns and wheels. This kind of controller is designed for only one-hand operation. The requirement of Title 14, Code of Federal Regulations (14 CFR) 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not adequate for a side stick controller. Special conditions are necessary to specify the appropriate loading conditions for this kind of controller.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

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 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 § 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 feature: a side stick controller for only one-hand operation by wrist and not by arms.

Discussion

Special conditions for Airbus side stick controllers have been developed and applied during previous Airbus certification programs. These proposed special conditions are also appropriate for the Model A350–900 series side stick controller.

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 proposed special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions in lieu of § 25.397(c), which are identical to A320, A340, and A380 special conditions on the same subject:

For the Airbus Model A350–900 series airplane equipped with stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows:

(1) For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf	Nose left 100 lbf.
Nose down 200 lbf	Nose right 100 lbf.

(2) For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29939 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0905; Notice No. 25–13–28–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Flight Envelope Protection: Normal Load Factor (g) Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with a flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. 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 January 31, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–0905 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: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; 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 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 will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these proposed 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 XWB 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 Airbus 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.

The normal load factor limit on Airbus Model A350–900 series airplanes is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope wherein maneuverability in excess of limit structural design values is possible.

Title 14 Code of Federal Regulations (14 CFR) part 25 sections do not specify requirements or policy for demonstrating maneuver control that impose any handling qualities requirements beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency such as upset recoveries or collision avoidance.

These proposed special conditions are needed to ensure adequate maneuverability and controllability for the Model A350–900 series using the Airbus flight control system.

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series 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 Airbus 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 § 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 will incorporate the following novel or unusual design features: a flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor.

Discussion

Flight envelope protection that limits normal load factor (g) limiting is considered novel and unusual because the current regulations do not provide standards for maneuverability and controllability evaluations for such systems. Special conditions are needed to ensure adequate maneuverability and controllability when using this design feature.

As with the previous fly-by-wire airplanes, the FAA has no regulatory or safety reason to inhibit the design concept of the Airbus A350 flight control system with load factor limiting. Pilots accustomed to this control feature may feel more freedom in commanding full stick displacement maneuvers because of the following:

(1) Knowledge that the limit system will protect the structure,

(2) Low stick force/displacement gradients, and

(3) Smooth transition from pilot elevator control to limit control.

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 Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes.

To meet the intent of adequate maneuverability and controllability required by § 25.143(a), and in the absence of other limiting factors, the following special condition is proposed:

1. The positive limiting load factor must not be less than:

(a) 2.5g for the EFCS normal state with the high lift devices retracted up to V_{MO}/M_{MO}. The positive limiting load factor may be gradually reduced down to 2.25g above V_{MO}/M_{MO}.

(b) 2.0g for the EFCS normal state with the high lift devices extended.

2. The negative limiting load factor must be equal to or more negative than:

(a) Minus 1.0g for the EFCS normal state with the high lift devices retracted.

(b) 0.0g for the EFCS normal state with high lift devices extended.

3. Maximum reachable positive load factor wings level may be limited by flight control system characteristics or flight envelope protections (other than load factor protection) provided:

(a) That the required values are readily achievable in turns and

(b) that wings level pitch up responsiveness is satisfactory.

4. Maximum achievable negative load factor may be limited by flight control system characteristics or flight envelope protections (other than load factor protection) provided:

(a) pitch down responsiveness is satisfactory

(b) from level flight, 0g is readily achievable or alternatively, a satisfactory* trajectory change is readily achievable at operational speeds (from V_{LS} to max speed -10kts). V_{LS} is the lowest speed that the crew may fly with

auto thrust or auto pilot engaged. It is displayed on primary flight displays as the top of the low speed amber band, and is the lower end of the normal flight envelope. Max speed − 10kts is proposed to cover typical margin from V_{MO}/M_{MO} to cruise speeds and typical margin from V_{FE} to standard speed in high lift configurations.

* For the FAA to consider a trajectory change as satisfactory, the applicant should propose and justify a pitch rate that provides sufficient maneuvering capability in the most critical scenarios.

Compliance demonstration with the above requirements may be performed without ice accretion on the airframe.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29941 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0909; Notice No. 25–13–17–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature associated with electronic system security protection from unauthorized external access. 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 January 31, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–0909 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: Varun Khanna, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1298; 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 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 proposed 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 XWB 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.

Contemporary transport category airplanes have both safety-related and non-safety-related electronic system networks for many operational functions. However, electronic system network security considerations and functions have played a relatively minor role in the certification of such systems because of the isolation, protection mechanisms, and limited connectivity between the different networks.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

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 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 § 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 will incorporate the following novel or unusual design feature:

The digital systems architecture for the Airbus Model A350–900 series airplanes is composed of several connected networks. This proposed network architecture is used for a diverse set of functions, providing data connectivity between systems, including:

1. airplane control, communication, display, monitoring and navigation systems,
2. airline business and administrative support systems,
3. passenger entertainment systems, and
4. access by systems external to the airplane.

Discussion

The proposed Airbus Model A350–900 series architecture and network configuration may allow increased connectivity to and access from external network sources and airline operations and maintenance networks to the aircraft control domain and airline information services domain. The aircraft control domain and airline information services domain perform functions required for the safe operation and maintenance of the airplane. Previously these domains had very limited connectivity with external network sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions are proposed to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

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 Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes. Airplane Electronic System Security Protection from Unauthorized External Access.

1. The applicant must ensure airplane electronic system security protection from access to or by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29985 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0910; Notice No. 25–13–20–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Isolation or Protection of the Aircraft Electronic System Security From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Airbus Model A350–900 series airplanes. These airplanes will have a novel or unusual design feature associated with aircraft electronic system security protection or isolation from unauthorized internal access. 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 January 31, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–0910 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: Varun Khanna, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1298; 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 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 proposed 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 XWB 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.

Contemporary transport category airplanes have both safety-related and non-safety-related electronic system networks for many operational functions. However, electronic system network security considerations and functions have played a relatively minor role in the certification of such systems because of the isolation, protection mechanisms, and limited connectivity between the different networks.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

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 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 § 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 Feature

The Airbus Model A350–900 series will incorporate the following novel or unusual design feature: an electronics network system architecture which is new and novel for commercial transport airplanes which introduces potential security risks and vulnerabilities not addressed in current regulations and aircraft-level or system-level safety assessment methods.

Discussion

The Airbus Model A350–900 series architecture is new and novel for commercial transport airplanes because it allows connection to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This proposed data network and design integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate this type of system architecture or electronic access to aircraft systems. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks and servers. Therefore, these special conditions are proposed to ensure that the security of airplane systems and networks is not compromised by unauthorized wired or wireless internal access.

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 related to electronic system security protection. 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 Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes.

Isolation of the Airplane Electronic System Security Protection from Unauthorized Internal Access.

■ 1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other

assets required for safe flight and operations.

■ 2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29986 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2013–0899; Notice No. 25–13–15–SC]

Special Conditions: Airbus, Model A350–900 Series Airplane; Control Surface Awareness and Mode Annunciation

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. These airplanes will have a novel or unusual design feature(s) associated with control surface awareness and mode annunciation provided by the electronic flight control system. 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 January 31, 2014.

ADDRESSES: Send comments identified by docket number FAA–2013–0899 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: Joe Jacobsen, FAA, Airplane and Flightcrew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2011; 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 XWB 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 Airbus 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.

These proposed special conditions for control surface awareness, applicable to Airbus Model A350–900 series airplanes, propose suitable flight control position annunciation and control system mode of operation to be provided to the flight crew when a flight condition exists in which nearly full surface authority (not crew-commanded) is being utilized. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full performance, which may saturate the surface. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed crew awareness and nuisance features. A monitoring system that might compare airplane motion and surface deflection, and pilot side stick controller (SSC) demand could be useful for elimination of nuisance alerting.

Type Certification Basis

Under Title 14, Code of Federal Regulations (14 CFR) 21.17, Airbus must show that the Model A350–900 series meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–129.

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 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 § 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 will incorporate the following novel or unusual design features: electronic flight control system providing control surface awareness and mode annunciation to the flightcrew.

Discussion

With a response-command type flight control system and no direct coupling from cockpit controller to control surface, the pilot is not aware of actual surface position utilized to fulfill the requested demand. Some unusual flight conditions, arising from atmospheric conditions and/or airplane or engine failures, may result in full or nearly full surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in such a manner to cause loss of control or other unsafe stability or performance characteristics.

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 Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Airbus Model A350–900 series airplanes.

■ 1. Current airworthiness standards do not contain adequate safety standards for the proposed design. In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following proposed special conditions apply:

■ a. The system design must ensure that the flight crew is made suitably aware whenever the primary control means nears the limit of control authority.

Note: The term ''suitably aware'' indicates annunciations provided to the flight crew that are appropriately balanced between nuisance and that are necessary for crew awareness.

■ b. If the design of the flight control system has multiple modes of operation, a means must be provided to indicate to the crew any mode that significantly changes or degrades the normal handling or operational characteristics of the airplane.

Issued in Renton, Washington, on October 22, 2013.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–29988 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Barnegat Bay, Seaside Heights, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the operating schedule that governs the S37 Bridge, at NJICW mile 14.1 over Barnegat Bay, at Seaside Heights, NJ. Over the span of two and half years, the bridge will be closed to navigation for three four-month closure periods. Extensive replacement of parts and repairs to the bridge necessitate these closures.

DATES: Comments and related material must reach the Coast Guard on or before February 18, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0926 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Jim Rousseau, District Five Prevention Bridges, the Coast Guard; telephone 757–398–6557, email *James.L.Rousseau2@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 Acronyms

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section Symbol
U.S.C. United States Code
NJDOT New Jersey Department of Transportation

A. Public Participation and Request for Comments

We encourage you to participate in this proposed 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this proposed rulemaking (USCG–2012–0926), 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 *http://www.regulations.gov,* or by fax, mail or hand delivery, but please use only one of these means. If you submit a

comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an 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,* type the docket number [USCG–2013–0926] in the ''SEARCH'' box and click ''Search.'' then click on ''Submit a Comment'' on the line associated with this rulemaking. 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. 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,* type the docket number (USCG–2013–0926) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

B. Basis and Purpose

Parsons Brinkerhoff, a design consultant on behalf of NJDOT, requested a temporary change to the existing regulations for the S37 Bridge to facilitate necessary repairs. The repairs consist of extensive structural rehabilitation, decking replacement, bearing replacement, electrical repairs, gate replacement and improvements to necessitate this closure. To facilitate repairs, the bascule span would be maintained in the closed position to navigation on three four-month closure periods beginning at 8 a.m., December 1, 2015 until 8 p.m., March 31, 2016; from 8 a.m., December 1, 2016 until 8 p.m., March 31, 2017; and from 8 a.m., December 1, 2017 until 8 p.m. March 31, 2018.

The Coast Guard has reviewed the bridge data provided by NJDOT. The data, from years 2004 to 2013, shows a substantial decrease in the number of bridge openings and vessel traffic transiting the area between December and March. Spring and fall average openings are approximately 100 per month. Winter months average approximately 6 vessel openings per month. A survey was conducted with nine local commercial marinas also indicating minimal impact to their customers and operations. The S37 Bridge, also known locally as the Thomas A. Mathis Bridge, is a double-leaf bascule bridge with a vertical clearance of approximately 30 feet, above mean high water. Based on the data provided, the proposed closure dates will have minimal impact on vessel traffic.

C. Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend 33 CFR 117.733(c)(1) governing the S37 Bridge, at NJICW mile 14.1, over Barnegat Bay, at Seaside Heights, NJ. The Coast Guard proposes to temporarily suspend 33 CFR 117.733(c)(1) and insert this new regulation at 33 CFR 117.733(c)(4). Paragraph (c)(4) would allow the draw to be maintained in the closed position to vessels during the extensive rehabilitation project on three four-month closure periods beginning 8 a.m., December 1, 2015 until 8 p.m., March 31, 2016; from 8 a.m., December 1, 2016 until 8 p.m., March 31, 2017; and from 8 a.m., December 1, 2017 until 8 p.m., March 31, 2018. Vessels with a mast height less than 30 feet can pass underneath the bridge in the closed position at anytime. The Atlantic Ocean is the only alternate route available for vessels unable to pass underneath the bridge and the bridge will be unable to open during the closure period.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The proposed change is expected to have minimal impact on mariners due to slow down of users in the winter months with no anticipated change to vessel traffic.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There have been minimal vessel requests requiring openings for the past 9 years in the winter months. Vessels that can safely transit under the bridge may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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 various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. 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 will not result in such expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides 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 which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to temporarily amend 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. From December 1, 2015 through March 31, 2018 in § 117.733, suspend paragraph (c)(1) and add paragraph (c)(4), to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(c) * * *

(4) From every December 1 through March 31, beginning in 2015 until 2018, the draw may remain closed to navigation.

* * * * *

Dated: November 18, 2013.

Steven H. Ratti,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2013–29859 Filed 12–16–13; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 13–39; FCC 13–135]

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the FCC seeks comments on additional measures that may help the Commission ensure a reasonable and nondiscriminatory level of service for completing long-distance calls to rural areas. This document also; seeks to improve the Commission's ability to monitor problems with completing calls to rural areas, and

enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. The Further Notice of Proposed Rulemaking seeks public comment on additional measures intended to further ensure reasonable and nondiscriminatory service to rural areas, including additional reforms pertaining to autodialer traffic, intermediate providers, and on other Safe Harbor options and reporting requirements.

DATES: Comments are due on or before January 16, 2014, and reply comments on or before February 18, 2014.

ADDRESSES: You may submit comments, identified by WC Docket No. 13–39, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and WC Docket No. 13–39.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

▪ In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com*.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory D. Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1191.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in WC Docket No. 13–39, FCC 13–135, released on November 8, 2013. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov*. This summarizes only the FPRM in WC Docket No. 13–39; A summary of the Commission's Report and Order in WC Docket No. 13–39 is published elsewhere in this issue of the **Federal Register**.

Synopsis of Further Notice of Proposed Rulemaking

I. Introduction

1. In the Report and Order in WC Docket No. 13–39 (published elsewhere in this issue of the **Federal Register**), we adopt rules to address significant concerns about completion of long-distance calls to rural areas. Doing so will help ensure that long-distance calls to all Americans, including rural Americans, are completed. The record in this proceeding leaves no doubt that completion rates for long-distance calls to rural areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.

2. The rules adopted in the Report and Order are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as aiding consumers and industry by adopting a rule prohibiting false ring signaling. In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on additional measures that may help the Commission ensure a reasonable and nondiscriminatory level of service to rural areas.

II. Background

3. The Commission initiated this rulemaking in February 2013 to help address problems in the completion of long-distance telephone calls to rural customers. This followed a series of Commission actions to address rural call completion concerns over the past several years. As discussed in greater detail below, since 2007 the Commission has:

• Adopted the *USF/ICC Transformation Order,* which, among other things, reaffirmed the prohibition on call blocking; made clear that carriers' blocking of VoIP–PSTN traffic is prohibited; clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN; and adjusted over a period of time many terminating switched access charges as part of transition to a bill-and-keep regime;

• Issued two Declaratory Rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges, and clarifying the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic which may violate section 201 or 202 of the Communications Act of 1934, as amended (the Act);

• Established a Rural Call Completion Task Force to investigate the growing problems associated with calls to rural customers;

• Held a workshop to identify specific causes of rural call completion problems and discuss potential solutions with key stakeholders;

• Established dedicated avenues for rural consumers and carriers to inform the Commission about call completion problems; and

• Investigated and pursued enforcement of providers not complying with the statute and/or our rules, including a consent decree as well as an enforcement advisory regarding rural call completion problems.

We describe in greater detail the Commission's most significant actions, which inform the legal and policy actions that we take in this Order.

4. *USF/ICC Transformation Order.* On November 18, 2011, the Commission released the *USF/ICC Transformation Order,* which, among other things, established a number of new rules requiring carriers to adjust, over a

period of years, many of their terminating switched access charges effective every July 1, as part of a transition to a bill-and-keep regime. The Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011. Price cap and rate-of-return carriers were required to make comparable reductions to certain intrastate switched access rates in 2012 and 2013 if specified criteria were met. Beginning in 2014, price cap and rate-of-return carriers begin a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep. The price cap transition occurs over six years and the rate-of-return transition over nine years.

5. The *USF/ICC Transformation Order* also re-emphasized the Commission's longstanding prohibition on call blocking. The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's communications network and that call blocking harms consumers. The Commission also made clear that the general prohibition on call blocking by carriers applies to VoIP-to-PSTN traffic. Finally, the Commission prohibited call blocking by providers of interconnected VoIP services as well as providers of ''one-way'' VoIP services. The Communications Act defines ''non-interconnected VoIP service'' as a service that enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP service. 47 U.S.C. 153(36). Our use of the term ''one-way VoIP'' in this Order is consistent with the definition of ''non-interconnected VoIP service'' in the Communications Act, to the extent such service offers the capability to place calls to or receive calls from the PSTN.

6. In addition, the Commission adopted rules to address so-called ''phantom traffic,'' that is, traffic that terminating networks receive that lacks certain identifying information for calls. The lack of such basic information to accompany calls has also resulted in calls being delivered without the correct caller identification, which is a common call quality complaint in rural areas. In the *USF/ICC Transformation Order,* the Commission found that service providers in the call path were intentionally removing or altering identifying information to avoid paying the terminating rates that would apply if the call were accurately signaled and billed. The Commission adopted rules requiring telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and required intermediate providers to pass this signaling information, unaltered, to the next provider in a call path.

7. *2012 Declaratory Ruling.* In 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers. The *2012 Declaratory Ruling* made clear that practices used for routing calls to rural areas that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in Section 201 of the Act or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. The *2012 Declaratory Ruling* also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers. The Bureau stated that the practices causing rural call completion problems ''adversely affect the ubiquity and reliability of the nation's communications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network.''

8. *The NPRM.* In February 2013, the Commission adopted a Notice of Proposed Rulemaking (*NPRM*) seeking comment on proposed reporting and data retention requirements. The *NPRM* proposed rules requiring facilities-based originating long-distance voice service providers to collect, retain, and report to the Commission data on call answer rates. The *NPRM* also proposed rules requiring facilities-based originating long-distance voice service providers to collect and retain information on call attempts and to periodically analyze call completion data and report the results to the Commission. The *NPRM* proposed rules requiring facilities-based originating long-distance providers with more than 100,000 retail long-distance subscribers (business or residential) to file quarterly reports that measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during a calendar month, and to report on specific categories of call attempts. The *NPRM* also proposed requiring originating long-distance providers to measure the overall call answer rate for nonrural call attempts to permit comparisons between long-distance calls in rural versus nonrural local exchanges.

9. *Public Notice Seeking Comment on List of Rural OCNs.* On April 18, 2013, the Wireline Competition Bureau released a Public Notice seeking comment on which rural OCNs covered providers should include in the proposed quarterly reports on call completion performance. The Public Notice invited comment on the completeness and suitability of a list of rural OCNs compiled by the National Exchange Carrier Association (NECA) and posted on NECA's Web site.

10. *Enforcement Activity.* The Commission's Enforcement Bureau is also actively responding to rural call completion problems. In March 2013, Level 3 Communications, LLC (Level 3) entered into a consent decree terminating the Enforcement Bureau's investigations into possible violations of sections 201(b) and 202(a) of the Act with respect to Level 3's call completion practices to rural areas, including its use and monitoring of intermediate providers. On July 19, 2013, the Enforcement Bureau issued an advisory to long-distance providers to take consumer complaints about rural call completion seriously. The advisory gave examples of plainly insufficient provider responses and warned that ''[g]oing forward, the FCC may take enforcement action against providers that submit such patently deficient responses to informal complaints.''

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to customers of rural incumbent local exchange carriers (LECs) is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A Web-based complaint intake focuses on the rural call completion problems of residential and business customers, instructs such customers how to file complaints with the Commission, and links to the Commission's standard 2000B complaint form. Separately, a dedicated email intake provides a ''hot email line'' for rural telephone companies to alert the Commission of systemic problems receiving calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. Many key stakeholders acknowledge that call termination issues to rural service areas are serious and widespread and have collaborated to propose industry solutions. For example, in October 2011, stakeholders attended the Commission's Rural Call Completion Task Force's workshop to identify and discuss potential solutions. In 2012, the Alliance for Telecommunications Industry Solutions (ATIS) released the *Intercarrier Call Completion/Call Termination Handbook* outlining standards and practices of the industry relevant to ensuring call completion. In August 2013, ATIS and NECA announced a voluntary Joint National Call Testing Project offering providers the opportunity to test call completion issues identified on calls destined to many areas served by rural local exchange carriers. The testing project will facilitate cooperative trouble resolution efforts with originating, intermediate and terminating carriers. Finally, we note that some providers have devoted substantial time and resources to analyzing rural call completion performance. We applaud these and other efforts by stakeholders and encourage the continued support of the industry to undertake further efforts to diagnose problems in call routing, cooperate on finding solutions, and adopt best practices aimed at solving the rural call completion problem.

III. Further Notice of Proposed Rulemaking

A. Autodialer Traffic

13. We seek additional comment on the ability of a covered provider to identify and segregate autodialer calls. It is unclear from the existing record whether autodialer, or mass-dialer, traffic can be reliably distinguished from regular traffic by covered providers. Two providers indicate that they can reasonably identify retail autodialer traffic because it is delivered on dedicated connections, whereas other commenters state that it is not possible to distinguish autodialer traffic. We seek comment on whether providers are able to isolate autodialer calls because of the way such traffic is delivered or otherwise. We also seek comment on the burdens of and benefits of distinguishing autodialer traffic.

14. We note that to the extent that terminating rural incumbent LECs report their own call answer rates, as we have encouraged them to do, those call answer rates will include autodialer traffic. In order for a terminating rural incumbent LEC's call answer rate to be a meaningful benchmark, the call data reported by covered providers must also include autodialer traffic. At the same time, as we have discussed, we recognize that autodialer traffic may skew call completion performance results, and that reports that segregate autodialer traffic may therefore be useful if such traffic can be reliably excluded. In the Order we permit covered providers to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. We seek comment on the proposal that all covered providers be required to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, and on the relative benefits and burdens of doing so.

B. Intermediate Providers

15. In the Order, we decline at this time to impose the rules on intermediate providers. We seek comment on whether we should extend these rules to intermediate providers, or a subset thereof, and on the Commission's authority to do so. If we extended these rules to intermediate providers, could we reduce or eliminate the burden on originating providers?

16. We seek comment on whether we should impose certifications or other obligations on intermediate providers. For example, one commenter proposes intra-industry compliance certification as a supplement to the data collection, retention and reporting adopted in the Order. Should the Commission require each intermediate provider offering to deliver traffic for termination for another provider, or offering to deliver traffic for termination that is originated by an entity other than the end users it serves, to certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements? Should each intermediate provider be required to obtain and file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural incumbent LECs in particular? Should we require intermediate providers to include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area? We seek comment on the proposal that it would be unlawful for any intermediate provider that refused to provide such a certification to carry traffic for termination on the PSTN, and it would be unlawful for any provider to direct such traffic to such a non-complying company.

C. Modifications to the Safe Harbor

17. In the Order, we adopt a safe harbor for qualifying providers, as noted above, whose contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider before the call reaches the terminating provider. We seek comment on whether we should revise these requirements in the future.

18. For example, ATIS supports the safe harbor, but recommends that the Commission also consider whether there may be other measures carriers can take that should constitute safe harbors. Are there particular industry practices to manage call termination that should make providers eligible for a safe harbor from reporting and/or retention of records? Should the existing safe harbor be modified to include additional requirements in contracting with intermediate providers or other measures? If so, what should these triggers be and why? What should the obligations be? And, if the Commission revises or adopts different safe harbors, should the Commission relieve any of the data retention obligations?

19. We also seek comment on adopting a separate safe harbor related to a provider's call completion performance in specific OCNs. Specifically, we seek comment on whether a covered provider's record of matching or exceeding a rural incumbent LEC's reported terminating call answer rate in specific OCNs, or another threshold tied to the rural incumbent LEC's terminating call answer rate, could establish the foundation for a separate safe harbor for those OCNs? What would be an appropriate record of matching or exceeding a rural incumbent LEC's terminating call answer rate, and what would be an appropriate threshold in relation to that call answer rate?

20. In the Order that we adopt today, we decline to adopt a performance-based safe harbor (*i.e.,* a safe harbor based on successful performance in completing rural calls as demonstrated by a provider's data). As we note above, some commenters have suggested that the Commission should review data reported by the providers and then adopt some type of a performance-based safe harbor. What should the Commission take into consideration if it were to adopt standards for rural call performance? What other uses of the reported data would be useful and appropriate to eliminate the rural call completion problem?

D. Rural Incumbent Local Exchange Carriers

21. In the Order we encourage, but do not require, each rural ILEC to report quarterly on the number of incoming long-distance call attempts received, the number answered on its network, and the resultant call answer rate calculation. We noted that this information would be an important benchmark against which to evaluate the number of call attempts that originating providers report as having reached a rural ILEC's terminating switch or tandem, and the number that originating providers report as having been answered. Here we seek comment on whether the Commission should adopt or encourage a reporting methodology beyond what is described in the Order.

22. Should rural ILECs above a certain size be required to report their terminating call answer rate data, while those below the size threshold could continue to report on a voluntary basis? If reporting this information by rural ILECs were mandated, what would be the appropriate threshold, in terms of subscriber lines, revenues, or other measures? Would it be more efficient for a single report on rural ILEC call answer rates to be assembled by a third party organization (*e.g.,* industry association), and how would that process function? For example, how would we select the organization, how would they obtain the data, and how we ensure the reliability of the report? Should we retain the same reporting timing and frequency as set for voluntary reporting in the Order? If not, what should the reporting timing and frequency be? We also seek comment on the burdens and benefits associated with the type of rural ILEC reporting described above.

E. Additional Rule Changes

23. The Commission and the Wireline Competition Bureau have stated that no carriers, including interexchange carriers, or VoIP service providers may block, choke, reduce, or restrict traffic, including VoIP–PSTN traffic. The Order accompanying this FNPRM and the Wireline Competition Bureau's *2012 Declaratory Ruling* make clear that carriers' and VoIP service providers' call routing practices that lead to call termination and call quality problems may violate this prohibition. Practices resulting in rural call completion problems adversely affect the ubiquity and reliability of the nation's telecommunications network and threaten the ability of consumers, businesses, and public health and safety officials to access and use a reliable network. For these reasons, we seek comment on whether we should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic. We also seek comment on whether there are any additional requirements that should apply to some or all of these providers or to any other entity, whether with respect to that entity's acts or omission that directly block, choke, reduce, or restrict traffic, governing its acts or omissions with respect to its intermediate providers, or that otherwise lead to rural call completion problems. To the extent that commenters advocate for additional requirements, commenters should explain why any such new requirements are needed; identify the specific categories of conduct that would be prohibited under the new requirements; and identify the specific sources of legal authority that would permit the Commission to adopt the new requirements. We also seek comment on whether we should provide additional guidance as to how existing or any new requirements should apply to specific scenarios.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

24. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

25. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

V. Initial Regulatory Flexibility Analysis

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

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

27. The FNPRM seeks comment on a variety of issues relating to possible remedies for the problem of low call completion rates and poor overall call quality to rural America. As discussed in the FNPRM, the proposed rules will provide the Commission and providers with more data to identify and address problems of long-distance call completion to rural areas. The ubiquity and reliability of the nation's telecommunications network are of paramount importance to the Communications Act of 1934, as amended, and problems adversely affecting that ubiquity and reliability threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network. In order to confront these challenges, the FNPRM asks for comment in a number of specific areas.

1. Autodialer Traffic

28. The FNPRM first seeks comment on the ability of a covered provider to identify and segregate autodialer calls in order to further clarify whether autodialer, or mass-dialer, traffic can be reliably distinguished from regular traffic by covered providers. The FNPRM also seeks comment on whether providers are able to isolate autodialer calls because of the way such traffic is delivered or otherwise, and on the burdens of and benefits of distinguishing autodialer traffic. In addition, the FNPRM seeks comment on the proposal that all covered providers be required to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, and on the relative benefits and burdens of doing so.

2. Intermediate Providers

29. The FNPRM seeks comment on whether the Commission should extend the recording, retention, and reporting requirements adopted in the Order to intermediate providers, or a subset thereof, the Commission's authority to do so, and the benefits and burdens of doing so. The FNPRM also seeks comment on whether the Commission should impose certifications or other obligations on intermediate providers. The FNPRM asks whether each intermediate provider offering to deliver traffic for termination for another provider, or offering to deliver traffic for termination that is originated by an entity other than the end users it serves, should be required to certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements. The FNPRM further asks whether each intermediate provider should be required to obtain and file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural telephone companies in particular. The FNPRM also asks whether the Commission should require intermediate providers to include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area. Finally, the FNPRM seeks comment on the proposals that it would be unlawful for any intermediate provider that refused to provide such a certification to carry traffic for termination on the PSTN, and that it would be unlawful for any provider to direct such traffic to such a non-complying company.

3. Modifications to the Safe Harbor

30. The FNPRM seeks comment on whether the Commission should revise, in the future, the requirements for the safe harbor for qualifying providers whose contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider before the call reaches the terminating provider. The FNPRM seeks comment on whether there are particular industry practices to manage call termination that should make providers eligible for a safe harbor from reporting and/or retention of records. The FNPRM also asks whether the existing safe harbor should be modified to include additional requirements in contracting with intermediate providers or other measures and, if so, what these triggers should be and why, and what those obligations should be. In addition, the FNPRM asks whether, if the Commission revises or adopts different safe harbors, providers qualifying for the new or revised safe harbors should be relieved of any data retention obligations.

31. The FNPRM also seeks comment on adopting a separate safe harbor related to a provider's call completion performance in specific OCNs. Specifically, it seeks comment on whether a covered provider's record of matching or exceeding a rural incumbent LEC's reported terminating call answer rate in specific OCNs, or another threshold tied to the rural incumbent LEC's terminating call answer rate, could establish the foundation for a separate safe harbor for those OCNs. The FNPRM also asks what would be an appropriate record of matching or exceeding a rural incumbent LEC's terminating call answer rate and what would be an appropriate threshold in relation to that answer rate.

32. The FNPRM seeks comment on what the Commission should consider should it elect to adopt a performance-based safe harbor (*i.e.,* a safe harbor based on successful performance in completing rural calls as demonstrated by a provider's data). Finally, the FNPRM seeks comment on what the Commission should take into consideration if it were to adopt standards for rural call performance and on what other uses of the reported data would be useful and appropriate to eliminate the rural call completion problem.

4. Rural Incumbent Local Exchange Carriers

33. The FNPRM seeks comment on whether rural ILECs should be required to report their terminating call answer rate and whether the Commission should adopt or encourage a reporting methodology beyond what is described in the Order. The FNPRM asks whether, if the Commission adopts such a reporting scheme, rural ILECs above a certain size should be required to report their local call answer rate data while those below the size threshold could continue to report on a voluntary basis. The FNPRM seeks comment on what would be the appropriate threshold, in terms of subscriber lines, revenues, or other measures, whether it would be more efficient for a single report on rural ILEC call answer rates to be assembled by a third party organization, and how that process would function. The FNPRM asks how the Commission would select such a third-party organization, how that organization would obtain the data, and how the Commission could ensure the reliability of the reports. The FNPRM also asks whether rural ILECs should report with the same timing and frequency as set out for voluntary reporting in the Order and, if not, what the reporting timing and frequency should be. Finally, the FNPRM seeks comment on the burdens and benefits of rural ILEC reporting.

5. Additional Rule Changes

34. The FNPRM seeks comment on whether the Commission should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic. The FNPRM also seeks comment on whether there are any additional requirements that should apply to some or all of these providers or to any other entity, whether with respect to that entity's acts or omission that directly block, choke, reduce, or restrict traffic, governing its acts or omissions with respect to its intermediate providers, or that otherwise lead to rural call completion problems. The FNPRM seeks comment on a number of related issues, including: Why such new requirements are needed; identify the specific categories of conduct that would be prohibited under the new requirements; and identify the specific sources of legal authority that would permit the Commission to adopt the new requirements. The FNPRM also seeks comment on whether the Commission should provide additional guidance as to how existing or any new requirements should apply to specific scenarios.

B. Legal Basis

35. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

36. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

38. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

39. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

40. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

41. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

42. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

43. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

44. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.[1] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

45. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

46. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is

[1] *See id.*

small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

47. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

48. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

49. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

50. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

51. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

52. *All Other Telecommunications.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2,478 establishments had annual receipts of under $10 million and 145 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

53. In the FNPRM, the Commission proposes to require covered providers to file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

54. In the FNPRM, the Commission proposes to extend the recordkeeping, retention, and reporting requirements to intermediate providers, or some subset thereof. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

55. In the FNRPM, the Commission proposes to require intermediate providers to certify that they terminate long-distance traffic in accordance with

all intercarrier compensation orders, tariffs, and agreements, and to prohibit intermediate carriers that fail to submit such certifications from carrying long-distance traffic. In addition, the proposal would prohibit other providers from handing off traffic to an intermediate provider that has failed to submit such certifications. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

56. In the FNPRM, the Commission also proposes to require rural ILECs to periodically report data for all long-distance calls terminating to their OCNs. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

57. We note parenthetically that, in the FNPRM, the Commission seeks comment on the benefits and burdens of these proposals.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

59. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the FNPRM proposes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

60. First, with regard to the proposal that covered providers file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic, only those covered providers with more than 100,000 retail long-distance subscriber lines (business or residential) would be required to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission.

61. Second, the FNPRM seeks comment on the proposal that the recordkeeping, retention, and reporting requirements adopted in the Order be extended to intermediate providers, and on whether doing so would allow the Commission to reduce or eliminate the burden on covered providers.

62. Third, the FNPRM seeks comment on standards the Commission might use to adopt additional safe harbors in the future in order to reduce or eliminate any burdens associated with compliance with the recordkeeping, retention, and reporting obligations. The FNPRM proposes to adopt a safe harbor based on a provider's performance in completing long-distance calls to particular rural OCNs, measured against each rural OCNs local call answer rate.

63. Fourth, the FNPRM proposes to exempt smaller rural ILECs from the requirement that rural ILECs periodically report their local call answer rates to the Commission. Each of these proposals could reduce the economic impact on small entities.

64. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The proposed recordkeeping, retention, and reporting requirements in the FNPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

65. None.

VI. Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403, the Further Notice of Proposed Rulemaking *is adopted.*

It is further ordered that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), the Further Notice of Proposed Rulemaking comments are due on or before January 16, 2014, and reply comments on or before February 18, 2014.

It is further ordered that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–29864 Filed 12–16–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 529 Through 578, Except Parts 571 and 575

[Docket No. NHTSA–2013–0116]

Federal Motor Vehicle Safety Standards; Small Business Impacts of Motor Vehicle Safety

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of regulatory review; Request for comments.

SUMMARY: NHTSA seeks comments on the economic impact of its regulations on small entities. As required by the Regulatory Flexibility Act, we are attempting to identify rules that may have a significant economic impact on a substantial number of small entities. We also request comments on ways to make these regulations easier to read and understand. The focus of this notice is rules that specifically relate to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, motorcycles, and motor vehicle equipment.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than February 18, 2014.

ADDRESSES: You may submit comments [identified by Docket Number NHTSA–2013–0116] by any of the following methods:

• *Internet:* To submit comments electronically, go to the U.S. Government regulations Web site at *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• *Mail:* Send comments to Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

• *Fax:* Written comments may be faxed to 202–493–2251.

• You may call Docket Management at 1–800–647–5527.

Instructions: For detailed instructions on submitting comments and additional information see the Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Juanita Kavalauskas, Office of Regulatory Analysis and Evaluation, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–366–2584, fax 202–366–3189).

SUPPLEMENTARY INFORMATION:

I. Section 610 of the Regulatory Flexibility Act

A. Background and Purpose

Section 610 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires agencies to conduct periodic reviews of final rules that have a significant economic impact on a substantial number of small business entities. The purpose of the reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of such small entities.

B. Review Schedule

On November 24, 2008, NHTSA published in the **Federal Register** (73 FR 71401) a 10-year review plan for its existing regulations. The National Highway Traffic Safety Administration (NHTSA, ''we'') has divided its rules into 10 groups by subject area. Each group will be reviewed once every 10 years, undergoing a two-stage process—an Analysis Year and a Review Year. For purposes of these reviews, a year will coincide with the fall-to-fall publication schedule of the Semiannual Regulatory Agenda, see *http://www.regulations.gov.* Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010; and so on.

During the Analysis Year, we will request public comment on and analyze each of the rules in a given year's group to determine whether any rule has a significant impact on a substantial number of small entities and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. In each fall's Regulatory Agenda, we will publish the results of the analyses we completed during the previous year. For rules that have subparts, or other discrete sections of rules that do have a significant impact on a substantial number of small entities, we will announce that we will be conducting a formal section 610 review during the following 12 months.

The section 610 review will determine whether a specific rule should be revised or revoked to lessen its impact on small entities. We will consider: (1) The continued need for the rule; (2) the nature of complaints or comments received from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules or with state or local government rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. At the end of the Review Year, we will publish the results of our review. The following table shows the 10-year analysis and review schedule:

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION SECTION 610 REVIEWS

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR 571.223 through 571.500, and parts 575 and 579	2008	2009
2	23 CFR parts 1200 and 1300	2009	2010
3	49 CFR parts 501 through 526 and 571.213	2010	2011
4	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222	2011	2012
5	49 CFR 571.101 through 571.110, and 571.135, 571.138 and 571.139	2012	2013
6	49 CFR parts 529 through 578, except parts 571 and 575	2013	2014
7	49 CFR 571.111 through 571.129 and parts 580 through 588	2014	2015
8	49 CFR 571.201 through 571.212	2015	2016
9	49 CFR 571.214 through 571.219, except 571.217	2016	2017
10	49 CFR parts 591 through 595 and new parts and subparts	2017	2018

C. Regulations Under Analysis

During Year 6, we will continue to conduct a preliminary assessment of the following sections of 49 CFR parts 529 through 578, except parts 571 and 575:

Section	Title
529	Manufacturers of Multistage Automobiles.
531	Passenger Automobile Average Fuel Economy.
533	Light Truck Fuel Economy Standards.
534	Rights and Responsibilities of Manufacturers in the Context of Changes in Corporate Relationships.
535	Medium- and Heavy-Duty Vehicle Fuel Efficiency Program.
536	Transfer and Trading of Fuel Economy Credits.

Section	Title
537	Automotive Fuel Economy Reports.
538	Manufacturing Incentives for Alternative Fuel Vehicles.
541	Federal Motor Vehicle Theft Prevention Standard.
542	Procedures for Selecting Light Duty Truck Lines to be Covered by the Theft Prevention Standard.
543	Exemption from Vehicle Theft Prevention Standard.
545	Federal Motor Vehicle Theft Prevention Standard Phase-In and Small-Volume Line Reporting Requirements.
551	Procedural Rules.
552	Petitions for Rulemaking, Defect, and Noncompliance Orders.
553	Rulemaking Procedures.
554	Standards Enforcement and Defects Investigation.
555	Temporary Exemption from Motor Vehicle Safety and Bumper Standards.
556	Exemption for Inconsequential Defect or Noncompliance.
557	Petitions for Hearings on Notification and Remedy of Defects.
563	Event Data Recorders.
564	Replaceable Light Source and Sealed Beam Headlamp Information.
565	Vehicle Identification Number (VIN) Requirements.
566	Manufacturer Identification.
567	Certification.
568	Vehicles Manufactured in Two or More Stages—All Incomplete, Intermediate and Final-Stage Manufacturers of Vehicles Manufactured in Two or More Stages.
569	Regrooved Tires.
570	Vehicle In Use Inspection Standards.
572	Anthropomorphic Test Devices.
573	Defect and Noncompliance Responsibility and Reports.
574	Tire Identification and Recordkeeping.
576	Record Retention.
577	Defect and Noncompliance Notification.
578	Civil and Criminal Penalties.

We are seeking comments on whether any requirements in 49 CFR parts 529 through 578, except parts 571 and 575 have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Business entities are generally defined as small businesses by Standard Industrial Classification (SIC) code, for the purposes of receiving Small Business Administration (SBA) assistance. Size standards established by SBA in 13 CFR 121.201 are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. If your business or organization is a small entity and if any of the requirements in 49 CFR parts 529 through 578, except parts 571 and 575 have a significant economic impact on your business or organization, please submit a comment to explain how and to what degree these rules affect you, the extent of the economic impact on your business or organization, and why you believe the economic impact is significant.

If the agency determines that there is a significant economic impact on a substantial number of small entities, it will ask for comment in a subsequent notice during the Review Year on how these impacts could be reduced without reducing safety.

II. Plain Language

A. Background and Purpose

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

B. Review Schedule

In conjunction with our section 610 reviews, we will be performing plain language reviews over a ten-year period on a schedule consistent with the section 610 review schedule. We will review 49 CFR parts 529 through 578, except parts 571 and 575 to determine if these regulations can be reorganized and/or rewritten to make them easier to read, understand, and use. We encourage interested persons to submit draft regulatory language that clearly and simply communicates regulatory requirements, and other recommendations, such as for putting information in tables that may make the regulations easier to use.

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit one copy of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the

agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov.*

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

(2) FDMS provides two basic methods of searching to retrieve dockets and docket materials that are available in the system: (a) ''Quick Search'' to search using a full-text search engine, or (b) ''Advanced Search,'' which displays various indexed fields such as the docket name, docket identification number, phase of the action, initiating office, date of issuance, document title, document identification number, type of document, **Federal Register** reference, CFR citation, etc. Each data field in the advanced search may be searched independently or in combination with other fields, as desired. Each search yields a simultaneous display of all available information found in FDMS that is relevant to the requested subject or topic.

(3) You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued in Washington, DC, on December 10, 2013.

Terry Shelton,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2013–29744 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 78, No. 242

Tuesday, December 17, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations and Statement Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Administrative Conference of the United States adopted three recommendations at its Fifty-Ninth Plenary Session. The appended recommendations address the use of social media to support agency rulemaking activities, provide guidance to courts and agencies in connection with the judicial remedy of remanding an agency action without vacating that action, and offer best practices to facilitate cross-agency collaboration under the Government Performance and Results Act (GPRA) Modernization Act of 2010. The Conference also adopted one formal statement at the Plenary Session on improving the timeliness of regulatory review by the Office of Information and Regulatory Affairs.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2013–5, Emily Bremer; for Recommendation 2013–6, Stephanie Tatham; for Recommendation 2013–7, Funmi Olorunnipa; and for Statement # 18, Reeve Bull or Funmi Olorunnipa. For all four of these actions the address and phone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations for improvements to agencies, the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 594(1)). For further information about the Conference and its activities, see *www.acus.gov.*

At its Fifty-Ninth Plenary Session, held December 5–6, 2013, the Assembly of the Conference adopted three recommendations and one formal statement. Recommendation 2013–5, ''Social Media in Rulemaking,'' provides guidance to agencies on whether, how, and when social media might be used both lawfully and effectively to support rulemaking activities.

Recommendation 2013–6, ''Remand Without Vacatur,'' examines the judicial remedy of remand without vacatur on review of agency actions and equitable factors that may justify its application. The recommendation offers guidance for courts that remand agency actions and for agencies responding to judicial remands.

Recommendation 2013–7, ''The GPRA Modernization Act of 2010: Examining Constraints To, and Providing Tools For, Cross-Agency Collaboration,'' examines perceived and real constraints to cross-agency collaboration under the Government Performance and Results Act (GPRA) Modernization Act and highlights tools available to help agencies collaborate. It offers guidance to help increase transparency, improve information sharing, and facilitate better agency reporting under the Act. The recommendation is also aimed at enhancing the role of agency attorneys and other agency staff in facilitating cross-agency collaboration.

Statement # 18, ''Improving the Timeliness of OIRA Regulatory Review,'' highlights potential mechanisms for improving review times of rules under review by the Office of Information and Regulatory Affairs (OIRA), including promoting enhanced coordination between OIRA and agencies prior to the submission of rules, encouraging increased transparency concerning the reasons for delayed reviews, and ensuring that OIRA has adequate staffing to complete reviews in a timely manner.

The Appendix below sets forth the full texts of these three recommendations and the statement. The Conference will transmit them to affected agencies, relevant committees of Congress, and the Judicial Conference of the United States, as appropriate. The recommendations are not binding, so the relevant agencies, the Congress, and the courts will make decisions on their implementation.

The Conference based these recommendations and the statement on research reports that are posted at: *www.acus.gov/59th.* A video of the Plenary Session is available at the same web address and a transcript of the Plenary Session will be posted when it is available.

Dated: December 12, 2013.

Shawne C. McGibbon,

General Counsel.

Appendix—Recommendations and Statement of the Administrative Conference of the United States

Administrative Conference Recommendation 2013–5

Social Media in Rulemaking

Adopted December 5, 2013

In the last decade, the notice-and-comment rulemaking process has changed from a paper process to an electronic one. Many anticipated that this transition to ''e-Rulemaking'' [1] would precipitate a ''revolution,'' making rulemaking not just more efficient, but also more broadly participatory, democratic, and dialogic. But these grand hopes have not yet been realized. Although notice-and-comment rulemaking is now conducted electronically, the process remains otherwise recognizable and has undergone no fundamental transformation.

At the same time, the Internet has continued to evolve, moving from static, text-based Web sites to dynamic multi-media platforms that facilitate more participatory, dialogic activities and support large amounts of user-generated content. These ''social media'' broadly include any online tool that facilitates two-way communication, collaboration, interaction, or sharing between agencies and the public. Examples of social media tools currently in widespread use include Facebook, Twitter, Ideascale, blogs, and various crowdsourcing [2] platforms. But

[1] The Conference has previously defined ''e-Rulemaking'' as ''the use of digital technologies in the development and implementation of regulations before or during the informal process, i.e., notice-and-comment rulemaking under the Administrative Procedure Act (APA).'' Recommendation 2011–1, *Legal Considerations in e-Rulemaking,* 76 FR 48,789, 48,789 (Aug. 9, 2011) (internal quotation marks and footnote omitted).

[2] ''Crowdsourcing'' is an umbrella term that includes various techniques for distributed problem-solving or production, drawing on the cumulative knowledge or labor of a large number of people. Wikipedia, the development of the Linux operating system, Amazon.com's ''Mechanical Turk'' platform, and public and private challenges that award a prize to the best solution to a

Continued

technology evolves quickly, continuously, and unpredictably. It is a near certainty that the tools so familiar to us today will evolve or fade into obsolescence, while new tools emerge.[3]

The accessible, dynamic, and dialogic character of social media makes it a promising set of tools to fulfill the promise of e-Rulemaking. Thus, for example, the e-Rulemaking Program Management Office, which operates the federal government's primary online rulemaking portal, Regulations.gov, has urged agencies to ''[e]xplore the use of the latest technologies, to the extent feasible and permitted by law, to engage the public in improving federal decision-making and help illustrate the impact of emerging Internet technologies on the federal regulatory process.'' [4] The Conference has similarly, albeit more modestly, recommended that ''[a]gencies should consider, in appropriate rulemakings, using social media tools to raise the visibility of rulemakings.'' [5]

Federal agencies have embraced social media to serve a variety of non-rulemaking purposes,[6] but few have experimented with such tools in the rulemaking context. One explanation for this reluctance is uncertainty about how the Administrative Procedure Act (APA) and other requirements of administrative law apply to the use of social media, particularly during the process governed by the APA's informal rulemaking requirements, beginning when the Notice of Proposed Rulemaking (NPRM) has been issued, through the comment period, and until the agency issues a final rule.[7] In particular, agencies are uncertain whether public contributions to a blog or Facebook discussion are ''comments'' for purposes of the APA, thus triggering the agencies' obligations to review and respond to the contributions and include them in the rulemaking record. Other concerns include how the Paperwork Reduction Act applies to agency inquiries through social media,[8] whether the First Amendment might limit an agency from moderating a social media discussion, and how individual agencies' ''ex parte'' communications policies might apply to the use of social media.

Apart from legal concerns are doubts as to whether, when, and how social media will benefit rulemaking. These doubts arise with respect to two distinct issues that often overlap. First, can social media be used to generate more useful public input in rulemaking? Second, is increased lay participation in rulemaking likely to be valuable? Experience suggests that both the quality of comments and the level of participation in social media discussions are often much lower than one might hope. A third-party facilitator may be able to help an agency address these issues by encouraging public participation, helping participants understand the rulemaking process and the agency's proposal, asking follow-up questions to produce more substantive input, and actively facilitating engagement among participants. Regardless of whether a third-party facilitator is used, however, creating the conditions necessary to foster a meaningful, productive dialogue among participants requires commitment, time, and thoughtful design. Since this kind of innovation can be costly, agencies are understandably reluctant to expend scarce resources in pursuit of uncertain benefits. Agencies also face a variety of practical questions. One such question is whether to require participants to identify themselves in agency-sponsored social media discussions. Another concern is that the use of ranking or voting tools may mislead some to believe that rulemaking is a plebiscite or allow some participants to improperly manipulate the discussion.

Social media can be valuable during the notice-and-comment phase of rulemaking, but on a selected basis. For example, if an agency needs to reach an elusive audience or determine public preferences or reactions in order to develop an effective regulation, social media may enable the collection of information and data that are rarely reflected in traditional rulemaking comments. Success requires an agency to thoughtfully identify the purpose(s) of using social media, carefully select the appropriate social media tool(s), and integrate those tools into the traditional notice-and-comment process. In addition, agencies must clearly communicate to the public how the social media discussion will be used in the rulemaking. Although the APA allows agencies the flexibility to be innovative, attention should be given to how the APA or other legal requirements will apply in the circumstances of a particular rulemaking.

Agencies may find, however, that it is both easier and more often valuable to use social media in connection with rulemaking activities, but outside the notice-and-comment process. For example, social media can be effective for public outreach, helping to increase public awareness of agency activities, including opportunities to contribute to policy setting, rule development, or the evaluation of existing regulatory regimes. The use of social media may also be particularly appropriate during the pre-rulemaking or policy-development phase. Here, the APA and other legal restrictions do not apply, and agencies are often seeking dispersed knowledge or answers to more open-ended questions that lend themselves to productive discussion through social media. For the same reasons, social media may be an effective way for agencies to seek input on retrospective review of existing regulations. It also may be helpful in connection with a negotiated rulemaking,[9] where these tools may make it easier for the diverse interests to collaborate during and between meetings on a solution to the problem being addressed.

This recommendation provides guidance to agencies on whether, how, and when social media might be used both lawfully and effectively to support rulemaking activities. It seeks to identify broad principles susceptible of application to any social media tool that is now available or may be developed in the future. It is intended to encourage innovation and facilitate the experimentation necessary to develop the most effective techniques for leveraging the strengths of social media to achieve the promises of e-Rulemaking.

Recommendation

1. Agencies should explore in the rulemaking process the use of social media—online platforms that can provide broad opportunities for public consultation, discussion, and engagement.

Public Outreach

2. Agencies should use social media to inform and educate the public about agency activities, their rulemaking process in general, and specific rulemakings. Agencies should take an expansive approach to alerting potential participants to upcoming rulemakings by posting to the agency Web site and sending notifications through

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particular problem are all examples of crowdsourcing.

[3] One type of emerging technology includes structured argumentation tools. These tools may take the form of, for example, interactive feedback forms that ask direct and progressively more focused questions in sequence or in response to input, thereby generating more targeted and substantively useful input from users.

[4] e-Rulemaking Program Management Office, Improving Electronic Dockets on Regulations.gov and the Federal Docket Management System: Best Practices for Federal Agencies 8 (2010), available at *http://exchange.regulations.gov/exchange/sites/default/files/doc_files/20101130_eRule_Best_Practices_Document_rev.pdf.*

[5] Recommendation 2011–8, *Agency Innovations in e-Rulemaking,* 77 FR 2257, 2265 (Jan. 17, 2012). The Conference has consistently supported full and effective public participation in rulemaking, as well as the use of new technologies to enhance such participation. In Recommendation 95–3, *Review of Existing Agency Regulations,* the Conference encouraged agencies to ''provide adequate opportunity for public involvement in both the priority-setting and review processes,'' including by ''requesting comments through electronic bulletin boards or other means of electronic communication.'' 60 FR 43,108, 43,109 (Aug. 18, 1995).

[6] For example, agencies have enthusiastically embraced social media, including Facebook and Twitter, as an effective tool for pushing information out to the public, from general information about an agency and its mission to more specific notifications of services, benefits, or employment opportunities that are available from an agency. Agencies have also used social media in more interactive ways, such as when nearly three dozen agencies used Ideascale to engage the public in the process of developing the agencies' Open Government Plans, or to collect metadata, such as when the Consumer Financial Protection Bureau used ''heat maps'' generated from click-based online user reviews of prototype disclosure forms to illustrate which sections of the forms elicited the strongest reactions.

[7] The Conference recently addressed legal issues related to e-rulemaking in Recommendation 2011–1, *Legal Considerations in e-Rulemaking, see supra* note 1, but did not delve into the unique concerns that arise when agencies use social media to support rulemaking activities.

[8] The Office of Management and Budget has issued helpful guidance on these issues. *See* Memorandum from Cass R. Sunstein, Adm'r, Office of Info. & Regulatory Affairs, to the Heads of Executive Departments and Independent Regulatory Agencies regarding Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act (Apr. 7, 2010), *available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/SocialMediaGuidance_04072010.pdf.*

[9] *See, e.g.,* Recommendation 85–5, *Procedures for Negotiating Proposed Regulations* (Dec. 13, 1985).

multiple social media channels. Social media may provide an effective means to reach interested persons who have traditionally been underrepresented in the rulemaking process (including holders of affected interests that are highly diffused).

3. Agencies should recognize that raising awareness among missing stakeholders (those directly affected by the proposed rule who are historically unlikely to participate in the traditional comment process) and other potential new participants in the rulemaking process will require new outreach strategies beyond simply giving notice in the **Federal Register**, Regulations.gov, and the agency Web site. Social media may be particularly effective for successful outreach, and agencies using it for this purpose in connection with rulemaking should consider:

(a) Developing one or more communications plans specifically tailored to the rule and to all types of missing stakeholders or other potential new participants the agency is trying to engage. These plans should be evenhanded and designed to encourage all types of stakeholders to participate.

(b) In outreach messages, clearly explaining the mechanisms through which members of the public can participate in the rulemaking, what the role of public comments is, and how the agency will take comments into account.

(c) Encouraging public response by being clear and specific about how the proposed rule would affect the targeted participants and what input will be most useful to the agency.

(d) Asking all interested organizations to spread the participation message to members or followers. Agencies should be prepared to explain why individual participation can be beneficial, and to encourage organizations to solicit substantive, individualized comments from their members.

(e) Using multilingual social media outlets where appropriate.

4. The General Services Administration, the e-Rulemaking Program Management Office, and other federal agencies, either individually or (preferably) collaboratively, should use social media to create and distribute more robust educational programs about rulemaking. These efforts could include: producing videos about the rulemaking process and how to effectively participate through commenting and posting on an agency Web site or video-sharing Web site; hosting webinars in which agency personnel discuss how to draft useful and helpful comments; maintaining an online database of exemplary rulemaking comments; or conducting an online class or webinar or providing explanatory materials in which officials review a draft comment and suggest ways to improve it.

5. Agencies should explore ways to publicize, and allow members of the public to receive, regular, automated updates on developments in, at a minimum, significant rulemakings.

6. Agencies should consider using social media prior to the publication of an NPRM or proposed policy where the goal is to understand the current state of affairs, collect dispersed knowledge, or identify problems. To enhance the amount and value of public input, an agency seeking to engage the public for these purposes should, to the maximum extent possible, make clear the sort of information it is seeking and how the agency intends to use public input received in this way. The agency should also directly engage with participants by acknowledging submissions, asking follow-up questions, and providing substantive responses.

7. Agencies should consider using social media in support of retrospective review of existing regulations, particularly to learn what actual experience has been under the relevant regulation(s).

Using Social Media in Notice-and-Comment Rulemaking

8. Although the use of social media may not be appropriate and productive in all rulemakings, agencies may use social media to supplement or improve the traditional commenting process. Before using social media in connection with a particular rulemaking, agencies should identify the specific goals they expect to achieve through the use of social media and carefully consider the potential costs and benefits.

9. Agencies should use the social media tools that best fit their particular purposes and goals and should carefully consider how to effectively integrate those tools into the traditional rulemaking process.

Effective Approaches for Using Social Media in Rulemaking

10. For each rulemaking, agencies should consider maintaining a blog or other appropriate social media site dedicated to that rulemaking for purposes of providing information, updates, and clarifications regarding the scope and progress of the rulemaking. Agencies may also wish to explore using such a site to generate a dialogue.

11. When an agency sponsors a social media discussion in connection with a notice-and-comment rulemaking, it should determine and prominently indicate to the public how the discussion will be treated under the APA (for administrative record purposes). The agency may decide, for example:

(a) To include all comments submitted via an agency-administered social media discussion in the rulemaking record. Agencies should consider using an application programming interface (API) or other appropriate technological tool to efficiently transfer content from social media to the rulemaking record.

(b) That no part of the social media discussion will be included in the rulemaking docket, that the agency will not consider the discussion in developing the rule, and that the agency will not respond to the discussion. An agency that selects this option should communicate the restriction clearly to the public through conspicuous disclaimers on the social media site itself, provide instructions on how to submit an official comment to the rulemaking docket, and provide a convenient mechanism for doing so. It is especially important in these circumstances that the agency clearly explain the purpose of a social media discussion the agency does not intend to consider in the rulemaking.

12. When soliciting input through a social media platform, agencies should provide a version of the NPRM that is ''friendly'' and clear to lay users. This involves, for example, breaking preambles into smaller components by subject, summarizing those components in plain language, layering more complete versions of the preamble below the summaries, and providing hyperlinked definitions of key terms. In doing this, the agency should either:

(a) Publish both versions of the NPRM in the **Federal Register**; or

(b) Cross-reference the user-friendly version of the NPRM in the published NPRM and cross-reference the published NPRM in the user-friendly version of the NPRM.

13. Agencies should consider, in appropriate rulemakings, retaining facilitator services to manage rulemaking discussions conducted through social media. Appropriate rulemakings may include those in which:

(a) Targeted users are inexperienced commenters who may need help to prepare an effective comment (e.g., providing comments that give reasons rather than just reactions); or

(b) The issues will predictably produce sharply divided or highly emotional reactions.

14. Agencies should realize that not all rulemakings will be enhanced by a crowdsourcing approach. However, when the issue to be addressed is the public or user response itself (e.g., when the agency seeks to determine the best format for a consumer notice), direct submission to the public at large may lead to useful information. In addition, agencies should consider encouraging, and being receptive to, comments from lay stakeholders with ''situated knowledge'' arising out of their real world experience.

15. Agencies should consider experimenting with collaborative drafting platforms, both internally and, potentially, externally, for purposes of producing regulatory documents.

16. If an agency chooses to use voting or ranking tools, the agency should explain to the public how it intends to use the input generated through those tools (e.g., to help it decide which of several potential forms is easiest to use).

17. Agencies should use social media to notify and educate the public about the final agency action produced through a rulemaking.

18. In appropriate circumstances, agencies should also use social media to provide compliance information. For example, an agency might use social media to inform and educate the public about paperwork requirements associated with a rule or the availability of regulatory guidance.

19. Agencies should collaborate to identify best practices for addressing issues that arise in connection with the use of social media in rulemaking.

Direct Final Rulemaking

20. Agencies should consider using social media before or in connection with direct final rulemaking to quickly identify whether

there are significant or meaningful objections that are not initially apparent.

Key Legal Considerations

21. Agencies have maximum flexibility under the APA to use social media before an NPRM is issued or after a final rule has been promulgated.

22. Agencies should consider how the First Amendment applies to facilitating or hosting social media discussions, such as by making it clear through a posted comment policy that all discussions and comments on any given agency social media site will be moderated in a uniform, viewpoint-neutral manner. Through this posted policy, agencies may decide to define or restrict the topics of discussion, impose reasonable limitations to preserve decorum, decency, and prevent spam or, alternatively, terminate a social media discussion altogether.

23. Agencies that have ''ex parte'' contact policies for information obtained in connection with rulemaking should review those policies to ensure they address communications made through social media.

Administrative Conference Recommendation 2013–6

Remand Without Vacatur

Adopted December 5, 2013

Remand without vacatur is a judicial remedy that permits agency orders or rules to remain in effect after they are remanded by the reviewing court for further agency proceedings. Traditionally, courts have reversed and set aside agency actions they have found to be arbitrary and capricious, unlawful, unsupported by substantial evidence, or otherwise in violation of an applicable standard of review. Since 1970, however, the remedy of remanding without vacating the agency decision has been employed with increasing frequency. It has now been applied in more than seventy decisions of the Court of Appeals for the District of Columbia Circuit involving over twenty federal agencies and encompassing a variety of substantive areas of law including air pollution control, telecommunications, and national security.[1]

The Administrative Conference conducted a study of remand without vacatur that examined existing scholarship on the remedy as well as its application by courts in recent years. These recommendations and the supporting Report examine the legality and application of remand without vacatur in cases involving judicial review of agency actions. The Conference accepts the principle that remand without vacatur is within the court's equitable remedial authority. It recognizes and approves of at least three general circumstances in which remand without vacatur may be appropriate. Finally, it offers advice to courts that are considering employing the remedy and to agencies responding to remands.

The remedy has generated academic and judicial debate over its advisability and legality. Those who support remand without vacatur point to the benefits that accrue in a variety of situations, such as when application of the device enhances stability in the regulatory regime or in regulated markets, protects reliance interests, prevents regulatory gaps, allows the government to continue collecting fees or processing reimbursements, and ensures continued provision of public benefits (including the benefits of regulation). Remand without vacatur has also been said to be appropriate because it defers to the institutional competence of agencies and may reduce agency burdens on remand.

Nonetheless, remand without vacatur is not without controversy. Some scholars argue that it can deprive litigants of relief from unlawful or inadequately reasoned agency decisions, reduce incentives to challenge improper or poorly reasoned agency behavior, promote judicial activism, and allow deviation from legislative directives. Critics have also suggested that it reduces pressure on agencies to comply with APA obligations and to respond to a judicial remand. Given the relative infrequency of application of the remedy, these prudential and theoretical concerns, while possible, do not appear to cause systemic problems.

Some judges argue that remand without vacatur contravenes the plain language of the judicial review provisions of the APA.[2] However, despite occasional dissents or other separate judicial opinions, no cases were identified in which a federal court of appeals held that remand without vacatur was unlawful under the APA or another statutory standard of review. Rather, courts generally accept the remedy as a lawful exercise of equitable remedial discretion.[3]

The Conference recommends that the remedy continue to be considered an authorized exercise of judicial authority on review of cases that arise under the Administrative Procedure Act, 5 U.S.C. § 706(2), as well as under other statutory review provisions, unless they contain an express legislative directive to the contrary. In employing remand without vacatur, courts are essentially finding that agency errors that are sufficient to require remand may not always justify immediately setting aside the challenged action. Since this conclusion deviates from customary remedial norms, when courts invoke the remedy, they should explain their reasons for doing so.

Equitable considerations that justify leaving the challenged agency action in place on remand may exist in a variety of circumstances. Longstanding judicial precedent in the DC Circuit supports application of the remedy after a finding that a challenged agency action, while invalid, is not seriously deficient or when vacatur would have disruptive consequences.[4] Courts also employ the remedy when vacatur would not serve the interests of the prevailing party that was harmed by the agency's error.[5] Remand without vacatur may be appropriate in these circumstances as well as in others not considered here.

When a reviewing court has decided to remand an agency's action, it should consider asking the parties for their views on the appropriate remedy in light of this decision.[6] In its final decision, the court should specify whether or not it is vacating the remanded agency action. Research indicates that ambiguous remand orders that do not clearly identify whether an agency's action is also vacated occur with some regularity.[7] This is particularly problematic where an agency rule or order regulates conduct of, or permits enforcement actions against, individuals or entities not party to the litigation, and who cannot seek direct clarification of the court's remedial intention.

Remand without vacatur does not by itself provide relief for litigants after successful challenges to agency rules or orders. Thus, responsive agency action on remand is a matter of particular concern in such cases.[8] Moreover, difficulties in identifying remanded decisions and agency responses can hinder oversight. Accordingly, agencies

[1] Stephanie J. Tatham, *The Unusual Remedy of Remand Without Vacatur,* Apendix A (Report to the Administrative Conference of the United States, Nov. 14, 2013) [hereinafter Tatham Report]. It has also been applied on review of agency action in the Courts of Appeals for the Federal, First, Third, Fifth, Eighth, Ninth, and Tenth Circuits. *Id.* at 26–28.

[2] The APA provides that reviewing courts ''shall * * * hold unlawful and set aside agency action, findings, and conclusions'' found to violate one of its standards of review. 5 U.S.C. § 706(2). *E.g.,* Checkosky v. SEC, 23 F.3d 452 (D.C. Cir. 1994) (Randolph, J., separate opinion).

[3] Remand without vacatur has been described as fitting comfortably within a tradition of equitable judicial remedial discretion. Ronald M. Levin, ''*Vacation'' at Sea: Judicial Remedies and Equitable Discretion in Administrative Law,* 53 Duke L.J. 291, 315–44 (2003).

[4] *E.g.,* N. Air Cargo v. U.S. Postal Service, 674 F.3d 852, 860–61 (D.C. Cir. 2012); *Allied-Signal, Inc.* v. *NRC*, 988 F.2d 146, 150–51 (D.C. Cir. 1993).

[5] *E.g., Envtl. Def. Fund* v. *EPA*, 898 F.2d 183, 190 (D.C. Cir. 1990) (''no party to this litigation asks that the court vacate the EPA's regulations, and to do so would at least temporarily defeat petitioner's purpose, the enhanced protection of environmental values covered by the [statutory Prevention of Significant Deterioration] provisions''). This reasoning appears to be the basis for a substantial number of cases involving the remedy and that arise under the Clean Air Act, which comprise a sizeable portion of all cases in which it is employed. *See also* Richard L. Revesz & Michael A. Livermore, Retaking Rationality 160–61 (2008) (describing how the remedy can provide pro-regulatory plaintiffs with the benefit of continuing a weak rule while the case is on remand, rather than having no rule in the interim in the event of a successful challenge).

[6] Courts have occasionally requested supplemental briefing on whether to vacate agency rules after they have announced an intention to remand the agency's decision. *E.g., Am. Trucking Ass'ns* v. EPA, 175 F.3d 1027, 1057 (D.C. Cir. 1999), *aff'd in part, rev'd in part,* Whitman v. Am. Trucking Ass'ns, 531 U.S. 457 (2001); *Int'l Union, UAW* v. *OSHA*, 938 F.2d 1310, 1325–26 (D.C. Cir. 1991). Courts might also consider soliciting the views of the parties at oral argument.

[7] *E.g.,* PSEG Energy Res. & *Trade, LLC* v. *FERC*, 665 F.3d 203 (D.C. Cir. 2011); *Am. Radio Relay League, Inc.* v. *FCC*, 524 F.3d 227 (DC Cir. 2008).

[8] Courts have occasionally retained jurisdiction over cases remanded without vacatur to ensure responsive agency action. *E.g., Nat'l Ass'n of Regulatory Util. Comm'rs* v. *DOE*, 680 F.3d 819, 820 (D.C. Cir. 2012) (directing compliance within six months and retaining jurisdiction ''so that any further review would be expedited''). Courts may also ask agencies to report on their progress on remand. *E.g., Chamber of Commerce* v. *SEC*, 443 F.3d 890, 909 (D.C. Cir. 2006) (staying the court's mandate that would vacate the remanded agency action until further order of the court and requiring the SEC to file a status report within 90 days).

should identify or post final judicial opinions vacating, or remanding without vacatur, agency rules or orders in the applicable online public docket, if any exists, and on agency Web sites, where appropriate. Agencies should include a short statement identifying the judicial opinion and whether it vacates all or part of the challenged rule or order, together with any unique identifiers for the affected agency rule or order (such as a Regulation Identifier Number). Agencies should additionally work with the Office of the Federal Register to remove vacated regulations from the Code of Federal Regulations.[9]

To further public awareness, the Conference also recommends that agencies provide information in the Unified Agenda of Federal Regulatory and Deregulatory Actions regarding their future plans with respect to rules that are remanded without vacatur. In any subsequent proceedings responding to remand without vacatur, agencies should identify the initial agency action together with any unique identifier, as well as the remanding judicial opinion.

Recommendation

Judicial Authority To Use Remand Without Vacatur

1. Remand without vacatur should continue to be recognized as within the court's equitable remedial authority on review of cases that arise under the Administrative Procedure Act (APA) and its judicial review provision, 5 U.S.C. § 706(2).

2. Absent an express legislative directive to the contrary in any other statute providing the basis for judicial review of challenges to agency action, remand without vacatur should be recognized as an authorized remedy in cases that arise under such a statute.

Recommendations to Courts

3. On review of agency action, reviewing courts should specify in their judicial opinions or orders whether or not they are vacating a remanded agency action.

4. When courts remand but do not vacate an agency action, they should explain the basis for their remedial choice.

5. In determining whether the remedy of remand without vacatur is appropriate, courts should consider equitable factors, including whether:

(a) correction is reasonably achievable in light of the nature of the deficiencies in the agency's rule or order;

(b) the consequences of vacatur would be disruptive; and

(c) the interests of the parties who prevailed against the agency in the litigation would be served by allowing the agency action to remain in place.

6. When a court has decided to remand an agency action, it should consider hearing parties' views on whether to vacate the agency action and on any related remedial issues.

Recommendations to Agencies

7. Agencies should specifically identify or post judicial decisions vacating or remanding without vacatur agency rules or orders in any applicable public docket, and, if appropriate, on the agency Web site. When a court remands but does not vacate an agency's rule or order, the agency should include a statement explicitly advising that the rule or order has not been vacated and is still in effect despite the remand.

8. When a regulation has been vacated, the promulgating agency should work with the Office of the Federal Register to remove the vacated regulation from the Code of Federal Regulations.

9. Agencies should provide information in the Unified Agenda of Federal Regulatory and Deregulatory Actions regarding their plans with respect to rules that are remanded without vacatur.

10. In their response(s) to a judicial remand without vacatur of an agency action, agencies should identify the initial agency action as well as the remanding judicial opinion.

11. In conjunction with a notice of proposed rulemaking in response to remand without vacatur, agencies should clearly state whether public comments and other materials in the docket for the remanded rule will or will not be incorporated into the new rulemaking record, if any.

Administrative Conference Recommendation 2013–7

GPRA Modernization Act of 2010: Examining Constraints To, and Providing Tools For, Cross-Agency Collaboration

Adopted December 6, 2013

The Government Performance and Results Act (GPRA) Modernization Act of 2010 (GPRAMA) became law on January 4, 2011.[1] Among other things, the Act requires the Executive branch and federal agencies to develop cross-agency performance goals and specifies directives toward the advancement, use, review, and measurement of cross-agency collaboration.[2] Cross-agency collaboration is widely viewed as a powerful means for government reform and performance improvement. Under GPRAMA, greater coordination across agencies offers the potential for the federal government to address complex policy challenges that lie inherently across agency boundaries and jurisdictions. In sum, cross-agency collaboration—when used thoughtfully for well-selected initiatives—holds great promise as a means of improving government performance, efficiency, and accountability. The effective development of these management tools may have an important role to play during the environment of constrained funding that federal agencies may face in the years ahead.

GPRAMA specifically requires the Office of Management and Budget (OMB) to develop long-term, outcome-oriented goals for a limited number of cross-cutting management improvement areas (known as Cross-Agency Priority (CAP) Goals), on such topics as: finances, human capital, information technology, procurement and acquisition and real property. CAP goals generally fall into two categories—mission-support goals, which focus on achieving consolidation of standard business functions and systems across agencies; and mission-oriented goals, which focus on coordinating authorities to pursue shared policy goals that cross-cut agencies. These goals are to be developed in coordination with agencies and in consultation with the Congress. Accordingly, agencies must proactively engage members of Congress and their staffs to inform them about cross-agency collaborative efforts and successfully navigate congressional concerns. Similarly, when reviewing and commenting on pending legislation, officials at OMB should consider identifying areas that necessitate or allow for cross-agency collaboration, communicating with Congress regarding those areas, and seeking statutory direction for such collaboration where appropriate.

The law also requires an agency to describe how it is working with other relevant agencies and organizations to achieve individual Agency Performance Goals (APGs). GPRAMA also requires the development of a federal government-wide performance plan and individual agency performance plans; quarterly progress reviews of agency goals and the use of performance information to evaluate federal government and agency progress toward their stated priority goals; and enhanced transparency through the effective operation of Performance.gov, a single Web site about the federal government priority goals, performance plans, quarterly review results, and individual agency performance.

Within OMB, the Office of Performance and Personnel Management (OPPM) leads the effort to drive mission-focused performance gains across the federal government. In addition, the Performance Improvement Council (PIC), located within the U.S. General Services Administration (GSA) and composed of the designated Performance Improvement Officers (PIOs) of Federal agencies and departments, as well as senior OMB officials, collaborates to improve the performance of Federal programs and facilitates information exchange among agencies. The PIC also provides support to agency officials by aiding the coordination of cross-agency collaboration under GPRAMA.

As designated agency officials work to implement GPRAMA, they may face certain institutional constraints to effective collaboration and thus need tools to aid them in their efforts.[3] Some agencies and federal

[9] Anecdotal evidence indicates that occasionally rules that have been vacated are not removed from the Code of Federal Regulations in a timely fashion. Tatham Report at 38–39, n. 244. 1 CFR § 21.6 requires agencies to notice expired codified regulations in the **Federal Register**. *See, e.g.,* Electronic On-Board Recorders for Hours-of-Service Compliance; Removal of Final Rule Vacated by Court 72 FR 28,447 (May 14, 2012).

[1] Pub. L. No. 111–352, 124 Stat. 3866 (2011) (codified as amended in scattered sections of 5 and 31 U.S.C.). The GPRA Modernization Act of 2010 amends the GPRA Act of 1993, Pub. L. No. 103–62, 107 Stat. 285 (1993).

[2] *See, e.g.,* 5 U.S.C. § 306; 31 U.S.C. §§ 1115–16, 1120–25 (setting forth the requirements under GPRAMA).

[3] *See, e.g.,* Jane Fountain, IBM Center for the Business of Government, Implementing Cross Agency Collaboration: A Guide for Federal Managers (2013), *available at http://www.businessofgovernment.org/sites/default/files/*

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officials have developed strategies to address the legal and other institutional challenges posed by such collaborative efforts. For others, obstacles to the kinds of cross-agency collaboration demanded by GPRAMA have proven frustrating and difficult to overcome. While a large body of research addresses interagency coordination or cross-agency collaboration generally,[4] little attention has been given to exploring the legal barriers and other constraints to implementation of GPRAMA—whether real or perceived—and providing tools that agency officials may use to address such constraints.

Accordingly, the Conference commissioned the study underlying this recommendation to provide attention to the key challenges to cross-agency collaboration under GPRAMA, as well as suggesting tools for federal officials to implement the Act's collaboration and other mandates.[5] This study examines the use of tools by officials at OMB, the PIC, senior agency officials, legal counsel, managers and others to overcome and work within institutional challenges to cross-agency collaboration. Such tools include the use of interagency agreements, memoranda of understanding, forms, documents, and other information useful in facilitating cross-agency collaboration efforts; the use of shared information systems and the sharing of data.

Consistent with the Administrative Conference's statutory mandate of increasing government efficiency and enhancing transparency, the Conference issues this recommendation to suggest practices to facilitate cross-agency collaboration under GPRAMA and to encourage wider use of tools that may advance such collaboration between federal agencies. The Recommendation covers practices and tools to better facilitate cross-agency collaboration that must be multi-faceted, must address institutional challenges on a number of fronts, and must be directed to a number of actors, including OMB and the PIC, as well as agency legal counsel and other agency officials leading cross-agency collaboration efforts.

One key challenge faced by agencies and the public is access to information regarding agency planning required by GPRAMA. A recommended practice to address this challenge should be aimed at increasing transparency on Performance.gov. Another challenge agency officials face when attempting to determine which tools to use for cross-agency collaboration efforts made pursuant to CAP goals under GPRAMA is distinguishing between mission-support CAP goals (which are designed to achieve consolidation of standard business functions and systems across agencies) and mission-oriented CAP goals (which are designed to coordinate authorities to pursue policy goals that are shared by multiple agencies). A recommended practice to address this challenge should provide clarification to allow agency officials to distinguish between the two types of goals so they can determine which tools to use.

Another challenge is the varied and incomplete agency response to the GPRAMA requirement that in setting APGs, agencies include a description of the agencies, programs, activities and other organizations that are related to a particular agency goal. A recommended practice to address this challenge should focus on encouraging agencies to comply with their responsibilities under GPRAMA in this regard. Agency general counsels and other agency attorneys play a critical role in helping to foster cross-agency collaboration. Accordingly, recommended practices that promote the dissemination of information helpful to cross-agency collaboration efforts among agency attorneys are needed to address challenges presented by the lack of information sharing. Practices focused on encouraging agency attorneys to foster expertise and experience in building and sustaining cross-agency collaboration are also recommended. In addition, other agency officials who lead cross-agency collaboration efforts face a host of challenges as they try to move initiatives forward. A number of recommended best practices are offered to these officials to ensure that collaborative efforts are maximized and the goals for such initiatives are reached.

Recommendation

1. Increasing Transparency. To increase transparency, the Office of Management and Budget (OMB), working with the Performance Improvement Council (PIC), should consider making all past and current quarterly status update reports, including those that show progress on cross-agency priority (CAP) goals, publicly available and searchable on the Performance.gov Web site.

2. Improving Agency Reporting Under GPRAMA. The PIC should work with other relevant agency officials to facilitate greater compliance with the GPRAMA requirement that agencies identify all organizations (including other agencies, programs, or activities) that contribute to the achievement of an agency priority goal (APG). OMB should continue to encourage agencies to properly report their involvement with other agencies that have made contributions to progress on their priority goals, including situations in which two agencies coordinate on their respective APGs or a particular APG is related to a CAP goal.

3. Improving Information Sharing. To improve the sharing and harmonization of data and information systems or subsystems, the PIC, in consultation with other relevant agency officials, should identify shared systems and cyber infrastructure within agencies that may be utilized, with modifications, to further cross-agency streamlining and collaboration. When directed and whenever legally permissible, agency attorneys charged with interpreting statutory language related to data should work with agency officials to facilitate the sharing of information and data among agencies.

4. Facilitating Better Use of Cross-Agency Collaboration. To help agency officials better utilize the tools available for cross-agency collaboration, OMB and the PIC should:

(a) clarify the distinction between mission-oriented goals (which are designed to coordinate authorities to pursue policy goals that are shared by multiple agencies) and mission-supported goals (which are designed to achieve consolidation of standard business functions and systems across agencies), so that agency officials can properly identify the relevant tools to use; and

(b) encourage agencies to have their legal counsel share, when feasible, interagency agreements, memoranda of understanding, forms, documents and other information containing specific language that has proved useful in facilitating cross-agency collaboration efforts.

5. Enhancing the Role of Agency Legal Counsel. To improve cross-agency collaboration, when directed and to the extent legally permissible:

(a) agency attorneys should work with agency officials to develop interagency agreements, memoranda forms, and other documents that would facilitate the process of sharing data and information between agencies and protect personally identifiable information; and

(b) agency officials who are leading cross-agency collaborative initiatives should engage agency attorneys as early as practicable and work with them to determine the best way to coordinate authority, information, operations, personnel and resources among agencies within the confines of relevant legal and statutory requirements.

6. Enhancing the Role of Other Agency Officials. Agency officials leading cross-agency initiatives should undertake the following best practices to help facilitate effective cross-agency collaboration:

(a) set and communicate clear, compelling direction, strategy and shared goals;

(b) utilize a variety of collaborative techniques to achieve stated goals;

(c) establish specific roles and responsibilities for agency staff;

(d) develop clear decision-making processes, including conflict resolution measures;

(e) where appropriate and permissible, work with relevant non-federal stakeholders to gain additional perspective, critique, or support for cross-agency collaborative efforts; and

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Implementing%20Cross%20Agency%20Collaboration.pdf (setting forth institutional constraints to cross-agency collaboration and recommending additional guidance from OMB); *see also* U.S. Gov't Accountability Office, GAO–13–518, Managing for Results: Executive Branch Should More Fully Implement the GPRA Modernization Act to Address Pressing Governance Challenges (2013), *available at http://www.gao.gov/assets/660/655541.pdf* (discussing some early challenges to the implementation of GPRAMA and making recommendations for improvement).

[4] *See, e.g.,* U.S. Gov't Accountability Office, GAO–12–1022, Managing for Results: Key Considerations for Implementing Interagency Collaboration Mechanisms (2012), *available at http://www.gao.gov/assets/650/648934.pdf* (setting forth a number of constraints to cross-agency collaboration).

[5] *See* Jane Fountain, The GPRA Modernization Act of 2010: Examining Constraints To, and Providing Tools For, Cross-Agency Collaboration (September 17, 2012) (draft report to the Administrative Conference of the U.S.), *available at http://www.acus.gov/sites/default/files/documents/Preliminary%20Draft%20GPRAMA%20Report_Fountain_9_20_13.pdf* .

(f) build shared evaluation, analytical and measurement tools to enable the tracking, monitoring, and improvement of output and outcomes across agencies and programs engaged in collaborative efforts.

7. Improving Training for Agency Officials. The PIC should work with the Office of Personnel Management (OPM) and with relevant agency officials to continue to identify and refine training tools that build capacity for cross-agency collaboration among agency attorneys and other officials.

Administrative Conference Statement #18

Improving the Timeliness of OIRA Regulatory Review

Adopted December 6, 2013

For more than three decades, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has conducted centralized review of federal agencies' draft proposed and final regulations. The fundamental structures and principles governing the regulatory review process are currently set forth in Executive Order (EO) 12,866,[1] and subsequent EOs have reaffirmed this system of regulatory review.[2] Among other things, Executive Order 12,866 requires covered agencies to submit all ''significant regulatory actions'' to OIRA for review.[3] The purposes underlying the centralized OIRA regulatory review process include: ensuring consistency with applicable laws and presidential priorities; enhancing coordination of regulatory policy among federal agencies; examining economic analyses accompanying the rule; and making the regulatory process more efficient.[4] OIRA regulatory review serves to monitor agency rulemaking activity to ensure adherence with administration policy[5] while also seeking to provide a ''dispassionate and analytical 'second opinion' on agency actions.''[6]

In order to ensure that OIRA review proceeds in a timely manner, EO 12,866 generally requires OIRA to ''waive review or notify the agency in writing of the results of its review'' within 90 calendar days following submission.[7] The executive order also provides that the review process may be extended ''(1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.''[8]

Executive review of agency rulemaking, and, more precisely, OIRA's role in the review process—though not without controversy[9]—are now firmly entrenched fixtures of the administrative landscape,[10] and each administration since at least that of President Ronald Reagan has endorsed them.[11] For such reviews to be effective, however, they must be timely. All stakeholders in the regulatory process—including the submitting agency, potentially regulated entities, other interested participants, and the general public—have an interest in seeing the OIRA review process operate as efficiently as possible for several reasons: agency regulatory or scientific assessments may become out of date when reviews are overlong; likewise, regulated markets or industries might experience uncertainty when proposed or final rules remain stalled in the review process; and, for rules related to health or safety, delay in the OIRA review process could well have serious social consequences.[12] In addition, the timing of review process should be made as transparent as possible.

Historically, OIRA has completed most of its reviews of agency rules well within the 90-day review period.[13] For example, from 1994–2011, the average time for OIRA review was 50 days for all rules.[14] Since 2011, however, average OIRA review times have trended significantly upward. In 2012, the average time for OIRA review for all rules rose to 79 days, and in the first half of 2013, the average review time increased even further to 140 days.[15] It is important to note that, as OIRA completes review for rules that have been in the backlog for some time, the average review times will likely increase, which evidences an improving situation. Approximately four dozen reviews completed in 2013 have taken more than a year.[16]

However, average review times and the length of completed reviews are lagging indicators of OIRA performance, and the recent increases in average review times reflect the significant headway that OIRA has made during the past year in reducing the backlog of rules and improving review timeliness. The number of ongoing reviews lasting more than one year has been cut from 51 reviews in mid-May 2013 to 27 reviews in mid-September 2013. Of the 38 reviews that, as of June 30, 2013, had been ongoing for more than a year, 14 of them were completed by mid-September 2013. Rules submitted more recently were also being reviewed more quickly. Only 10 percent of the reviews of rules submitted between September 2012 and February 2013 took more than six months to complete, compared to nearly 30 percent for reviews completed during the first six months of 2013 (regardless of when they were submitted).

Senior agency employees provided a variety of perspectives as to why they believe that OIRA review times increased in 2012–13, including one or more of the following reasons: (1) Concerns by some in the Executive Office of the President (EOP) about the issuance of potentially costly or otherwise controversial rules during an election year, (2) coordinative reviews by other agencies and offices within EOP took more time than in preceding years,[17] and (3)

[1] Exec. Order No. 12,866, 58 FR 51,735 (Oct. 4, 1993). These basic structures were carried over from Executive Order 12,291, issued during the Reagan Administration. Exec. Order No. 12,291, 46 FR 13,193 (Feb. 19, 1981).

[2] *See, e.g.,* Exec. Order No. 13,563, 76 FR 3821 (Jan. 21, 2011).

[3] Exec. Order No. 12,866 § 6(a)(3)(B)–(C); *see also id.* §§ 3(b) (generally defining covered ''[a]genc[ies]'' as federal departments and other executive branch establishments, but not independent regulatory agencies), 3(f) (defining ''[s]ignificant regulatory action'').

[4] *Id.* §§ 2(a)–(b), 6(a)(3)(B)–(C), 6(b); *see also* Exec. Order No. 13,563 § 1.

[5] Sierra Club v. Costle, 657 F.2d 298, 405 (D.C. Cir. 1981) (''The court recognizes the basic need of the President and his White House staff to monitor the consistency of agency regulations with Administration policy. He and his advisors surely must be briefed fully and frequently about rules in the making, and their contributions to policymaking considered. The executive power under our Constitution, after all, is not shared—it rests exclusively with the President.'').

[6] President Barack H. Obama, Memorandum on Regulatory Review, 74 FR 5977 (Jan. 30, 2009).

[7] Exec. Order 12,866 § 6(b)(2). Indeed, this Executive Order specifically underscores the importance of timeliness in the regulatory review when stating: ''An efficient regulatory planning and review process is vital to ensure the Federal Government's regulatory system best serves the American people.'' *Id.* § 2.

[8] *Id.* § 6(b)(2)(C).

[9] *See, e.g.,* Lisa Heinzerling, *Statutory Interpretation in the Era of OIRA,* 33 Fordham Urb. L.J. 1097 (2006); Alan Morrison, *Commentary, OMB Interference with Agency Rulemaking: The Wrong Way to Write a Regulation,* 99 Harv. L. Rev. 1059 (1986); Sidney A. Shapiro, *OMB and the Politicization of Risk Assessment,* 37 Envtl. L. 1083 (2007); *cf.* Peter L. Strauss, *Overseer, or ''The Decider''? The President in Administrative Law,* 75 Geo. Wash. L. Rev. 696 (2007).

[10] *See, e.g.,* Elena Kagan, *Presidential Administration,* 114 Harv. L. Rev. 2245 (2001); Michael A. Livermore & Richard L. Revesz, *Regulatory Review, Capture, and Agency Inaction,* 101 Geo. L.J. 1337 (2013); Cass R. Sunstein, Commentary, *The Office of Information and Regulatory Affairs: Myths and Realities,* 126 Harv. L. Rev. 1838 (2013).

[11] *See* Special Edition, OIRA Thirtieth Anniversary Conference, 63 Admin. L. Rev. 1 (2011). Jim Tozzi, who served at the Office of Management and Budget for over 10 years and was instrumental in the creation of OIRA, suggests that executive rulemaking review began during the Nixon Administration. *Id.* at 37.

[12] Institute for Policy Integrity, Public Comment 1–2 (Oct. 28, 2013) (noting that delays can postpone realization of benefits associated with proposed rules, create uncertainty amongst regulated parties, and damage public perception of OIRA). For example, at an FDA public meeting on September 19–20, 2013, Sandra Eskin, director of food safety at the Pew Charitable Trusts, noted several food safety rules that were required by the Food Safety Modernization Act in January 2011 had not been issued, and said the ''longer it takes these rules to be put in place, the more people will needlessly be put at risk and the less confidence consumers will have in the safety of the food supply.''

[13] Curtis W. Copeland, Length of Rule Reviews by the Office of Information and Regulatory Affairs 25 (Nov. 1, 2013), *available at http://acus.gov/sites/default/files/documents/Revised%20Draft%20OIRA%20Report%20110113%20CIRCULATED.pdf.*

[14] *See* Off. Info. & Reg. Aff., Review Counts, *http://www.reginfo.gov/public/do/eoCountsSearchInit?action=init* (last visited Nov. 14, 2013) (allowing searches of OIRA review counts and average review times by date range).

[15] *Id.*

[16] Off. Info. & Reg. Aff., Executive Order Review Search Results, *http://www.reginfo.gov/public/do/eoAdvancedSearch* (last visited Nov. 14, 2013) (allowing identification of the number and length of OIRA reviews completed within a date range). The time periods cited herein are for formal review after a complete rulemaking package is received by OIRA and do not reflect any informal review that may have occurred prior to receipt.

[17] Notwithstanding these concerns about increased review times in the period from 2012–13, the Administrative Conference reaffirms the importance of the interagency review process to ensuring that rulemaking agencies consider input from sister agencies and the EOP. *See* Administrative Conference of the United States,

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a reluctance by OIRA to use return letters. Both senior agency employees and other observers (including several former OIRA officials) also suggested that a decrease in OIRA staffing in recent years may have been another contributing factor. In addition, the executive review process has become more complicated for all parties involved as regulations have grown increasingly complex, interagency coordination has become more important, and various transparency and procedural requirements have grown more demanding.

The Administrative Conference has long supported effective executive review of agency rulemaking, and has emphasized the importance of timeliness and transparency in this process. In Recommendation 88–9, the Conference stated that ''[t]he process of presidential review of rulemaking, including agency participation, should be completed in a timely fashion by the reviewing office and, when so required, by the agencies, with due regard to applicable administrative, executive, judicial and statutory deadlines.'' [18] Similarly, in Recommendation 93–4, the Conference asserted that ''the reviewing or oversight entity should avoid, to the extent possible, extensive delays in the rulemaking process.'' [19] The Conference has also issued several recommendations advocating a transparent OIRA review process.[20]

Building upon these prior Conference initiatives addressing executive review, the Conference now offers a discrete set of principles for improving the timeliness of review and the transparency concerning the causes for delay. The OIRA review process involves many components and participants. Delays may not be attributable to any single cause but rather can arise from multiple factors (and complex interactions amongst them) involving numerous players, including OIRA, agencies submitting rules for review, and other agencies and offices in the interagency review process (including other parts of the EOP). As a result, the Conference wishes to highlight a number of principles that OIRA and agencies should consider to improve review times and enhance transparency concerning the timing of the review process.

The Conference reaffirms its long-term support of the basic presidential regulatory review process [21] and seeks to ensure that it functions as effectively and efficiently as practicable. The values of transparency, credibility, management effectiveness, and the rule of law apply to the executive review process, even if it is not subject to judicial oversight.

The following principles suggest ways that both OIRA and the agencies can promote timely and transparent OIRA review:

1. The Office of Information and Regulatory Affairs (OIRA) should, whenever possible, adhere to the timeliness provisions of Executive Order (EO) 12,866. The Administrator of OIRA should continue to focus on improving OIRA review times. In so doing, the Administrator should consider preparing a publicly available document that identifies any specific policies that OIRA, regulatory agencies, and other agencies participating in interagency review should undertake in order to ensure that the measures of timeliness return to historical averages under this executive order.

2. Agencies and OIRA should coordinate prior to the submission of a completed rulemaking package. To the extent possible, OIRA should use the regulatory planning process created by section 4 of EO 12,866 to identify all of the relevant entities, establish lines of communication among them, and create workplans with timelines and responsibilities for action. The section 4 process should be used to identify the principal factual and policy issues likely to be raised by a proposed rulemaking and to convey any presidential priorities respecting them. OIRA should hold itself available to mediate such disputes among the identified agencies as may arise, and to assure that all participating agencies place a high priority on the resulting processes, so as not to cause undue delays.

3. Though OIRA has the final authority for determining which rules will be classified as ''significant,'' the agency should decide the point at which it will submit a draft rule to OIRA for review under EO 12,866. Once an agency has submitted a completed rulemaking package with approval from the appropriate senior agency official(s) within the meaning of EO 12,866, the clock for the review period should commence.

4. In connection with interagency review, OIRA should promptly send the draft rule to all of the relevant entities and, to the extent feasible, establish a timeline by which these entities should submit comments. All participating entities should place a high priority on the review process so as to avoid undue delays.

5. If OIRA concludes that it will be unable to complete the review of an agency's draft rule within a reasonable period of time after submission, recognizing the timeframes established in section 6(b)(2) of EO 12,866 and the nature of the matter—but in no event beyond 180 days after submission—OIRA should inform the public as to the reasons for the delay or return the rule to the submitting agency.

6. OIRA's staffing authorization should be increased to a level adequate to ensure that OIRA can conduct its regulatory reviews under EO 12,866 in a timely and effective manner. In addition, or as an alternative, staff from rulemaking agencies could be detailed to OIRA.

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Recommendation 88–9, *Presidential Review of Rulemaking*, ¶ 1, 54 FR 5207 (Feb. 2, 1989) (''[Presidential review] can improve the coordination of agency actions and resolve conflicts among agency rules and assist in the implementation of national priorities.'').

[18] Administrative Conference of the United States, Recommendation 88–9, *Presidential Review of Agency Rulemaking,* ¶ 3, 54 FR 5207 (Feb. 2, 1989).

[19] Administrative Conference of the United States, Recommendation 93–4, *Improving the Environment for Agency Rulemaking,* 59 FR 4670 (Feb. 22, 1994).

[20] Administrative Conference of the United States, Recommendation 88–9, *Presidential Review of Rulemaking,* ¶ 5, 54 FR 5207 (Feb. 2, 1989) (''An agency engaged in informal rulemaking should be free to receive guidance concerning that rulemaking at any time from the President, members of the Executive Office of the President, and other members of the Executive Branch, without having a duty to place these communications in the public file of the rulemaking unless otherwise required by law. However, official written policy guidance from the officer responsible for presidential review of rulemaking should be included in the public file of the rulemaking once a notice of proposed rulemaking or final rule to which it pertains is issued or when the rulemaking is terminated without issuance of a final rule.''); Administrative Conference of the United States. Recommendation 80–6, *Intragovernmental Communications in Informal Rulemaking Proceedings,* ¶ 2, 45 FR 86,407 (Dec. 31, 1980) (''When the rulemaking agency receives communications from the President, advisers to the President, the Executive Office of the President, or other administrative bodies which contain material factual information (as distinct from indications of governmental policy) pertaining to or affecting a proposed rule, the agency should promptly place copies of the documents, or summaries of any oral communications, in the public file of the rulemaking proceeding.'').

[21] *See, e.g.,* Administrative Conference of the United States, Recommendation 93–4, *Improving the Environment for Agency Rulemaking,* 59 FR 4670 (Feb. 1, 1994) (''We continue to support presidential coordination of agency policymaking as beneficial and necessary.''); Administrative Conference of the United States, Recommendation 88–9, *Presidential Review of Agency Rulemaking,* 54 FR 5207 (Feb. 2, 1989) (''Presidential review should apply generally to federal rulemaking. Such review can improve the coordination of agency actions and resolve conflicts among agency rules and assist in the implementation of national priorities.''); Administrative Conference of the United States, Recommendation 80–6, *Intragovernmental Communications in Informal Rulemaking Proceedings,* 45 FR 86,407 (Dec. 31, 1980) (''Because the President, as the nation's Chief Executive, may be deemed accountable for what agencies do, efforts to achieve policy coordination through Presidential channels have become increasingly significant.'').

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0096]

Notice of Request for Extension of Approval of an Information Collection; Importation of Ovine Meat From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of ovine meat from Uruguay into the United States.

DATES: We will consider all comments that we receive on or before February 18, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2013–0096–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2013–0096, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2013–0096* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of ovine meat from Uruguay, contact Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3313. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Ovine Meat From Uruguay.

OMB Number: 0579–0372.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. The regulations for the importation of animals and animal products are contained in 9 CFR parts 92 through 98.

The regulations in part 94 provide the requirements for the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). The regulations in § 94.22 place certain restrictions on the importation of beef and ovine meat from Uruguay into the United States. These restrictions allow the importation of ovine meat from Uruguay under certain conditions to prevent the introduction of FMD. These conditions involve an information collection activity that requires APHIS to collect certification for each shipment from an authorized veterinary official of the Government of Uruguay that the conditions in § 94.22 have been met.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.6 hours per response.

Respondents: Federal animal health officials of the Government of Uruguay.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 8 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 12th day of December 2013.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–30022 Filed 12–16–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council (Council) will meet in Washington, DC The Council is established consistent with Section 9 of the Cooperative Forestry Assistance Act, as amended by Title XII, Section 1219 of Public Law No. 101–624, and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. II). Additional information concerning the Council can be found by visiting the Council's Web site at: *http://www.fs.fed.us/ucf/nucfac.html.*

DATES: The meeting will be held on January 22 and 23, 2014, 9:00 a.m. to 5:00 p.m. or until Council business is completed.

ADDRESSES: The meeting will be at the USDA South Building, 1400 Independence Avenue SW., Washington, DC 20250–9911, Wing 3, First Floor, Cafeteria Room 1 and 2. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service—Washington Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, by mailing address at 201 14th Street. SW., Yates Building (3 Southeast), Washington, DC 20250; by phone at 202–205–7829, by cell phone at 202–309–9873 or by email at *nstremple@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 purpose of this meeting is to introduce and orient new members; finalize the work plan action items; discuss 2015 grant categories; hear updates from past grant recipients; continue preparation for the 10 year action plan revisions; receive Forest Service updates on program activities and budget; and hear feedback from the submitted accomplishment/recommendations report. The meeting is open to the public. Individuals wishing to make an oral statement should submit a request in writing by January 10, 2014 to be scheduled on the agenda. Council discussion is limited to Forest Service staff and Council members; however, anyone who would like to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Written comments, time requests for oral comments and to facilitate entrance into the USDA South Building (next to the Smithsonian Metro) must be sent to Nancy Stremple, Executive Staff to the National Urban and Community Forestry Advisory Council, 201 14th Street SW., Yates Building (3 Southeast), Washington, DC 20250; by email *nstremple@fs.fed.us,* or via facsimile to 202–690–5792.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled For Further Information Contact. All reasonable accommodation requests are managed on a case by case basis.

Dated: December 6, 2013.

Paul Ries,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2013–29910 Filed 12–16–13; 8:45 am]

BILLING CODE 3410–11–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: U.S. Census Bureau.

Title: Annual Social and Economic Supplement to the Current Population Survey.

OMB Control Number: 0607–0354.

Form Number(s): CPS–580 (ASEC), CPS–580 (ASEC)SP, CPS–676, CPS–676(SP).

Type of Request: Revision of a currently approved collection.

Burden Hours: 32,500.

Number of Respondents: 78,000.

Average Hours per Response: 25 minutes.

Needs and Uses: The U.S. Census Bureau has conducted the Annual Social and Economic Supplement (ASEC) annually as part of the Current Population Survey (CPS) for over 60 years. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor this supplement. The Census Bureau will conduct the ASEC in conjunction with the February, March, and April CPS.

The ASEC data collection instrument has undergone substantive revisions from the previous collection in 2013. A summary of the revisions include:

- Tailoring the order of income questions to match those sources most likely received given certain known characteristics of the household: (1) householder aged 62 and older; (2) low-income households; and (3) a default for all other household types.
- Use of a dual-pass approach through the income types first, identifying all sources of income received. Then proceed to ask amounts for those sources the respondent indicated receiving.
- Use of income ranges as a follow-up for ''don't know'' or ''refused'' income amount questions.
- Change to the disability income questions to eliminate confusion between disability income from Social Security and Supplemental Security Income.
- Collecting back-payments for disability benefits.
- Use of a new strategy to collect property income by asking separately about income from retirement assets and other assets.
- Collecting the value of assets that generate income if the respondent is unsure of the income generated.
- Asking about withdrawals and distributions from retirement accounts.
- Total revision to Health Insurance Coverage questions, asking about coverage at the present time and then coverage since January 1 of the previous year. The questions continue to concentrate on the major types of health coverage, which are employer-based, privately-purchased, or government-sponsored. The revisions surround the method by which the questions are asked.

Information on work experience, personal income, noncash benefits, health insurance coverage, and migration is collected. The work experience items in the ASEC provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by people, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ASEC are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole, and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use ASEC data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their differential effects on various population groups.

A prime statistic of interest is the classification of people in poverty and how this measurement has changed over time for various groups. Researchers evaluate ASEC income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

The ASEC also contains questions related to: (1) medical expenditures; (2) presence and cost of a mortgage on property; (3) child support payments; and (4) amount of child care assistance received. These questions enable analysts and policymakers to obtain better estimates of family and household income, and more precisely gauge poverty status.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: December 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–29904 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results and Final No Shipments Determination of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 24, 2013, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2011–2012 administrative review of the antidumping duty order on certain cut-to-length carbon steel plate (''CTL plate'') from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is November 1, 2011, through October 31, 2012. This review covers three PRC companies: Hunan Valin Xiangtan Iron & Steel Co., Ltd. (''Hunan Valin''), Shanghai Pudong Iron and Steel Co. (''Shanghai Pudong''), and the company grouping Bao/Baoshan Iron and Steel Corp., Baoshan International Trade Corp. and Bao Steel Metals Trading Corp. (''Baosteel''). The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but no comments were received. In these final results of review, we continue to find that Hunan Valin did not have any reviewable transactions during the POR, and that Baosteel and Shanghai Pudong did not establish their eligibility for separate rate status and, thus, are part of the PRC-wide entity.

DATES: *Effective Date:* December 17, 2013.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2013, the Department published the *Preliminary Results.* We invited interested parties to submit comments on the *Preliminary Results,* but no comments were received.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now December 9, 2013.

The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the ''Act'').

Scope of the Order

The product covered by the order is certain cut-to-length carbon steel plate from the PRC. Included in this description is hot-rolled iron and non-alloy steel universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters (''mm'') but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns of relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated nor coated with metal, whether or not painted, varnished, or covered with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150mm and measures at least twice the thickness. Included as subject merchandise in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7212.40.5000, 7212.50.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive. Specifically excluded from subject merchandise within the scope of the order is grade X–70 steel plate.

Final Determination of No Shipments

In the *Preliminary Results,* we determined that Hunan Valin did not have any reviewable transactions during the POR because Hunan Valin submitted a timely-filed certification that it had no shipments of subject merchandise during the POR and U.S. import data did not show any POR entries of Hunan Valin's subject merchandise.[3] We did not receive information from U.S. Customs and Border Protection (''CBP'') indicating that there were reviewable transactions for Hunan Valin during the POR. Consistent with the Department's assessment practice in non-market economy (''NME'') cases, we stated in the *Preliminary Results* that the Department would not rescind the review in these circumstances but, rather, would complete the review with respect to Hunan Valin and issue appropriate instructions to CBP based on the final results of the review.[4] As stated above, we did not receive any comments on our *Preliminary Results.* In these final results, we continue to determine that Hunan Valin had no reviewable transactions of subject merchandise during the POR.

[1] *See Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011–2012,* 78 FR 44525 (July 24, 2013) (''*Preliminary Results*'').

[2] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[3] *See Preliminary Results* and accompanying Decision Memorandum, at 3–4.

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*''); *see also* the ''Assessment'' section of this notice, below.

Treatment of Baosteel and Shanghai Pudong

In the *Preliminary Results,* because we did not have adequate no shipment claims for Baosteel or Shanghai Pudong, we determined that record evidence did not demonstrate that these companies had no exports, sales or entries of subject merchandise during the POR. We also determined in the *Preliminary Results* that because neither Baosteel nor Shanghai Pudong filed separate rate applications or certifications with the Department, neither entity established its eligibility for separate rate status; therefore, we treated both Baosteel and Shanghai Pudong as part of the PRC-wide entity. As stated above, we did not receive any comments on our *Preliminary Results.* In these final results, we continue to determine that Baosteel and Shanghai Pudong did not establish their eligibility for separate rate status and, thus, are part of the PRC-wide entity.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[5] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department intends to instruct CBP to liquidate entries of subject merchandise from Baosteel and Shanghai Pudong at the PRC-wide rate of 128.59 percent. Additionally, consistent with the Department's assessment practice refinement in NME cases, because the Department determined that Hunan Valin had no reviewable transactions of subject merchandise during the POR, any suspended entries that entered under Hunan Valin's antidumping duty case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[6]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Hunan Valin, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to this company in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding but which have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, including Baosteel and Shanghai Pudong, the cash deposit rate will be the PRC-wide rate of 128.59 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: December 6, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2013–29994 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* 19 CFR 351.212(b)(1).

[6] *See Assessment Practice Refinement.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that imports of unfinished polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) are circumventing the antidumping duty order on PRCBs from the PRC.[1]

DATES: *Effective Date:* December 17, 2013.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0410, and (202)482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

The merchandise covered by the *Order* is PRCBs. PRCBs subject to the order are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 3923.21.0085. The HTSUS subheading is provided for convenience and customs purposes. A full description of the scope of the *Order* is contained in the memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the People's Republic of China'' dated concurrently with this notice (Preliminary Decision Memorandum), which is hereby adopted by this notice. The written description is dispositive. The Preliminary Decision Memorandum is a public document and is on file electronically via the Antidumping and Countervailing Duty Centralized

[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Circumvention Inquiry

This anticircumvention inquiry covers merchandise from the PRC that appears to be an unfinished PRCB which is sealed on all four sides, cut to length, and which appears ready to undergo the final step in the production process, *i.e.,* to use a die press to stamp out the opening and create the handles of a finished PRCB. The unfinished PRCBs subject to this inquiry may or may not have printing and may be of different dimensions as long as they otherwise meet the description of the scope of the order.

Methodology

The Department has made this preliminary finding of circumvention in accordance with section 781(a) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.225(g). We have relied on the facts available with respect to certain aspects of our determination in accordance with section 776 of the Act because, apart from the petitioners, no parties came forward or submitted argument or information. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination

As detailed in the Preliminary Decision Memorandum, we preliminarily determine, pursuant to section 781(a) of the Act, that imports of unfinished PRCBs from the PRC are circumventing the *Order.*

Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(2), we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of merchandise subject to this inquiry that is entered, or withdrawn from warehouse, for consumption on or after May 14, 2013, the date of publication of the initiation of this inquiry.[2] We will also instruct CBP to require a cash deposit of estimated duties at the applicable rates for each unliquidated entry of the product entered, or withdrawn from warehouse, for consumption on or after May 14, 2013, in accordance with 19 CFR 351.225(l)(2).

Invitation to Interested Parties To Participate

No responding interested party such as a foreign exporter or producer or U.S. importer has, to date, responded to the invitation stated in the *Initiation Notice* to participate in this anticircumvention inquiry.[3] In the interest of affording every possible opportunity to interested parties to participate, the Department continues to invite all interested parties to identify themselves and to provide information and argument that may inform the Department's determination. Any such interested party should enter an appearance pursuant to 19 CFR 351.103(d)(1) indicating their willingness to participate in this proceeding. Because of the relatively late stage of this proceeding, we require that any interested party submit its entry of appearance no later than 45 days after the date of publication of this notice.

Public Comment

Pursuant to 19 CFR 351.309(c) and (d), interested parties may submit case and rebuttal briefs. As described in the ''Invitation to Interested Parties to Participate'' section, above, we are re-iterating our solicitation to interested parties to participate in this anticircumvention inquiry. If any interested parties come forward within 45 days after the date of publication of this notice, we will issue the briefing schedule and requirements for requesting a hearing at a later date.

If no interested party comes forward within 45 days after the date of publication of this notice, then case briefs will be due not later than 50 days after the date of publication of this notice. Pursuant to 19 CFR 351.309(d), rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument:

(1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Additionally, if no interested party comes forward within 45 days after the date of publication of this notice, then pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 50 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. We intend to issue our final determination of circumvention by March 3, 2014.

Notification of the International Trade Commission

Pursuant to section 781(e) of the Act, we will notify the International Trade Commission of the proposed inclusion of unfinished PRCBs in the *Order.*

This preliminary determination of circumvention is in accordance with section 781(a) of the Act and 19 CFR 351.225.

Dated: December 11, 2013.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
4. Merchandise Subject to the Minor Alterations Antidumping Circumvention Inquiry
5. Statutory and Regulatory Framework
6. Allegations of Circumvention as Identified in the Initiation of Inquiry
7. Facts Available
8. Analysis
   A. Merchandise of the Same Class or Kind
   B. Completion of Merchandise in the United States
   C. Minor or Insignificant Process
   D. Value of the Parts or Components Produced in the Foreign Country Is a Significant Portion of the Total Value of the Merchandise
   E. Factors To Consider in Determining Whether Action Is Necessary
   - Pattern of Trade, Including Sourcing Patterns
   - Affiliation
   - Subsequent Import Volume

[2] *See Polyethylene Retail Carrier Bags From the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 78 FR 28194 (May 14, 2013) (*Initiation Notice*).

[3] *Id.*

9. Preliminary Findings

[FR Doc. 2013–29995 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar

March 8–14, 2014.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Secretary of Commerce will lead an Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar from March 8–14, 2014. This business development mission will promote U.S. exports to the Gulf region by helping U.S. companies launch or increase their business in the infrastructure sector. The mission will include government and business-to-business meetings, market briefings and networking events. In all three countries, the governments and private sector are investing significant money in infrastructure projects. As a result, the mission will focus on export-ready U.S. firms with product and services in a broad range of leading U.S. infrastructure sectors with an emphasis on project management and engineering (including construction, architecture and design), renewable energy (solar, wind, waste-to-energy), smart grid and energy efficiency, and environmental technologies (including water/wastewater; air pollution control; and waste management).

The mission will stop in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. In each country, participants will meet with pre-screened potential agents, distributors, and representatives, as well as other business partners and government officials. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

The delegation will be composed of representatives from 20–25 U.S. firms in the mission's target sectors. Representatives of the Export-Import Bank of the United States (Ex-Im) and the Overseas Private Investment Corporation (OPIC) will be invited to participate to provide information and counseling regarding their suite of programs, services, and interests in the Middle East.

Commercial Setting

The United Arab Emirates

The US-UAE trade relationship is undergoing a period of rapid expansion as the UAE seeks to undertake major investment in its infrastructure and transport systems. U.S. exports to the UAE totaled almost $23 billion in 2012. U.S. exports to the UAE increased by 36% in 2011, 42% in 2012 and are poised to grow an additional 15% in 2013. Key market opportunities for U.S. firms will continue to be present in project management and design work on urban transport, rail, oil&gas, and power generation (including alternative energy). Demand for imports is being fueled by economic growth rates of 3–4%, and bolstered by strong oil revenues as the UAE implements a one-third increase in its petroleum production.

In addition to accounting for virtually all UAE oil production and defense sector acquisitions, the Emirate of Abu Dhabi is also moving forward to develop a $10 billion urban transit system, a national railroad network and a nuclear energy industry. Dubai continues to expand its role as the major regional trade hub and has begun development of one the world's largest new airport projects. On November 27, 2013, the Emirate won the award to host the 2020 World Expo which will result in the undertaking of major infrastructure and hospitality development.

Specific projects in these sectors include an urban transit project in Abu Dhabi (light rail and below ground subway); development of the Etihad Rail network to link the UAE's major ports and cities; development of Dubai's new Al Maktoum airport and adjacent logistics, commercial, residential and recreational sites; and the anticipated design and construction of over 100 new hotels and multiple venues for the 2020 World Expo with an estimated project value of $40 billion.

Additionally, there are many major clean energy opportunities for U.S. firms. Dubai plans to develop a 1,000 mw solar energy capacity and Abu Dhabi continues plans to create a nuclear power industry.

Kingdom of Saudi Arabia

Saudi Arabia is the 9th largest trading partner of the United States with a bilateral trade of $74 billion in 2012 and is also the 20th largest destination for U.S. exports. In 2012, U.S. exports to Saudi Arabia exceeded $18 billion mark, an increase of 31% from 2011. The Saudi economy—the largest in the Middle East and North Africa region—has been growing at a robust pace. The private sector has been the key driver behind the stronger non-oil sector growth, with an annual growth rate close to 7 percent since 2000. The private sector is expected to continue to be a key driver of non-oil growth. The country has benefited enormously from oil and gas reserves that have generated vast financial liquidity in the six years between 2006 and 2012. As a result, there are currently about $960 billion worth of projects planned or under way in Saudi Arabia. Of these, more than $700 billion are megaprojects, or large master planned developments of more than $1 billion, making Saudi Arabia the biggest opportunity in the region for businesses involved in the infrastructure and construction sectors. The revenues from hydrocarbon resources are expected to be sufficient to support planned development spending and support private sector growth. The FY–2013 budget, the largest in Saudi history, projected spending of $221 billion.

Significant opportunities exist for U.S. companies interested in Saudi Arabia's construction project management, architectural, engineering and design, and renewable energy sectors. The King Abdullah City for Atomic and Renewable Energy has a stated goal to spend more than $150 billion to develop renewable energy capabilities, specifically solar, to reduce the country's reliance on burning oil for domestic power generation. The $22.5 billion Riyadh Metro, along with rail schemes in Mecca, Jeddah, Medina and Dammam, promises to transform transport infrastructure. The King Abdullah and Jizan Economic Cities are in the process of creating new industrial clusters and new communities. The government is committed to continue to spend heavily in the education, health, municipality, transportation and water sectors. Some of the anticipated capital expenditures for 2014 include the construction of new schools, hospitals, and roads across the country. Urbanization and population growth in Saudi Arabia have boosted demand for housing, especially affordable housing. The Saudi Government remains committed to building 500,000 houses over the next five years. Likewise, demand for power generation will continue to climb over the next five years on the back of a rapidly growing population, and resulting high investments in social and physical infrastructure.

Qatar

The U.S.-Qatar trade relationship is going through a massive transformation. The United States posted a trade surplus with Qatar of $2.6 billion from January 2013–August 2013. Total U.S. exports to Qatar through August 2013, were $3.6 billion establishing a new record and growing 106% compared year-on-year with January through August 2012. (The previous yearly record for U.S. exports to Qatar was $3.57 billion in 2012). Given this trend, U.S. exports to Qatar are poised to break the $5 billion dollar level in 2013. Despite Qatar's small population (Qatar is a country of only two million people and only 250,000 Qatari citizens) it ranks as the fifth largest U.S. export market in the MENA region, only behind the much larger markets of the UAE, the Kingdom of Saudi Arabia, Israel and Egypt. Over the past 10 years U.S. exports to Qatar have grown by over 700%.

With Qatar's 2030 Vision, which establishes a framework for Qatar to transform itself from a carbon-based economy, combined with Qatar hosting the 2022 FIFA World Cup, Qatar plans to spend over $250 billion on physical infrastructure over the next five years. Opportunities include: The new Hamad International Airport—$25 billion for completion of the first phase and the $10 billion dollar Phase II; the New Doha Port which is the world's largest green-field port construction project valued at $8 billion (commercial and naval port); QRail is embarking on a $40 billion dollar rail construction project creating three new subway lines, three above ground Light Rail Systems and a high-speed rail network, with heavy freight to follow after 2022; the Public Works Authority is spending $40 billion on new road projects (converting from European systems to U.S.-based designs) as well as public buildings such as schools and hospitals; and the Qatar 2022 Supreme Committee will supervise the construction of 9–12 stadiums for the 2022 World Cup valued at $5 billion. These projects provide on-going opportunities for U.S. engineering and design firms.

Another key program is the $4 billion dollar Inner Doha Re-sewerage Implementation Strategy (IDRIS). This scheme will include a major deep tunnel sewer network and advanced sewage treatment works. Renewable energy is a priority and Qatar is heavily investing in solar energy.

Products and Services Outside of the Scope of the Mission

The foregoing analysis of infrastructure export opportunities is not intended to be exhaustive, but illustrative of the many opportunities available to U.S. businesses in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. Applications from companies selling products or services within the scope of this mission will be considered and evaluated by the U.S. Department of Commerce. Companies whose products or services do not fit the scope of the mission may contact their local U.S. Export Assistance Center (USEAC) to learn about other business development missions and export promotion services that may provide more targeted export opportunities. Companies may call 1–800–872–8723, or visit the Web site: *http://www.export.gov* to obtain such information.

Mission Goals

This mission will demonstrate the United States' commitment to a sustained economic partnership in the Gulf region. The mission's purpose is to support the business development goals of U.S. firms as they construct a firm foundation for future business in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar, and specifically aims to:

- Assist in identifying potential partners and strategies for U.S. companies to gain access to each market for infrastructure products and services.
- Confirm U.S. Government support for activities of U.S. business in each market and to provide access to senior decision makers in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar government.
- Listen to the needs, suggestions and experience of individual participants so as to shape appropriate U.S. Government positions regarding U.S. business interests in the region.
- Organize private and focused events with local business and association leaders capable of becoming partners and clients for U.S. firms as they develop their business in the region.
- Assist in the development of competitive strategies and increasing market access through high level information gathering from private and public-sector leaders.

Mission Scenario

The mission will stop in the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar. In each country, participants will meet with pre-screened potential agents, distributors, and representatives, as well as other business partners and government officials. They will also attend market briefings by U.S. Embassy officials, as well as networking events offering further opportunities to speak with local business and industry decision-makers.

PROPOSED TIME TABLE

Saturday, March 8	Abu Dhabi, United Arab Emirates	Business development mission Orientation. U.S. Government Trade Finance Briefing. Commercial Opportunity Overview. Country Team Briefing. Welcome Dinner.
Sunday, March 9	Abu Dhabi, United Arab Emirates	Industry Briefings/Roundtable Discussions. One-on-One Business Appointments. Networking Luncheon. Networking Reception.
Monday, March 10	Dubai, United Arab Emirates	Travel to Dubai, United Arab Emirates. Industry Briefings/Roundtable Discussions. One-on-One Business Appointments. Travel to Riyadh, Saudi Arabia.
Tuesday, March 11	Riyadh, Saudi Arabia	Commercial Opportunity Overview Country Team Briefing. Government Meetings. One-on-One Business Appointments. Networking Luncheon. Networking Reception.
Wednesday, March 12	Riyadh, Saudi Arabia Doha, Qatar	One-on-One Business Appointments. Travel to Doha, Qatar.

PROPOSED TIME TABLE—Continued

Thursday, March 13	Doha, Qatar	Commercial Opportunity Overview. Country Team Briefing. One-on-One Business Appointments. Networking Reception. Government Meetings. One-on-One Business Appointments. Networking Luncheon. Wrap-up Discussion. Closing Dinner.

Participation Requirements

All parties interested in participating in the Secretarial Infrastructure Business Development Mission to the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Approximately 20–25 companies will be selected to participate in the mission from the applicant pool. U.S. companies doing business with the United Arab Emirates, the Kingdom of Saudi Arabia and Qatar, as well as U.S. companies seeking to enter these markets for the first time may apply.

Fees and Expenses: After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The fee schedule for the mission is below:

- $11,500 for large firms.
- $9,000 for a small or medium-sized enterprises (SMEs) [1]
- $3000 each additional firm representative (large firm or SME).

Expenses for air travel, lodging, most meals, and incidentals will be the responsibility of each mission participant.

Conditions of Participation: An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Each applicant must also:

- Certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content. In cases where the U.S. content does not exceed 50%, especially where the applicant intends to pursue investment and major project opportunities, the following factors, may be considered in determining whether the applicant's participation in the business development mission is in the U.S. national interest:
  - U.S. materials and equipment content;
  - U.S. labor content;
  - Repatriation of profits to the U.S. economy; and
  - Potential for follow-on business that would benefit the U.S. economy.
- Certify that the export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation: Selection will be based on the following criteria, listed in decreasing order of importance:

- Suitability of a company's products or services to the target markets and the likelihood of a participating company's increased exports or business interests in the target markets as a result of this mission;
- Consistency of company's products or services with the scope and desired outcome of the mission's goals;
- Demonstrated export experience in the target markets and/or other foreign markets;
- Current or pending major project participation; and
- Rank/seniority of the designated company representative.

Additional factors, such as diversity of company size, type, location, and demographics, may also be considered during the review process.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register** (*http://www.gpoaccess.gov/fr*), posting on ITA's business development mission calendar (*http://export.gov/trademissions*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment will begin immediately and conclude no later than January 17, 2014. Applications can be completed on-line at the GCC Infrastructure Business Development Mission Web site at *http://www.export.gov/GCCMission2014* or can be obtained by contacting the U.S. Department of Commerce Office of Business Liaison (202–482–1360 or *businessLiaison@doc.gov*).

The application deadline is Friday, January 17, 2014. Completed applications should be submitted to the Office of Business Liaison. Applications received after Friday, January 17, 2014,

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

will be considered only if space and scheduling constraints permit.

How To Apply:

Applications can be downloaded from the business development mission Web site (*http://export.gov/GCCMission2014*) or can be obtained by contacting the Office of Business Liaison (see below). Completed applications should be submitted to the Office of Business Liaison via email: *businessliaison@doc.gov* or fax: 202–482–4054.

Contacts:

General Information and Applications:

The Office of Business Liaison, 1401 Constitution Avenue NW., Room 5062, Washington, DC 20230, Tel: 202–482–1360, Fax: 202–482–4054, Email: *BusinessLiaison@doc.gov*.

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–29884 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Panel Member Survey To Develop Indicators of Resilient Coastal Tourism

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 18, 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 Chris Ellis, (843) 740–1195 or *Chris.Ellis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The purpose of this survey is to better understand the factors that shape the tourism industry's ability to adapt to or bounce back from external shocks such as natural disasters, climate change, and economic downturns (i.e. resiliency) in order to develop a set of indicators to measure the resiliency of coastal tourism. To help gather this information, NOAA will conduct a multi-round, iterative survey process based on the Delphi Method, which is a structured method for eliciting and combining expert opinion. The method requires indirect interaction among experts through a moderator. Experts make individual judgments, and these judgments are shared anonymously with the whole group. After viewing other experts' judgments, each expert is then given the opportunity to revise his or her own judgments, and the process is repeated. Theoretically, the goal of the Delphi study is to reach a consensus after a few rounds. In reality this rarely happens; thus, at the end of the Delphi rounds, the experts' final judgments are typically combined mathematically.

NOAA will apply the Delphi Method to a multi-round survey of panels of individuals with experience and insight into tourism resiliency and/or the tourism industry in two geographic areas: (1) The Central North Carolina Coast, and (2) The San Francisco Bay Area (inner and outer coast). Data to be collected through the survey include factors that may prevent or facilitate tourism resiliency as well as ranking or rating of those factors; suggested resiliency indicators; relevance and usefulness of resiliency indicators; and levels of respondent certainty with regard to their responses.

II. Method of Collection

The survey will be provided to respondents in electronic format via email and responses will be submitted via email of electronic forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (new information collection).

Affected Public: Non-profit institutions; Federal Government; State, local, or tribal government; Business or other for-profit organizations.

Estimated Number of Respondents: 40.

Estimated Time per Response: Four hours per respondent as follows: Preliminary webinar, 1 hour; first round survey, 1 hour; second round survey, 1 hour; and final webinar, 1 hour.

Estimated Total Annual Burden Hours: 160.

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: December 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–29905 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BD77

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Regulatory Amendment 17

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

ACTION: Supplemental notice of intent (NOI) to prepare a draft environmental impact statement (DEIS).

SUMMARY: NMFS, Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), is publishing this supplemental NOI to announce that scoping meetings for Regulatory Amendment 17 to the Fishery Management Plan for the Snapper-Grouper Fishery in the South Atlantic Region (Regulatory Amendment 17) will be postponed and

will be announced at a later date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

An NOI to prepare a DEIS for Regulatory Amendment 17 was published in the **Federal Register** on December 4, 2013 (78 FR 72867) and requested public comment through January 3, 2014. The NOI announced that the Council will consider alternatives to modify existing marine protected areas (MPAs) implemented through Amendment 14 to the Fishery Management Plan for the Snapper-Grouper Fishery in the South Atlantic Region (74 FR 1621, January 13, 2009) and establish new MPAs within Regulatory Amendment 17. Through these proposed actions, the Council intends to further reduce bycatch mortality of speckled hind and warsaw grouper and increase protection to their deep-water habitat.

In the NOI, NMFS announced scoping meeting dates, times, and locations that were scheduled to occur in January 2014. However, at its December 2013 meeting, the Council decided to continue development of Regulatory Amendment 17 but postpone the scoping meetings to a future date that is not yet known. The Council decided to delay the scoping meetings to allow the Council's Snapper-Grouper Advisory Panel to consider additional scientific information, such as the predicted effectiveness of the proposed MPAs and to provide MPA recommendations to the Council based on that information. In addition, the Council decided to hold public meetings on their snapper-grouper fishery visioning project before holding the Regulatory Amendment 17 scoping meetings. This would allow for an improved decision making process that incorporates the results of the Council's visioning project into the development of Regulatory Amendment 17. NMFS will announce, through a document published in the **Federal Register**, the exact dates, times, and locations of future scoping meetings for Regulatory Amendment 17.

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

Dated: December 11, 2013.

Sean Corson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–29852 Filed 12–16–13; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of a revised Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (CFPB or Bureau), gives notice of the establishment of a revised Privacy Act System of Records.

DATES: Comments must be received no later than January 16, 2014. The new system of records will be effective January 27, 2014, unless the comments received result in a contrary determination.

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

- *Electronic:* privacy@cfpb.gov.
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The CFPB revises its Privacy Act System of Records Notice (SORN) ''CFPB.011—Correspondence Tracking Database.'' In revising this SORN, the CFPB modifies the purpose(s) for which the system is maintained; the categories of individuals for the system; the categories of records for the system; the record source categories for the system; the method by which records are retrieved in the system; and the retention and disposal of records in the system. Additionally, as part of a biennial review of this System of Record, the CFPB modifies: the notification procedures for individuals seeking access to records maintained in this system; the system location and address; and makes several non-substantive changes to the routine use section to ensure compliance with the Privacy Act, 5 U.S.C. 552a.

The report of the revised system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r). The revised system of records entitled ''CFPB.011—Correspondence Tracking Database'' is published in its entirety below.

Dated: December 12, 2013.

Claire Stapleton,

Chief Privacy Officer, Bureau of Consumer Financial Protection.

CFPB.011

SYSTEM NAME:

Correspondence Tracking Database

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit correspondence, or who have correspondence submitted on their behalf to the CFPB, or who request to receive correspondence from the Bureau, and CFPB employees responsible for processing, reviewing, and/or responding to such correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system may contain (1) correspondence (including, without limitation, official letters, memoranda, faxes, telegrams, and emails) received and sent by the Bureau; (2) mailing lists of individuals who submit correspondence, or who have correspondence submitted on their behalf to the Bureau or request to receive correspondence from the Bureau; (3) identifying information regarding individuals who submit the

[1] Although pursuant to section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

correspondence, individuals or entities on whose behalf such correspondence is submitted, or individuals who request to receive correspondence from the Bureau, such as name, phone number, address, email address, and any other disclosed identifiable information; (4) information about the correspondence, including disposition, tracking dates, and where applicable, the type of correspondence; and (5) information concerning the CFPB employee responsible for processing the correspondence, including contact information, position or title, and information about internal assignments. Supporting records may include correspondence between the CFPB and the individual. This system does not contain all correspondence received or sent by the Bureau—for example, records related to consumer complaints will not be contained in this system—and some correspondence is maintained in other Bureau systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 111–203, Title X, Sections 1011, 1012, 1013, codified at 12 U.S.C. 5491, 5492, 5493.

PURPOSE(S):

The purpose of the Correspondence Tracking Database is to enable the CFPB to track correspondence, including responsibilities for processing, tracking, responding to, or referring sensitive and/or time-critical correspondence for appropriate processing and responsive action, and to manage mailing lists of individuals who submit correspondence to the Bureau, have correspondence submitted on their behalf, or have requested to receive correspondence from the Bureau.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) the CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The DOJ for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate agencies, entities, and persons, to the extent necessary to respond to or refer correspondence; and

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by a variety of fields including, but not limited to, an individual's name, email address or other contact information, by date of correspondence, topic of correspondence, correspondence control number or by some combination thereof.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

Per N1–587–12–06, records in this system are deleted or destroyed three (3) years after the calendar year in which it was created.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Chief Operating Officer, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing the CFPB's Disclosure of Records and Information Rules, promulgated at 12 CFR part 1070 *et seq.* Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information contained in the system will be collected from a variety of sources, including, without limitation, individuals who submit correspondence, or who have correspondence submitted on their behalf to the CFPB, or who have requested to receive correspondence from the Bureau, and CFPB employees responsible for processing, reviewing, and/or responding to such correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–29969 Filed 12–16–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement and Dam Safety Modification Study Report for the Cherry Creek Project, Arapahoe County, Colorado

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers, Omaha District (Corps) intends to prepare a draft Environmental Impact Statement (EIS) for the federal action to remediate dam safety concerns at Cherry Creek Dam. The dam safety concerns are primarily related to a hydrologic deficiency resulting from an extreme precipitation event and the large population that could be affected by such an event. Cherry Creek Dam and Lake is located on Cherry Creek, 11.4 miles upstream of its confluence with the South Platte River, in Aurora, Colorado (southeast Denver metropolitan area). The remediation actions will be identified through a Dam Safety Modification Study (DSMS) being conducted in accordance with Corps policy as described in Engineering Regulation 1110–2–1156 ''Safety of Dams—Policy and Procedures.''

ADDRESSES: Omaha District Corps of Engineers, 1616 Capitol Ave, Omaha, NE 68102–4926 (Attn: Margaret Oldham CENWO–PAO).

FOR FURTHER INFORMATION CONTACT: Current and archival information regarding Cherry Creek Dam may be obtained by contacting the Omaha District. The point of contact is Margaret Oldham, Phone: (402) 995–2416; email: *Margaret.E.Oldham@usace.army.mil.* Questions or comments regarding the upcoming studies at Cherry Creek Dam should also be directed to Ms. Oldham.

SUPPLEMENTARY INFORMATION:

1. *Background Information.* The Cherry Creek Dam project was authorized in the 1940s for the primary purpose of protecting the city of Denver against floods from Cherry Creek. The dam is located in a densely populated area and provides flood protection to over 200,000 people. Starting in 2005, the Corps sought to better categorize the risk at all of its dams. Risk considers both the probability and consequences of a dam failure. Cherry Creek Dam received an elevated risk rating primarily because of the hydraulic deficiency resulting from an extreme precipitation event and the large population which is protected by the dam. Estimation of extreme precipitation events is based on the Probable Maximum Precipitation (PMP) for a given location. A PMP is an extremely rare event and is defined as the maximum amount of precipitation that could occur if all meteorological elements were optimal to allow a perfect environment for forming precipitation. The resulting stream flow from a PMP is a flood defined as the Probable Maximum Flood (PMF).

Multiple past studies have indicated that Cherry Creek may not be able to adequately pass a PMF event. Hydrologic deficiency issues associated with Cherry Creek Dam were initially brought to light in 1970 after the National Weather Service (NWS) completed a site-specific PMP study of the upper South Platte River basin for the design of Chatfield Dam (a nearby dam on the South Platte River). Applying the 1970 PMP criteria to the Cherry Creek basin resulted in a larger stream flow than used in the project's original design and indicated the dam had a potential hydrologic deficiency. Since 1970, the NWS and the Corps have completed several PMP and PMF estimates including a Cherry Creek basin, site-specific PMP study completed by the NWS in 1995. Applying the current estimate of the PMF, which is also based on the 1995 PMP study, Cherry Creek Dam has a hydrologic deficiency even if the pool elevation at the start of the PMF was at normal operating levels.

Because of the risk rating, Omaha District completed an Issue Evaluation Study (IES) in 2011 to further evaluate Cherry Creek Dam's safety issues and corresponding risk. The IES findings were presented to a Senior Oversight Group (SOG) appointed by the Corps' Headquarters. The SOG reviewed the IES and confirmed the risk rating for the dam. Omaha District was directed to proceed into a DSMS, which is currently under way, with the task of defining in detail the risk associated with the Cherry Creek Dam's safety issues and assessing possible options for mitigating the risk. Those options may include federal actions which will be the subject of the EIS.

2. *Remediation Alternatives.* The draft EIS will address an array of remediation alternatives that could reduce the risk of life loss, extensive downstream damage, functional loss of the project, and the loss of all project benefits. The nature and extent of the remediation alternatives will be determined based on the results of on-going engineering studies, public and agency input during the scoping period, and preparation of the draft EIS.

3. *Issues To Be Addressed.* The draft EIS will address environmental issues concerning the remediation alternatives proposed. Issues will be identified based on public input during the scoping process and during preparation of the draft EIS. Environmental issues initially identified as potentially significant include, but are not limited to: hydrology and water quality, noise and vibration, air quality, socioeconomics, water supply, land use, recreation, visual and aesthetic resources, traffic and transportation, historical and cultural resources, vegetation and wildlife, special status species, and fisheries.

4. *Public Involvement.* Public scoping meetings will be held in 2014 at specific locations to be announced within the local Cherry Creek Dam project area. The purpose of the public scoping meetings will be to present information to the public regarding the array of remediation alternatives that may be addressed in the draft EIS, receive public comments, and solicit input regarding dam safety issues, remediation alternatives to consider, and environmental issues of concern to the public. These meetings are intended to initiate the process to involve concerned individuals, and local, state, and federal agencies. The public scoping meeting place, date, and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties.

5. *Availability of the Draft EIS.* The Corps intends to issue the draft EIS in the 2015/2016 time frame. The Corps will announce availability of the draft EIS in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments to be addressed in the final EIS.

Dated: December 4, 2013.

John Palensky,

Project Manager, U.S. Army Corps of Engineers.

[FR Doc. 2013–29984 Filed 12–16–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2013–IES–0151]

Request for Information To Gather Technical Expertise Pertaining to Data Elements, Metrics, Data Collection, Weighting, Scoring, and Presentation of a Postsecondary Institution Ratings System

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Request for information.

SUMMARY: To assist the Department of Education (Department) in its efforts to develop a Postsecondary Institution Ratings System (PIRS), the National Center for Education Statistics (NCES) invites the submission of information about data elements, metrics, methods of data collection, methods of weighting or scoring, and presentation frameworks for a PIRS for assessing the performance of institutions of higher education (IHEs) and advancing institutional accountability while also enhancing consumer access to useful information.

DATES: Written submissions must be received by the Department on or before January 31, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''Postsecondary Institution Ratings response'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to this site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Richard Reeves, National Center for Education Statistics, Attention: Postsecondary Institution Ratings System RFI, U.S. Department of Education, 1990 K Street NW., 8th Floor, Washington, DC 20006.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should be careful to include only information that they wish to make publicly available on the Internet.

Submission of Proprietary Information: Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

This is a request for information (RFI) only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications (NIA). This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web site (*http://www.fbo.gov*). The Department announces grant competitions in the **Federal Register** (*http://www.gpo.gov/fdsys*). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Richard Reeves, (202) 502–7436, *Richard.Reeves@ed.gov.* If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

A postsecondary education is among the most important investments students can make in their own futures. However, obtaining such an education has grown increasingly expensive. The average tuition at a public four-year college has increased by more than 300 percent over the past three decades, while incomes for typical families grew by only 16 percent, according to Integrated Postsecondary Education Data System (IPEDS) and Bureau of Labor Statistics data. Declining State funding has moved an increasing share of the cost of postsecondary education from State taxpayers to students; tuition has almost doubled as a share of public college revenues over the past 25 years, from 25 percent to 47 percent. While a college education remains a valuable investment overall, the average borrower with a bachelor's degree now graduates with more than $29,400 in debt, according to 2012 data from the National Postsecondary Student Aid Study. Moreover, college completion rates are relatively low: only 58 percent of full-time students who began college in 2004 earned a four-year degree within six years. Loan default rates are rising, and many young adults are burdened with debt as they seek to start a family, buy a home, launch a business, or save for retirement.

The Department provides over $150 billion each year in student financial aid, while States collectively invest over $70 billion in public colleges and universities. Almost all of these resources are allocated based on the number of students who enroll, not the number of students who earn degrees, how much students learn, or the return on investment to the students and society for the cost of their degrees.

In August 2013, President Obama announced a new agenda that will increase college value and affordability for American families. As part of this plan, the President has directed the Department to develop and publish a new college ratings system before the 2015–16 school year.

The ratings system will help students compare the value and affordability of

colleges and encourage colleges to improve. The ratings will be based upon such measures as:

- Access, such as percentage of students receiving Pell grants;
- Affordability, such as average cost of attendance, scholarships, and student loan debt; and
- Outcomes, such as graduation and transfer rates, including those for Pell grant recipients, graduate earnings, and advanced degree attainment of graduates.

The Department intends, through these ratings, to compare colleges with similar missions and identify colleges that do the most to help students from disadvantaged and underrepresented backgrounds, as well as colleges that are improving their performance. The ratings system is not intended to rank institutions. Instead, it will provide information about an institution's performance on a specific measure or a specific set of measures. In the upcoming reauthorization of the Higher Education Act, the President will propose allocating financial aid based upon these college ratings by 2018.

Introduction

The Department invites IHEs and systems of IHEs, their faculty and staff, students and parents, college counselors, research and data experts, State higher education agencies, associations, advocacy groups, think tanks, publishers, experts in ratings in other industries, consortia of any of the above entities, or any other interested party, to provide information about potential data elements, metrics, methods of data collection and analysis, methods of weighting or scoring, and presentation frameworks of a PIRS that will be used to advance institutional accountability, enhance transparency, and improve consumer decision-making. Organizations that have developed, or are developing, ratings systems for postsecondary institutions or other non-education entities are also strongly encouraged to respond. This RFI is specifically inquiring into the following: (1) Metrics necessary for rating the performance of postsecondary institutions using both data elements currently available to the Department and other Federal agencies, and data elements not currently available to the Department or other Federal agencies but that could be collected in the future; (2) empirical methods for weighting, scoring, or otherwise combining the various metrics into a single dimension or a set of dimensions; (3) empirical methods for weighting, scoring, or otherwise adjusting metrics or grouping institutions to ensure appropriate comparison and calibration within the PIRS; (4) options for presenting the information in the PIRS for both accountability and consumer information purposes; and (5) models of ratings systems for entities other than postsecondary institutions. The Department is interested in a PIRS that takes into account information important to the Federal government in promoting college value and affordability, ensuring the integrity of Federal student aid programs, and carrying out its fiduciary responsibility for taxpayer investments in postsecondary education.

Through this RFI, the Department is interested in suggestions that address the challenges in measuring the affordability and value of postsecondary education. The Department is interested in specific examples of ratings systems that best measure postsecondary institutions' value to students and the Federal taxpayer. The Department is also interested in specific examples of empirical methods for taking into account the diversity of institutional missions and for comparing performance across similar institutions. In particular, the Department is interested in how such factors as institutional resources (e.g., State investment in postsecondary education) and student characteristics (e.g., postsecondary readiness) should be addressed as part of the ratings system. Finally, the Department is interested in specific suggestions for minimizing unintended consequences such as the undervaluing of certain kinds of postsecondary credentials or learning experiences or creating disincentives for institutions to enroll underrepresented student populations.

Information gathered through this RFI will inform the development of a PIRS designed to advance institutional accountability for the investment of Federal dollars in IHEs while at the same time improving public information about college access, affordability, and outcomes for students and families.

In addition to significant outreach that the Department is conducting to communities and stakeholder groups throughout the country, development of a PIRS will employ three specific steps. First, NCES is issuing this RFI to collect information about data elements, metrics, methods of data collection, methods of weighting or scoring, and presentation frameworks. We pose a series of questions to which we invite interested parties and members of the public to respond. Second, NCES will host a symposium of external experts to discuss and deliberate on these issues in greater depth. Third, NCES will publish a summary of the recommendations developed from the RFI and the symposium, as well as other resources identified by symposium participants, on the Department's college affordability and completion Web site (*http://www.ed.gov/college-affordability*).

Context for Responses

The primary goal of this RFI is to gather information that will help the Department develop a PIRS that advances the accountability of postsecondary institutions and that provides enhanced transparency and consumer information. We have developed several questions to guide input. Because the questions are only guides, you do not have to respond to the specific questions and you may provide comments in a format of your choice. However, we strongly recommend that you provide specific examples in your responses. You may also provide information that is not responsive to a particular question but may be helpful.

Questions

1. Questions Regarding Data Elements, Metrics, and Data Collection

1.1. Using data currently collected by the Department or other Federal agencies, and given the Administration's focus on access, affordability, and outcomes, what metrics are possible for rating the performance of postsecondary institutions? What metrics are appropriate for consumer information purposes? What metrics are appropriate for accountability purposes? What metrics are appropriate for consumer information and accountability purposes? For each metric, include information about data sources, quality, availability, and limitations.

1.2 Using data not currently collected by the Department or other Federal agencies, and given the Administration's focus on access, affordability, and outcomes, what metrics are possible for rating the performance of postsecondary institutions? What metrics are appropriate for consumer information purposes? What metrics are appropriate for accountability purposes? What metrics are appropriate for consumer information and accountability purposes? What is the best way to collect data that will inform those metrics? What are the challenges in collecting such data?

1.3 What metrics should apply to all types of postsecondary institutions?

1.4 What metrics should apply to institutions with specific missions? How should those missions be defined?

1.5 How should existing limitations in Federal postsecondary data and data collections be addressed?

2. Questions Regarding Weighting or Scoring

2.1 What empirical methods for weighting, scoring, or otherwise reducing a large and complex amount of information into a single dimension or a set of dimensions should be used in a PIRS?

2.2 What empirical methods for weighting or scoring are appropriate for consumer information purposes?

2.3 What empirical methods for weighting or scoring are appropriate for accountability purposes?

2.4 What empirical methods for weighting or scoring are appropriate for both purposes?

2.5 How should metrics be adjusted to account for institutional differences, such as mission, and student characteristics? How should those characteristics be defined?

2.6 How should metrics be adjusted to reflect institutional improvement over time?

3. Questions Regarding the Development of Comparison Groups

3.1 What empirical methods for developing institutional comparison groups are appropriate for consumer information purposes?

3.2 What empirical methods for developing institutional comparison groups are appropriate for accountability purposes?

3.3 What empirical methods for developing institutional comparison groups are appropriate for both purposes?

3.4 Should students be disaggregated for comparison purposes and if so, by what sub-groups?

4. Questions Regarding the Presentation of Ratings Information

4.1 What models for presenting institutional ratings are appropriate for consumer information purposes?

4.2 What models for presenting institutional ratings are appropriate for accountability purposes?

4.3 What models for presenting institutional ratings are appropriate for motivating consumers to make choices that promote institutional accountability?

4.4 How could the PIRS strengthen States' and others' oversight and fiduciary responsibility for postsecondary education?

5. Questions Regarding Existing Ratings Systems

5.1 What are examples of systems used to rate the performance of other types of entities or services that could be used to inform the development of a PIRS?

5.2 What examples of existing ratings systems used to rate the performance of postsecondary institutions could be used to inform the development of a PIRS? What lessons learned from existing systems could inform a PIRS?

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request from Warren Farr at (202) 377–4380 or *Warren.Farr@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.

Authority: 20 U.S.C. 3402(4).

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2013–30011 Filed 12–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–249–000.

Applicants: WBI Energy Transmission, Inc.

Description: 2013 Revised Non-conforming Negotiated Rate SA—FT–513, 1056, 1109 to be effective 12/1/2013.

Filed Date: 12/3/13.

Accession Number: 20131203–5048.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: RP14–250–000.

Applicants: Stingray Pipeline Company, L.L.C.

Description: Revise System Map to be effective 1/1/2014.

Filed Date: 12/4/13.

Accession Number: 20131204–5099.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: RP14–251–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company L.L.C., Petition for Approval of Stipulation and Agreement.

Filed Date: 12/4/13.

Accession Number: 20131204–5130.

Comments Due: 5 p.m. ET 12/16/13.

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 December 05, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29928 Filed 12–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–10–000.

Applicants: Ohio Valley Hub, LLC.

Description: Notice of Cancellation of Operating Statement.

Filed Date: 12/2/13.

Accession Number: 20131202–5165.

Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–252–000.

Applicants: Enable Gas Transmission, LLC.

Description: Negotiated Rate Filing—December 2013—Tenaska Att A 9840 to be effective 12/5/2013.

Filed Date: 12/5/13.

Accession Number: 20131205–5115.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: RP14–253–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Cancel X-Rate Schedules—Docket CP13–490 Compliance Filing to be effective 12/1/2013.

Filed Date: 12/5/13.

Accession Number: 20131205–5120.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: RP14–256–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: Volume No. 2—Rate Schedule X–65—Cancelled to be effective 12/1/2013.

Filed Date: 12/6/13.

Accession Number: 20131206–5058.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–257–000.

Applicants: Equitrans, L.P.

Description: Notice Regarding Non-Jurisdictional Gathering Facilities of Equitrans, L.P.

Filed Date: 12/6/13.

Accession Number: 20131206–5079.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–258–000.

Applicants: Bobcat Gas Storage.

Description: No-Notice Storage Service to be effective 3/1/2014.

Filed Date: 12/6/13.

Accession Number: 20131206–5142.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–259–000.

Applicants: Egan Hub Storage, LLC.

Description: No-Notice Storage Service to be effective 3/1/2014.

Filed Date: 12/6/13.

Accession Number: 20131206–5143.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–260–000.

Applicants: Steckman Ridge, LP.

Description: No-Notice Storage Service to be effective 3/1/2014.

Filed Date: 12/6/13.

Accession Number: 20131206–5144.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–261–000.

Applicants: Rager Mountain Storage Company LLC.

Description: Re-Collation Filing to be effective 12/31/9998.

Filed Date: 12/6/13.

Accession Number: 20131206–5165.

Comments Due: 5 p.m. ET 12/13/13.

Docket Numbers: RP14–262–000.

Applicants: Dominion Transmission, Inc.

Description: DTI—Petition for Approval of Settlement.

Filed Date: 12/6/13.

Accession Number: 20131206–5166.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–263–000.

Applicants: East Cheyenne Gas Storage, LLC.

Description: ECGS tariff filing to be effective 1/5/2014.

Filed Date: 12/6/13.

Accession Number: 20131206–5184.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–264–000.

Applicants: Rager Mountain Storage Company LLC.

Description: RMSC Compliance Filing Docket No. CP13–139–000 to be effective 12/31/9998.

Filed Date: 12/6/13.

Accession Number: 20131206–5194.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–265–000.

Applicants: Rockies Express Pipeline LLC.

Description: Neg Rate 2013–12–06 BP NC NRA to be effective 12/7/2013.

Filed Date: 12/6/13.

Accession Number: 20131206–5236.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–266–000.

Applicants: Carolina Gas Transmission Corporation.

Description: IT Revenue Sharing—BH to be effective 1/1/2014.

Filed Date: 12/9/13.

Accession Number: 20131209–5207.

Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–267–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/10/13 Negotiated Rates—ConEdison Energy Inc. (HUB) 2275–89 to be effective 12/10/2013.

Filed Date: 12/10/13.

Accession Number: 20131210–5020.

Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–268–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/11/13 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 12/11/2013.

Filed Date: 12/11/13.

Accession Number: 20131211–5000.

Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–269–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/11/13 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 12/11/2013.

Filed Date: 12/11/13.

Accession Number: 20131211–5001.

Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–270–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/11/13 Negotiated Rates—Tenaska Gas Storage, LLC (HUB) to be effective 12/11/2013.

Filed Date: 12/11/13.

Accession Number: 20131211–5002.

Comments Due: 5 p.m. ET 12/23/13.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–182–001.

Applicants: Natural Gas Pipeline Company of America.

Description: Amendment to Negotiated Rate—Town of Corning, IL to be effective 12/1/2013.

Filed Date: 12/5/13.

Accession Number: 20131205–5160.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: RP14–183–001.

Applicants: Natural Gas Pipeline Company of America.

Description: Amendment to Negotiated Rate—City of Sullivan to be effective 12/1/2013.

Filed Date: 12/6/13.

Accession Number: 20131206–5178.

Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP13–1371–001.

Applicants: Eastern Shore Natural Gas Company.

Description: Correction of eTariff Metadata to be effective 11/1/2013.

Filed Date: 12/9/13.

Accession Number: 20131209–5222.

Comments Due: 5 p.m. ET 12/23/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: December 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29929 Filed 12–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–2–001.
Applicants: Washington 10 Storage Corporation.
Description: Tariff filing per 284.123/.224: Replace the term negotiated with Agreed-Upon to be effective 12/10/2013.
Filed Date: 12/10/13.
Accession Number: 20131210–5006.
Comments Due: 5 p.m. ET 12/18/13.

Docket Numbers: RP14–272–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 12/11/2013 Negotiated Rates—United Energy Trading, LLC (RTS) to be effective 12/11/2013.
Filed Date: 12/11/13.
Accession Number: 20131211–5109.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–273–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: ConocoPhillips 12–12–2013 Release to be effective 12/12/2013.
Filed Date: 12/11/13.
Accession Number: 20131211–5140.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–274–000.
Applicants: NGO Transmission, Inc.
Description: NGO Transmission, Inc. submits tariff filing per 154.204: NGO Transmission, Inc.—Negotiated Rate Filing to be effective 1/1/2014.
Filed Date: 12/11/13.
Accession Number: 20131211–5147.
Comments Due: 5 p.m. ET 12/23/13.

Docket Numbers: RP14–275–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Amendments to Neg Rate Agmts (EOG 34687–14, 34950–3) to be effective 12/12/2013.
Filed Date: 12/12/13.
Accession Number: 20131212–5027.
Comments Due: 5 p.m. ET 12/24/13.

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.

Filings in Existing Proceedings

Docket Numbers: RP14–224–001.
Applicants: WTG Hugoton, LP.
Description: WTG Hugoton, LP submits tariff filing per 154.205(b): WTG Hugoton, LP 2013 Annual Charge Adjustment Compliance Filing to be effective 10/1/2013.
Filed Date: 12/11/13.
Accession Number: 20131211–5079.
Comments Due: 5 p.m. ET 12/23/13.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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: December 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29930 Filed 12–16–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0547; FRL 9903–29–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Performance Evaluation Studies on Wastewater Laboratories (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Performance Evaluation Studies on Wastewater Laboratories (Renewal)'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2014. Public comments were previously requested via the **Federal Register** (78 FR 41926) on July 12, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 16, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0547, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brian Krausz, Office of Compliance, Monitoring, Assistance, and Media Programs Division, 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–3069; fax number: 202–564–0038; email address: *krausz.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the

Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

EPA ICR Number: 0234.11.

OMB Control Number: 2080–0021

Abstract: Discharge Monitoring Report-Quality Assurance (DMR–QA) study program participation is mandatory for major and selected minor National Pollution Discharge Elimination System (NPDES) permit holders in accordance with Clean Water Act Section 308. The DMR–QA study program is designed to evaluate the analytic ability of the laboratories that perform chemical, microbiological and whole effluent toxicity (WET) analyses required in the NPDES permits for reporting results in the Discharge Monitoring Reports (DMR). Under DMR–QA, the permit holder is responsible for having their in-house and/or contract laboratories perform proficiency tests and submit results for grading by proficiency test (PT) providers. Graded results are transmitted by either the permittee or PT provider to the appropriate federal or state NPDES regulatory authority. Permit holders are responsible for submitting corrective action reports to the appropriate regulatory authority.

Form Numbers: EPA Form 6400–01.

Respondents/affected entities: Major and selected minor permit holders under the Clean Water Act's National Pollution Discharge Elimination System (NPDES).

Respondent's obligation to respond: Mandatory under Clean Water Act Section 308(a).

Estimated number of respondents: 5,509 (total).

Frequency of response: Major permit holders must participate annually. Minor permit holders must participate if selected by the state or EPA DMR–QA coordinator.

Total estimated burden: 36,361 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,176,263 (per year), includes $2,376,638 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 5,150 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease in burden hours can be attributed to a number of states obtaining full or partial waivers from this activity through agreements with the EPA. Labor costs were revised upward to take into account employee benefit compensation costs and inflation. Non-labor costs for obtaining proficiency test samples increased because of an update to the list of most commonly used analytes, and due to inflation.

Richard T. Westlund,

Acting Director, Collection Strategies Division.

[FR Doc. 2013–29862 Filed 12–16–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9904–21–OW]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Mosaic Fertilizer, LLC Uncle Sam, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Mosaic Fertilizer, LLC for two Class I injection wells located at Uncle Sam, LA. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Mosaic, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection wells WDW–1 and WDW–2 for 57 years from the date of the petition approval, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued September 24, 2013. The public comment period closed on November 26, 2013. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of December 4, 2013.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: December 4, 2013.

David F. Garcia

Deputy Director, Water Quality Protection Division.

[FR Doc. 2013–29983 Filed 12–16–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 18, 2014. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov (mailto:PRA@fcc.gov)* and to *Cathy.Williams@fcc.gov (mailto:Cathy.Williams@fcc.gov).*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Reinstatement without change a previously approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

47 CFR 74.784(b) states that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

47 CFR 74.1284 requires that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29870 Filed 12–16–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 18, 2014. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0057.

Title: Application for Equipment Authorization, FCC Form 731.

Form Number: FCC 731.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 3,740 respondents; 22,250 responses.

Time per Response: 35 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 778,750 hours.

Total Annual Costs: $ 34,465,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. There is an increase in respondents/burden estimates in this information collection.

Commission rules require that manufacturers of certain radio frequency (RF) equipment file FCC Form 731 to obtain approval prior to marketing their equipment. Manufacturers may then market their RF equipment based on a showing of compliance with technical standards established in the FCC Rules for each type of equipment or device operated under the applicable FCC Rule part. The following types of equipment are regulated (a) the RF equipment is regulated under certain rule sections of 47 CFR Part 15 and Part 18, and (b) in addition, rules governing certain RF equipment operating in the licensed services also require equipment authorization as established in the procedural rules in 47 CFR Part 2. The RF equipment manufacturers comply with the information collection requirements by (a) Filing FCC Form 731 electronically with the Commission, or (b) Submitting the information to a Telecommunications Certification Body (TCB), which acts on behalf of the FCC to issue grants of certification and may issue grants more expeditiously than the FCC. The TCBs have flexibility in the format in which they require the collection of information (i) TCBs may require applicants to submit the required information in FCC Form 731 format or in another format selected by the TCB, but (ii) whatever the information collection method, the information required is governed by the procedural rules in 47 CFR Part 2 and a showing of compliance with the FCC technical standards for the specific type of equipment. RF manufacturer applicants for equipment certification may also request ''expedited authorization'' to market their equipment by: (a) Choosing to pay the fee levied by a TCB, and (b) submitting their request to a TCB in order for expedited authorization to market. The TCB processes the RF equipment manufacturer's application as follows: (i) the TCB receives and reviews the RF manufacturer's information submission/application; and (ii) the TCB enters the information into the FCC Equipment Authorization System database using an interface that provides the TCB with the tools to issue a standardized Grant of Equipment Authorization. Whichever method the RF manufacturers choose to submit their information-via either the FCC on FCC Form 731 or the TCB, FCC Rules require that applicants supply the following data: (a) demographic information including Grantee name and address, contact information, etc; (b) information specific to the equipment including FCC Identifier, equipment class, technical specifications, etc; and (c) attachments that demonstrate compliance with FCC Rules that may include any combination of the following based on the applicable Rule parts for the equipment for which authorization is requested: (1) Identification of equipment (47 CFR 2.925); (2) attestation statements that may be required for specific equipments; (3) external photos of the equipment for which authorization is requested; (4) block diagram of the device; (5) schematics; (6) test report; (7) test setup photos; (8) Users Manual; (9) Internal Photos; (10) Parts List/Tune Up Information; (11) RF Exposure Information; (12) Operational Description; (13) Cover Letters; and, (14) Software Defined Radio/Cognitive Radio Files.

In general, an applicant's submission is as follows: (a) FCC Form 731 includes approximately two pages covering the demographic and equipment identification information; and (b) applicants must supply additional documentation and other information, as described above, demonstrating conformance with FCC Rules, which may range from 100–1000 pages. The supplemental information is essential to control potential interference to radio communications, which the FCC may use, as is necessary, to investigate complaints of harmful interference. In response to new technologies and in allocating spectrum, the Commission may establish new technical operating standards: (a) RF equipment manufacturers must meet the new standards to receive an equipment authorization, and (b) RF equipment manufacturers must still comply with the Commission's requirements in FCC Form 731 and demonstrate compliance as required by 47 CFR Part 2 of FCC Rules. Thus, this information collection applies to a variety of RF equipment: (a) that is currently manufactured, (b) that may be manufactured in the future, and (c) that operates under varying technical standards. On July 8, 2004, the Commission adopted a *Report and Order,* Modification of Parts 2 and 15 of the Commission's Rules for Unlicensed Devices and Equipment Approval, ET Docket No. 03–201, FCC 04–165. The change requires that all paper filings required in 47 CFR Sections 2.913, 2.926(c), 2.929(c), and 2.929(d) of the rules are outdated and now must be filed electronically via the Internet on FCC Form 731. The Commission believes that electronic filing speeds up application processing and supports the Commission in further streamlining to reduce cost and increase efficiency. Information on the procedures for electronically filing equipment authorization applications can be obtained from the Commission's rules, and from the Internet at: *<http://transition.fcc.gov/oet/ea/ea_app_info.html>.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–29872 Filed 12–16–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke, Interagency Pain Research Coordinating Committee; Call for Committee Membership Nominations

The Department of Health and Human Services (Department) has created the Interagency Pain Research Coordinating Committee and is seeking nominations for this committee. As specified in Public Law 111–148 (''Patient Protection and Affordable Care Act'') the Committee will: (a) Develop a summary of advances in pain care research supported or conducted by the Federal agencies relevant to the diagnosis, prevention, and treatment of pain and diseases and disorders associated with pain; (b) identify critical gaps in basic and clinical research on the symptoms and causes of pain; (c) make recommendations to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort; (d) make recommendations on how best to disseminate information on pain care; and (e) make recommendations on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership on the committee will include six (6) non-Federal members from among scientists, physicians, and other health professionals and six (6) non-Federal members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions. Members will serve overlapping three year terms. It is anticipated that the committee will meet at least once a year.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every

effort is made to ensure that the views of all ethnic and racial groups and people with disabilities are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Department is soliciting nominations for three non-federal members from among scientists, physicians, and other health professionals and for two non-federal members of the general public who are representatives of leading research, advocacy, and service organizations for people with pain-related conditions. These candidates will be considered to fill positions opened through completion of member terms. Nominations are due by COB, January 22, 2014, and should be sent to Linda Porter, Ph.D., NINDS/NIH, 31 Center Drive, Room 8A03, Bethesda, MD 20892, *porterl@ninds.nih.gov* by either USPS mail or email. Nominations should include contact information, and a current curriculum vitae or resume.

Dated: December 5, 2013.

Story C. Landis,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2013–29869 Filed 12–16–13; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. FFIEC–2013–0002]

Social Media: Consumer Compliance Risk Management Guidance

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice; final guidance.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of its members, is issuing this final supervisory guidance entitled ''Social Media: Consumer Compliance Risk Management Guidance'' (Guidance). The Guidance is being published after consideration of comments received from the public. The Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); and the Consumer Financial Protection Bureau (CFPB) (collectively, the Agencies) will use it as supervisory guidance for the institutions that they supervise, and the State Liaison Committee (SLC) of the FFIEC encourages state regulators to adopt the Guidance. Accordingly, financial institutions are expected to use the Guidance in their efforts to ensure that their policies and procedures provide oversight and controls commensurate with the risks posed by their involvement with social media.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT:

OCC: Eric Gott, Compliance Specialist, Office of the Comptroller of the Currency, 400 7th Street SW., Washington DC 20219, (202) 649–7181.

Board: Lanette Meister, Senior Supervisory Consumer Financial Services Analyst, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, (202) 452–2705.

FDIC: Elizabeth Khalil, Senior Policy Analyst, Federal Deposit Insurance Corporation, 550 17th Street NW., Room F–6016, Washington, DC 20429–0002, (202) 898–3534.

NCUA: Robert J. Polcyn, Consumer Compliance Policy and Outreach Analyst, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314, (703) 664–3916.

CFPB: Edna Boateng, Senior Consumer Financial Protection Analyst, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7697.

SLC: Matthew Lambert, Policy Counsel, Conference of State Bank Supervisors, 1129 20th Street NW., 9th Floor, Washington, DC 20036, (202) 407–7130.

SUPPLEMENTARY INFORMATION:

I. Background Information

The FFIEC is publishing this Guidance to address the applicability of federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as by nonbank entities supervised by the Consumer Financial Protection Bureau (CFPB) (collectively, financial institutions). The Guidance does not impose any new requirements on financial institutions. Rather, it is a guide to help financial institutions understand the applicability of existing requirements and supervisory expectations associated with the use of social media. Financial institutions are expected to manage risks associated with all types of consumer and customer communications, no matter the medium. The Guidance provides considerations that financial institutions may find useful in conducting risk assessments and crafting and evaluating policies and procedures regarding social media. Thus, rather than discouraging the use of social media or establishing any new obligations related to the use of this technology, the Guidance is intended to help financial institutions understand and successfully manage risks in this area.

The six members of the FFIEC are the Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the National Credit Union Administration (NCUA); the Consumer Financial Protection Bureau (CFPB) (collectively, the Agencies); and the State Liaison Committee (SLC). As part of its mission, the FFIEC makes recommendations regarding supervisory matters and the adequacy of supervisory tools to the Agencies. The FFIEC also develops procedures for examinations of financial institutions that are used by the Agencies. The Agencies expect that all financial institutions they supervise will effectively assess and manage risks associated with activities conducted via social media. The Agencies and SLC will use this Guidance to the extent consistent with their respective authorities. After consideration of comments received from the public, the FFIEC is issuing this document on behalf of its members as guidance to the institutions that the member Agencies supervise. Accordingly, such institutions are expected to use the Guidance in their efforts to ensure that their risk management and consumer protection practices adequately address consumer compliance and legal risks, as well as related risks, such as reputation and operational risks, raised by activities conducted via social media. The SLC, which is composed of representatives of five state agencies that supervise financial institutions, was established to encourage the application of uniform examination principles and standards by state and federal supervisory agencies. The SLC encourages the adoption of the Guidance by state regulators. State agencies that adopt the Guidance will expect the entities that they regulate to use the Guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and

reputation risks raised by activities conducted via social media.

Social media has been defined in a number of ways. For purposes of the Guidance, social media is a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille). Social media can be distinguished from other online media in that the communication tends to be more interactive. For purposes of this Guidance, messages sent via email or text message, standing alone, do not constitute social media, although such communications may be subject to a number of laws and regulations discussed in this Guidance. Social media is a dynamic and constantly evolving technology and thus any definition for this technology is meant to be illustrative and not exhaustive. In addition to the examples of social media mentioned above, other forms of social media may emerge in the future that financial institutions should also consider.

Financial institutions may use social media in a variety of ways, including marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example, by receiving and responding to complaints, or providing loan pricing. Since this form of customer interaction tends to be both informal and dynamic, and may occur in a less secure environment, it can present some unique challenges to financial institutions.

II. Principal Elements of Guidance

The use of social media by a financial institution to attract and interact with customers can impact a financial institution's risk profile. The increased risks can include the risk of harm to consumers, compliance and legal risk, operational risk, and reputation risk. Increased risk can arise from a variety of directions, including poor due diligence, oversight, or control on the part of the financial institution. This Guidance is meant to help financial institutions identify potential risk areas to appropriately address, as well as to ensure institutions are aware of their responsibilities to oversee and control these risks within their overall risk management program. The Agencies and the SLC recognize that the scope of social media activities vary by financial institution. Each institution is responsible for carrying out an appropriate risk assessment and maintaining a risk management program that is appropriate and tailored to the particular institution's size, activities, and risk profile.

III. Comments Received

On January 23, 2013, the FFIEC issued proposed guidance in response to requests articulated to the Agencies by various participants in the industry for guidance regarding the application of consumer protection laws and regulations within the realm of social media. 78 FR 4848 (Jan. 23, 2013). The FFIEC invited comments on any aspect of the proposal. In addition, the FFIEC specifically solicited comments in response to the following questions:

1. Are there other types of social media, or ways in which financial institutions are using social media, that are not included in the proposed guidance but that should be included?

2. Are there other consumer protection laws, regulations, policies or concerns that may be implicated by financial institutions' use of social media that are not discussed in the proposed guidance but that should be discussed?

3. Are there any technological or other impediments to financial institutions' compliance with otherwise applicable laws, regulations, and policies when using social media of which the Agencies should be aware?

The FFIEC received 81 official comments on the proposal. After consideration of all such comments, the FFIEC is issuing this final Guidance substantially as proposed, but with some changes. The changes are meant to provide further clarification of certain provisions, including those raised by commenters. For example, certain commenters expressed concerns that the proposed guidance appeared to be imposing, for all financial institutions, a single, ''one-size-fits-all'' approach to carrying out compliance and risk management responsibilities. The revised Guidance clarifies and points to the longstanding principle that financial institutions are expected to assess and manage the risks particular to the individual institution, taking into account factors such as the institution's size, complexity, activities, and third party relationships.

A number of commenters also provided feedback on the appropriate definition of social media. For purposes of this final Guidance, traditional emails and text messages, standing alone, are not social media. However, messages sent through social media channels are social media. Further, the Guidance cautions financial institutions to ensure that they are aware of the laws and regulations that may apply to emails and text messages, some of which overlap with laws and regulations discussed in this Guidance as applicable to social media.

Some commenters also requested further clarification regarding the application of certain specific laws and regulations to social media activities. The Guidance contains such further discussion in a number of sections on specific laws and regulations, such as the Community Reinvestment Act. Commenters also raised issues regarding employee use of social media. The Guidance does not require a particular approach to employee personal use of social media. This final Guidance clarifies that training and guidance should be provided to employees regarding official use of social media—that is, when employees communicate officially on behalf of the financial institution.

In addition, commenters raised questions about regulators' expectations for risk management practices regarding third parties with which a financial institution does not have a traditional vendor relationship. Such third-party relationships can still pose risks, including reputation risks, to the financial institution. The final Guidance clarifies that a financial institution should conduct an evaluation of, and perform due diligence appropriate to, the risks posed by the prospective third party prior to engaging with it.

Commenters also expressed concerns that this Guidance would require financial institutions to monitor all communications about the institution on Internet sites other than those maintained by or on behalf of the institution. This final Guidance clarifies that financial institutions are not expected to conduct such monitoring.

Finally, some commenters questioned whether the Guidance implied that financial institutions are expected to treat all negative comments about the financial institution made on its proprietary social media sites as complaints and/or inquiries and process them accordingly. The final Guidance confirms that to the extent consistent with other applicable legal requirements, a financial institution may establish one or more specified channels that customers must use for submitting communications directly to

the institution. The Guidance also clarifies that financial institutions are not expected to monitor all Internet communications for complaints and inquiries about the institution. Rather, the financial institution should take into account the results of its own risk assessment in determining the appropriate approach to take regarding monitoring of, and any response to, such communications.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA),[1] an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Guidance does not involve any new collections of information pursuant to the PRA. Consequently, no information was submitted to the OMB for review.

The text of the interagency Social Media: Consumer Compliance Risk Management Guidance follows:

Social Media: Consumer Compliance Risk Management Guidance

I. Purpose

The Federal Financial Institutions Examination Council (FFIEC), on behalf of its members, is issuing this Guidance. The members are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB) (collectively, the Agencies), and the State Liaison Committee (SLC). The FFIEC is issuing, and the Agencies are adopting, this Guidance to address the applicability of existing federal consumer protection and compliance laws, regulations, and policies to activities conducted via social media by banks, savings associations, and credit unions, as well as by nonbank entities supervised by the CFPB (collectively, financial institutions). Various industry participants expressed a need for guidance in this area. The Agencies and SLC will use this Guidance to the extent consistent with their respective authorities.

The Guidance is intended to help financial institutions understand potential consumer compliance and legal risks, as well as related risks, such as reputation and operational risks associated with the use of social media, along with expectations for managing those risks. The Guidance provides considerations that financial institutions may find useful in conducting risk assessments and crafting and evaluating policies and procedures regarding social media. Although this Guidance does not impose any new requirements on financial institutions, as with any process or product channel, financial institutions are expected to manage potential risks associated with social media usage and access.

Financial institutions are using social media as a tool to generate new business and interact with consumers. Social media, as any new communication technology, has the potential to improve market efficiency. Social media may more broadly distribute information to users of financial services and may help users and providers find each other and match products and services to users' needs. To manage potential risks to financial institutions and consumers, however, financial institutions should ensure their risk management programs provide oversight and controls commensurate with the risks presented by the types of social media in which the financial institution is engaged, including, but not limited to, the risks outlined within this Guidance.

II. Background

Social media has been defined in a number of ways. For purposes of this Guidance, social media is considered to be a form of interactive online communication in which users can generate and share content through text, images, audio, and/or video. Social media can take many forms, including, but not limited to, micro-blogging sites (e.g., Facebook, Google Plus, MySpace, and Twitter); forums, blogs, customer review Web sites and bulletin boards (e.g., Yelp); photo and video sites (e.g., Flickr and YouTube); sites that enable professional networking (e.g., LinkedIn); virtual worlds (e.g., Second Life); and social games (e.g., FarmVille and CityVille). Social media can be distinguished from other online media in that the communication tends to be more interactive. For purposes of this Guidance, messages sent via traditional email or text message, standing alone, do not constitute social media, although such communications may be subject to a number of laws and regulations discussed in this Guidance. However, messages sent through social media channels are social media. Social media is a dynamic and constantly evolving technology and thus any definition for this technology is meant to be illustrative and not exhaustive. In addition to the examples of social media mentioned above, other forms of social media may emerge in the future that financial institutions should also consider.

Financial institutions may use social media in a variety of ways including advertising and marketing, providing incentives, facilitating applications for new accounts, inviting feedback from the public, and engaging with existing and potential customers, for example by receiving and responding to complaints, or providing loan pricing. Since this form of customer interaction tends to be both informal and dynamic, and may occur in a less secure environment, it can present some unique challenges to financial institutions.

III. Compliance Risk Management Expectations for Social Media

A financial institution should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media. The size and complexity of the risk management program should be commensurate with the breadth of the financial institution's involvement in this medium. For instance, a financial institution that relies heavily on social media to attract and acquire new customers should have a more detailed program than one using social media only to a very limited extent. However, in accordance with its own risk assessment, a financial institution that has chosen not to use social media should still consider the potential for negative comments or complaints that may arise within the many social media platforms described above, and, when appropriate, evaluate what, if any, action it will take to monitor for such comments and/or respond to them.

The risk management program should be designed with participation from specialists in compliance, technology, information security, legal, human resources, and marketing. Financial institutions should also provide guidance and training for employee official use of social media. Components of a risk management program should include the following:

- A governance structure with clear roles and responsibilities whereby the board of directors or senior management direct how using social media contributes to the strategic goals of the institution (for example, through increasing brand awareness, product advertising, or researching new customer bases) and establish controls and ongoing assessment of risk in social media activities;
- Policies and procedures (either stand-alone or incorporated into other policies and procedures) regarding the use and monitoring of social media and compliance with all applicable

[1] 44 U.S.C. 3501 *et seq.*

consumer protection laws and regulations, and incorporation of guidance as appropriate. Further, policies and procedures should incorporate methodologies to address risks from online postings, edits, replies, and retention;

- A risk management process for selecting and managing third-party relationships in connection with social media;
- An employee training program that incorporates the institution's policies and procedures for official, work-related use of social media, and potentially for other uses of social media, including defining impermissible activities;
- An oversight process for monitoring information posted to proprietary social media sites administered by the financial institution or a contracted third party;
- Audit and compliance functions to ensure ongoing compliance with internal policies and all applicable laws and regulations, and incorporation of guidance as appropriate; and
- Parameters for providing appropriate reporting to the financial institution's board of directors or senior management that enable periodic evaluation of the effectiveness of the social media program and whether the program is achieving its stated objectives.

IV. Risk Areas

The use of social media to attract and interact with customers can impact a financial institution's risk profile, including risk of harm to consumers, compliance and legal risks, operational risks, and reputation risks. Increased risk can arise from poor due diligence, oversight, or control on the part of the financial institution. As noted previously, this Guidance is meant to help financial institutions identify potential risks to ensure institutions are aware of their responsibilities to address risks within their overall risk management program.

Compliance and Legal Risks

Compliance and legal risk arise from the potential for violations of, or nonconformance with, laws, rules, regulations, prescribed practices, internal policies and procedures, or ethical standards. These risks also arise in situations in which the financial institution's policies and procedures governing certain products or activities may not have kept pace with changes in the marketplace. This concern is particularly pertinent to an emerging medium like social media. Further, the potential for defamation or libel risk exists where there is broad distribution of information exchanges. Failure to adequately address these risks can expose an institution to enforcement actions and/or civil lawsuits.

The laws and regulations discussed in this Guidance do not contain exceptions regarding the use of social media. Therefore, to the extent that a financial institution uses social media to engage in lending, deposit services, or payment activities, it must comply with applicable laws and regulations as when it engages in these activities through other media. Financial institutions should remain aware of developments involving such laws and regulations.

The following laws and regulations may be relevant to a financial institution's social media activities. This list is not all-inclusive. Each financial institution should ensure that it periodically evaluates and controls its use of social media to ensure compliance with all applicable federal, state, and local laws and regulations, and incorporation of guidance, as appropriate.

Deposit and Lending Products

Social media may be used to market products and originate new accounts. When used to do either, a financial institution is expected to take steps to ensure that advertising, account origination, and document retention are performed in compliance with applicable consumer protection and compliance laws and regulations. These measures may include, but are not limited to:

Truth in Savings Act/Regulation DD and Part 707.[2] The Truth in Savings Act (TISA), as implemented by Regulation DD, and, for credit unions, by Part 707 of the NCUA Rules and Regulations, imposes disclosure requirements designed to enable consumers to make informed decisions about deposit accounts. Regulation DD and Part 707 require disclosures about fees, annual percentage yield (APY), interest rate, and other terms. Under Regulation DD and Part 707, a depository institution may not advertise deposit accounts in a way that is misleading or inaccurate or misrepresents the depository institution's deposit contract.

○ If an electronic advertisement displays a triggering term, such as ''bonus'' or ''APY,'' then Regulation DD and Part 707 require the advertisement to clearly state certain information, such as the minimum balance required to obtain the advertised APY or bonus. For example, an electronic advertisement can provide the required information via a link that directly takes the consumer to the additional information.

Fair Lending Laws: Equal Credit Opportunity Act/Regulation B[3] *and Fair Housing Act.*[4] A financial institution should ensure that its use of social media does not violate fair lending laws and regulations.

○ The Equal Credit Opportunity Act, as implemented by Regulation B, prohibits creditors from making any oral or written statement, in advertising or other marketing techniques, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application. However, a creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.[5]

○ Creditors must observe the time frames outlined under Regulation B for notifying applicants of the outcome of their applications or requesting additional information for incomplete applications, whether those applications are received via social media or through other channels.

○ As with all prescreened solicitations, a creditor must preserve prescreened solicitations disseminated through social media, as well as the prescreening criteria, in accordance with Regulation B.[6]

○ When denying credit, a creditor must provide an adverse action notice detailing the specific reasons for the decision or notifying the applicant of his or her right to request the specific reasons for the decision.[7] This requirement applies whether the information used to deny credit comes from social media or other sources.

○ It is also important to note that creditors may not, with limited exceptions, request certain information, such as information about an applicant's race, color, religion, national origin, or sex. Since social media platforms may collect such information about participants in various ways, a creditor should ensure that it is not requesting, collecting, or otherwise using such information in violation of applicable fair lending laws. Particularly if the social media platform is maintained by a third party that may request or require users to provide personal information such as age and/or sex or use data

[2] 12 U.S.C. 4301 *et seq.,* 12 CFR parts 230 and 1030 and 12 CFR part 707 (NCUA).

[3] 15 U.S.C. 1691 *et seq.,* 12 CFR parts 202 and 1002 and 12 CFR 701.31 (NCUA).

[4] 42 U.S.C. 3601 *et seq.,* 24 CFR part 100 (HUD), 12 CFR part 128 (OCC), 12 CFR part 390 subpart G (FDIC), 12 CFR 701.31 (NCUA).

[5] 12 CFR part 1002, Comment 4(b)–2.

[6] 12 CFR 1002.12(b)(7).

[7] 12 CFR 1002.9(a)(2).

mining technology to obtain such information from social media sites, the creditor should ensure that it does not itself improperly request, collect, or use such information or give the appearance of doing so.

○ The Fair Housing Act (FHA), among other things, prohibits discrimination based on race, color, national origin, religion, sex, familial status, or handicap in the sale and rental of housing, in mortgage lending, and in appraisals of residential real property. In addition, the FHA makes it unlawful to advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition applies to all advertising media, including social media sites. For example, if a financial institution engages in residential mortgage lending and maintains a presence on Facebook, the Equal Housing Opportunity logo must be displayed on its Facebook page, as applicable.[8]

Truth in Lending Act/Regulation Z.[9] Any social media communication in which a creditor advertises credit products must comply with Regulation Z's advertising provisions. Regulation Z broadly defines advertisements as any commercial messages that promote consumer credit; and the official commentary to Regulation Z states that the regulation's advertising rules apply to advertisements delivered electronically. In addition, Regulation Z is designed to promote the informed use of consumer credit by requiring disclosures about loan terms and costs. The disclosure requirements vary based on whether the credit is open-end or closed-end. Further, within those two broad categories, additional specific requirements apply to certain types of loans such as private education loans, home secured loans, and credit card accounts.

○ Regulation Z requires that advertisements relating to credit present certain information in a clear and conspicuous manner. It includes requirements regarding the proper disclosure of the annual percentage rate and other loan features. If an advertisement for credit states specific credit terms, it must state only those terms that actually are or will be arranged or offered by the creditor.

○ For electronic advertisements, such as those delivered via social media, Regulation Z permits providing the required information on a table or schedule that is located on a different page from the main advertisement if that table or schedule is clear and conspicuous and the advertisement clearly refers to the page or location.

○ Regulation Z requires that, for consumer loan applications taken electronically, the financial institution must provide the consumer with all Regulation Z disclosures within the required time frames. Regulation Z does not exempt applications taken via social media.

Real Estate Settlement Procedures Act. Section 8 of the Real Estate Settlement Procedures Act (RESPA)[10] prohibits certain activities in connection with federally related mortgage loans. These prohibitions include fee splitting, as well as giving or accepting a fee, kickback, or thing of value in exchange for referrals of settlement service business. RESPA also has specific timing requirements for certain disclosures. These requirements apply to applications taken electronically, including via social media.

Fair Debt Collection Practices Act.[11] The Fair Debt Collection Practices Act (FDCPA) restricts how debt collectors (generally defined as third parties collecting others' debts and entities collecting debts on their own behalf if they use a different name) may collect debts. The FDCPA generally prohibits debt collectors from publicly disclosing that a consumer owes a debt. Using social media to inappropriately contact consumers, or their families and friends, may violate the restrictions on contacting consumers imposed by the FDCPA. Communicating via social media in a manner that discloses the existence of a debt or to harass or embarrass consumers about their debts (e.g., a debt collector writing about a debt on a Facebook wall) or making false or misleading representations may violate the FDCPA.

Unfair, Deceptive, or Abusive Acts or Practices. Section 5 of the Federal Trade Commission (FTC) Act[12] prohibits ''unfair or deceptive acts or practices in or affecting commerce.'' Sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[13] prohibit unfair, deceptive, or abusive acts or practices. An act or practice can be unfair, deceptive, or abusive despite technical compliance with other laws. A financial institution should not engage in any advertising or other practice via social media that could be deemed ''unfair,'' ''deceptive,'' or ''abusive.'' Of course, any determination as to whether an act or practice engaged in through social media is unfair, deceptive, or abusive, will necessarily be fact-specific. As with other forms of communication, a financial institution should ensure that information it communicates on social media sites is accurate, consistent with other information delivered through electronic media, and not misleading.[14]

Deposit Insurance or Share Insurance. A number of requirements regarding FDIC or NCUA membership and deposit insurance or share insurance apply equally to advertising and other activities conducted via social media as they do in other contexts.

○ *Advertising and Notice of FDIC Membership.*[15] Whenever a depository institution advertises FDIC-insured products, regardless of delivery channel, the institution must include the official advertising statement of FDIC membership, usually worded, ''Member FDIC.'' An advertisement is defined as ''a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.'' The official advertisement statement must appear, even in a message that ''promotes nonspecific banking products and services, if it includes the name of the insured depository institution but does not list or describe particular products or services.'' Conversely, the advertising statement is *not permitted* if the advertisement relates solely to nondeposit products or hybrid products (products with both deposit and nondeposit features, such as sweep accounts).

○ *Advertising and Notice of NCUA Share Insurance.*[16] Each insured credit union must include the official advertising statement of NCUA membership, usually worded, ''Federally insured by NCUA'' in advertisements regardless of delivery channel, unless specifically exempted. An advertisement is defined as ''a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.'' The official advertising statement must be in a size and print that is clearly legible and may be no smaller than the smallest font size used

[8] 12 CFR 128.4, 338.3, 390.145.

[9] 15 U.S.C. 1601 *et seq.;* 12 CFR parts 226 and 1026.

[10] 12 U.S.C. 2607. *See* Interagency Guidance, *Weblinking: Identifying Risks and Risk Management Techniques,* 5, 7 (2003), *available at http://www.occ.treas.gov/news-issuances/bulletins/2003/bulletin-2003-15a.pdf.*

[11] 15 U.S.C. 1692–1692p.

[12] 15 U.S.C. 45.

[13] 12 U.S.C. 5531, 5536.

[14] *See* FTC Guidance, including *Guides Concerning the Use of Endorsements and Testimonials in Advertising, available at http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf.*

[15] 12 CFR part 328.

[16] 12 CFR part 740.

in other portions of the advertisement intended to convey information to the consumer. If the official sign is used as the official advertising statement, an insured credit union may alter the font size to ensure its legibility. Each insured credit union must display the official NCUA sign on its Internet page, if any, where it accepts deposits or opens accounts.

○ *Nondeposit Investment Products.* As described in the ''Interagency Statement on Retail Sales of Nondeposit Investment Products,'' [17] when a depository institution recommends or sells nondeposit investment products to retail customers, it should ensure that customers are fully informed that the products are not insured by the FDIC or NCUA; are not deposits or other obligations of the institution and are not guaranteed by the institution; and are subject to investment risks, including possible loss of the principal invested.

Payment Systems

If social media is used to facilitate a consumer's use of payment systems, a financial institution should keep in mind the laws, regulations, and industry rules regarding payments that may apply, including those providing disclosure and other rights to consumers. Under existing law, no *additional* disclosure requirements apply simply because social media is involved (for instance, providing a portal through which consumers access their accounts at a financial institution). Rather, the financial institution should continue to be aware of the existing laws, regulations, guidance, and industry rules that apply to payment systems and evaluate which will apply. These may include the following:

Electronic Fund Transfer Act/ Regulation E.[18] The Electronic Fund Transfer Act (EFTA) and its implementing Regulation E provide specific protections, including required disclosures and error resolution procedures, to individual consumers who engage in ''electronic fund transfers'' and ''remittance transfers.''

Rules Applicable to Check Transactions. When a payment occurs via a check-based transaction rather than an EFT, the transaction will be governed by applicable industry rules [19] and/or Article 4 [20] of the Uniform Commercial Code of the relevant state, as well as the Expedited Funds Availability Act, as implemented by Regulation CC [21] (regarding the availability of funds and collection of checks).

Bank Secrecy Act/Anti-Money Laundering Programs (BSA/AML)

As required by the Bank Secrecy Act (BSA) [22] and applicable regulations,[23] depository institutions and certain other entities must have a compliance program that incorporates training from operational staff to the board of directors. Among other elements, the compliance program must include appropriate internal controls to ensure effective risk management and compliance with recordkeeping and reporting requirements under the BSA. Internal controls are the financial institution's policies, procedures, and processes designed to limit and control risks and to achieve compliance with the BSA. The level of sophistication of the internal controls should be commensurate with the size, structure, risks, and complexity of the financial institution. At a minimum, internal controls include but are not limited to: implementing an effective customer identification program; implementing risk-based customer due diligence policies, procedures, and processes; understanding expected customer activity; monitoring for unusual or suspicious transactions; and maintaining records of electronic funds transfers.

An institution's BSA/AML program must provide for the following minimum components: A system of internal controls to ensure ongoing compliance, independent testing of BSA/AML compliance, a designated BSA compliance officer responsible for managing compliance, and training for appropriate personnel. These controls should apply to all customers, products and services, including customers engaging in electronic banking (e-banking) through the use of social media, and e-banking products and services offered in the context of social media.

Financial institutions should also be aware of emerging areas of BSA/AML risk in the virtual world. For example, illicit actors are increasingly using Internet games involving virtual economies, allowing gamers to cash out, as a way to launder money. Virtual world Internet games and digital currencies present a higher risk for money laundering and terrorist financing and should be monitored accordingly.

Community Reinvestment Act [24]

Under the regulations implementing the Community Reinvestment Act (CRA), a depository institution subject to the CRA must maintain a public file that includes, among other items, all written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the institution's performance in helping to meet community credit needs. The institution must also include any response to those comments, as long as neither the comments nor the responses reflect adversely on the good name or reputation of any persons other than the institution, or publication of which would violate specific provisions of law. A depository institution subject to the CRA should ensure that its policies and procedures addressing public comments take into account such comments when they are received through social media sites run by or on behalf of the institution. However, under the CRA, comments about the institution made on the Internet through sites that are not run by or on behalf of the institution are not necessarily deemed to have been received by the depository institution and would not be required to be retained. Rather, the institution should retain comments made on sites run by or on behalf of the institution that specifically relate to the institution's performance in helping to meet community credit needs.

Privacy

Privacy rules have particular relevance to social media when, for instance, a financial institution collects, or otherwise has access to, information from or about consumers. A financial institution should take into consideration the following laws and regulations regarding the privacy of consumer information:

[17] Interagency Guidance, *Retail Sales of Nondeposit Investment Products* (Feb. 17, 1994).

[18] 15 U.S.C. 1693 *et seq.,* 12 CFR parts 205 and 1005.

[19] *See* Operating Rules of the National Automated Clearing House Association (NACHA), *available at http://www.achrulesonline.org/;* Rules of the Electronic Check Clearinghouse Organization (ECCHO), *available at https://www.eccho.org/cc/rules/Rules%20Summary-Mar%202012.pdf.*

[20] UCC Art. 4.

[21] 12 CFR part 229.

[22] ''Bank Secrecy Act'' is the name that has come to be applied to the Currency and Foreign Transactions Reporting Act (Titles I and II of Pub. L. 91–508), its amendments, and the other statutes referring to the subject matter of that Act. These statutes are codified at 12 U.S.C. 1829b, 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; and notes thereto.

[23] Bank Secrecy Act regulations are found throughout 31 CFR Chapter X. Also, the federal banking agencies require institutions under their supervision to establish and maintain a BSA compliance program. *See* 12 CFR 21.21, 163.177 (OCC); 12 CFR 208.63, 211.5(m), 211.24(j) (Board); 12 CFR 326.8, 390.354 (FDIC); 12 CFR 748.2 (NCUA). *See also* Treas. Dep't Order 180–01 (Sept. 26, 2002).

[24] 12 U.S.C. 2901 *et seq.,* 12 CFR parts 25, 195, 228, 345.

Gramm-Leach-Bliley Act Privacy Rules and Data Security Guidelines.[25] Title V of the Gramm-Leach-Bliley Act (GLBA) establishes requirements relating to the privacy and security of consumer information. Whenever a financial institution collects, or otherwise has access to, information from or about consumers, it should evaluate whether these rules will apply. The rules have particular relevance to social media when, for instance, a financial institution integrates social media components into customers' online account experience or takes applications via social media portals.

○ A financial institution using social media should clearly disclose its privacy policies as required under GLBA.

○ Even when there is no ''consumer'' or ''customer'' relationship triggering GLBA requirements, a financial institution will likely face reputation risk if it appears to be treating any consumer information carelessly or if it appears to be less than transparent regarding the privacy policies that apply on one or more social media sites that the financial institution uses.

CAN–SPAM Act[26] *and Telephone Consumer Protection Act.*[27] The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act) and Telephone Consumer Protection Act (TCPA) may be relevant if a financial institution sends unsolicited communications to consumers via social media. The CAN–SPAM Act and TCPA, and their implementing rules,[28] establish requirements for sending unsolicited commercial messages (''spam'') and unsolicited communications by telephone or short message service (SMS) text message, respectively. Financial institutions should be familiar with the provisions of the CAN–SPAM Act and TCPA to evaluate whether social media activities trigger the application of either or both laws.

Children's Online Privacy Protection Act.[29] The Children's Online Privacy Protection Act (COPPA) and the Federal Trade Commission's implementing regulation[30] impose obligations on operators of commercial Web sites and online services directed to children younger than 13 that collect, use, or disclose personal information from children, as well as on operators of general audience Web sites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13. A financial institution should evaluate whether it, through its social media activities, could be covered by COPPA.

○ Certain social media platforms require users to attest that they are at least 13, and a financial institution using those sites may consider relying on such policies. However, the financial institution should still take care to monitor whether it is actually collecting any personal information of a person under 13, such as when a child under 13 manages to post such information on the financial institution's site.

○ A financial institution maintaining its *own* social media site (such as a virtual world) should be especially careful to establish, post, and follow policies restricting access to the site to users 13 or older, especially when those sites could attract children under 13. This may be true, for instance, in the case of virtual worlds and any other features that resemble video games.

Fair Credit Reporting Act.[31] The Fair Credit Reporting Act (FCRA) and its implementing regulations[32] contain restrictions and requirements concerning making solicitations using eligibility information, responding to direct disputes, and collecting medical information in connection with loan eligibility. The FCRA applies when social media is used for these activities.

Reputation Risk

Reputation risk is the risk arising from negative public opinion. Activities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of the financial institution, even if the financial institution has not violated any law. Privacy and transparency issues, as well as other consumer protection concerns, arise in social media environments. Therefore, a financial institution engaged in social media activities is expected to be sensitive to, and properly manage, the reputation risks that arise from those activities. Reputation risk can arise in areas including the following:

Fraud and Brand Identity

Financial institutions should be aware that protecting their brand identity in a social media context can be challenging. Risk may arise in many ways, such as through comments made by social media users, spoofs of institution communications, and activities in which fraudsters masquerade as the institution. Financial institutions should consider the use of social media monitoring tools and techniques to identify heightened risk, and respond appropriately. Financial institutions should have appropriate policies in place to monitor and address in a timely manner the fraudulent use of the financial institution's brand, such as through phishing or spoofing attacks.

Third Party Concerns[33]

Working with third parties to provide social media services can expose financial institutions to substantial reputation risk. A financial institution should regularly monitor the information it places on social media sites. This monitoring is the direct responsibility of the financial institution, as part of a sound compliance management system, even when such functions may be delegated to third parties. Even if a social media site is owned and maintained by a third party, consumers using the financial institution's part of that site may blame the financial institution for problems that occur on that site, such as uses of their personal information they did not expect or changes to policies that are unclear. The financial institution's ability to control content on a site owned or administered by a third party and to change policies regarding information provided through the site may vary depending on the particular site and the contractual arrangement with the third party. A financial

[25] 15 U.S.C. 6801 *et seq.,* 12 CFR part 1016 (CFPB) and 16 CFR part 313 (FTC); *Interagency Guidelines Establishing Information Security Standards,* 12 CFR part 30, app. B and part 170, app. B (OCC); 12 CFR part 208, app. D–2 and part 225, app. F (Board); 12 CFR part 364, app. B (FDIC); 12 CFR part 748, app. A & B (NCUA); *Safeguards Rule,* 16 CFR part 314 (FTC).

[26] 15 U.S.C. 7701 *et seq.*

[27] 47 U.S.C. 227.

[28] 16 CFR part 316 (FTC); 47 CFR parts 64 and 68 (FCC).

[29] 15 U.S.C. 6501 *et seq.*

[30] 16 CFR part 312.

[31] 15 U.S.C. 1681–1681u.

[32] 12 CFR part 1022 (CFPB); 12 CFR part 41 (OCC); 12 CFR part 222 (Board); 12 CFR part 334 (FDIC); 12 CFR parts 717, 748 (NCUA).

[33] 12 U.S.C. 1813(u). Guidance from the Agencies addressing third-party relationships is generally available on their respective Web sites. *See, e.g.,* CFPB Bulletin 2012–03, *Service Providers* (Apr. 13, 2012), *available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf;* FDIC FIL 44–2208, *Managing Third-Party Risk* (June 6, 2008), *available at http://www.fdic.gov/news/news/financial/2008/fil08044a.html;* NCUA Letter to Credit Unions 07–CU–13, *Evaluating Third Party Relationships* (Dec. 2007), *available at http://www.ncua.gov/Resources/Documents/LCU2007–13.pdf;* OCC Bulletin OCC 2013–29, *Third-Party Relationships* (Oct. 30, 2013), *available at http://www.occ.gov/news-issuances/bulletins/2013/bulletin-2013–29.html;* Interagency Guidance, *Weblinking: Identifying Risks and Risk Management Techniques,* (2003), *available at http://www.occ.treas.gov/news-issuances/bulletins/2003/bulletin-2003–15a.pdf.;* NCUA Letter to Credit Unions 03–CU–08, Weblinking: Identifying Risks & Risk Management Techniques (April 2003), *available at http://ithandbook.ffiec.gov/media/resources/3315/ncu-03-cu-08_weblinking_tech.pdf.*

institution should thus weigh these issues against the benefits of using a third party to conduct social media activities.

A financial institution should conduct an evaluation and perform due diligence appropriate to the risks posed by the prospective service provider prior to engaging with the provider. To understand the risks that may arise from a relationship with a given third party, the institution should be aware of matters such as the third party's reputation in the marketplace; the third party's policies, including policies on collection and handling of consumer information, including the information of the institution's customers; the process and frequency by which the third party's policies may change; and what, if any, control the institution may have over the third party's policies or actions.

Privacy Concerns

Even when a financial institution complies with applicable privacy laws in its social media activities, it should consider the potential reaction by the public to any use of consumer information via social media. The financial institution should have procedures to address risks from occurrences such as members of the public posting confidential or sensitive information—for example, account numbers—on the financial institution's social media page or site.

Consumer Complaints and Inquiries

Although a financial institution can take advantage of the public nature of social media to address customer complaints and questions, reputation risks exist when the financial institution does not address consumer questions or complaints in a timely or appropriate manner. Further, the participatory nature of social media can expose a financial institution to reputation risks that may arise when users post critical or inaccurate statements. Compliance risk can also arise when a customer uses social media to communicate issues or concerns directly with a financial institution, such as an error dispute under Regulation E, a billing error under Regulation Z, or a direct dispute about information furnished to a consumer reporting agency under FCRA and its implementing regulations.

This Guidance does not require financial institutions to monitor and respond to all Internet communications; however, a financial institution is expected to take into account the results of its own risk assessments in determining the appropriate approach to take regarding monitoring of, and responding to, such communications. Appropriate steps may include, for example, establishing one or more specific channels consumers must use when submitting complaints or disputes directly to the institution for further investigation, to the extent consistent with other applicable legal requirements. However, the institution should also consider the risks, particularly the reputation risk, inherent in not responding to complaints and disputes received through other channels and tailor its policies and procedures accordingly, in a manner appropriate to the institution's size and risk profile.

Based on its own risk assessment processes, a financial institution should also consider whether and how to respond to communications disparaging the financial institution on other parties' social media sites. One approach to managing these risks would be to monitor question and complaint forums on social media sites to ensure that such inquiries, complaints, or comments are reviewed, and when appropriate, addressed in a timely manner.

Employee Use of Social Media Sites

Financial institutions should be aware that employees' communications via social media may be viewed by the public as reflecting the financial institution's official policies or may otherwise reflect poorly on the financial institution, depending on the form and content of the communications. Employee communications can also subject the financial institution to compliance risk, operational risk, as well as reputation risk. Therefore, as appropriate, financial institutions should take steps to address these risks, such as establishing policies and training to address employee participation in social media representing the financial institution. For example, if an employee is communicating with a customer regarding a loan product through an approved social media channel, policies should include steps to ensure the customer is receiving all of the required disclosures. This Guidance does not address any employment law principles that may be relevant to employee use of social media. In addition, the Guidance is not intended to impose any specific requirements for policies or procedures regarding employee personal use of social media. Each financial institution should evaluate the risks for itself and determine appropriate policies to adopt in light of those risks.

Operational Risk

Operational risk is the risk of loss resulting from inadequate or failed processes, people, or systems. The root cause can be either internal or external events.[34] Operational risk includes the risks posed by a financial institution's use of information technology (IT), which encompasses social media.

The identification, monitoring, and management of IT-related risks are addressed in the *FFIEC Information Technology Examination Handbook,*[35] as well as other supervisory guidance issued by the FFIEC or individual agencies.[36] A financial institution should pay particular attention to the booklets ''Outsourcing Technology Services'' [37] and ''Information Security'' [38] when using social media, and include social media in existing risk assessment and management programs.

Social media is one of several platforms vulnerable to account takeover and the distribution of malware. A financial institution should ensure that the controls it implements to protect its systems and safeguard customer information from malicious software adequately address social media usage. Financial institutions' incident response protocol regarding a security event, such as a data breach or account takeover, should include social media, as appropriate.

Conclusion

As noted previously, this Guidance is intended to help financial institutions understand and successfully manage the risks associated with use of social media. Financial institutions are using social media as a tool to generate new business and provide a dynamic environment to interact with consumers. As with any product channel, financial institutions are expected to manage potential risks to the financial institution and consumers by ensuring that their risk management programs provide appropriate oversight and control to address the risk areas discussed within this Guidance.

Dated: December 12, 2013.

[34] FFIEC IT Examination Handbook: Management booklet, 2–3 (June 2004), *available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_Management.pdf.*

[35] *Available at http://ithandbook.ffiec.gov/it-booklets.aspx.*

[36] FFIEC InfoBase at *http://ithandbook.ffiec.gov.*

[37] *Available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_OutsourcingTechnologyServices.pdf.*

[38] *Available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_InformationSecurity.pdf.*

Federal Financial Institutions Examination Council.

Judith E. Dupre,

FFIEC Executive Secretary.

[FR Doc. 2013–30004 Filed 12–16–13; 8:45 am]

BILLING CODE 7535–01–P; 6714–01–P; 6210–01–P; 4810–33–P; 4810–AM–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The George Breckenridge Family Trust, with Maureen Breckenridge as trustee, and Maureen Breckenridge as trustee of the George Breckenridge Family Trust and the Maureen Breckenridge Trust, individually, and the George Breckenridge Family Trust, the Maureen Breckenridge Trust, and Maureen Breckenridge as trustee of the George Breckenridge Family Trust and the Maureen Breckenridge Trust,* all of Yates City, Illinois, together as a group acting in concert, to retain voting shares of First Bancorp, Inc., and thereby indirectly retain voting shares of Bank of Yates City, both in Yates City, Illinois.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jay R. Trofholz,* Columbus, Nebraska, to retain voting shares of Valley Bank Shares, Inc., and thereby indirectly retain voting shares of First Nebraska Bank, both in Valley, Nebraska.

Board of Governors of the Federal Reserve System, December 12, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–29915 Filed 12–16–13; 8:45 am]

BILLING CODE 6210–01–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 January 10, 2014.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Van Buren Bancorporation ESOP,* Keosauqua, Iowa; to acquire at least an additional 6 percent, for a total of 50.1 percent of the voting shares of Van Buren Bancorporation, Keosauqua, Iowa, and thereby indirectly acquire additional voting shares of Community First Bank, Keosauqua, Iowa, and First Iowa State Bank, Albia, Iowa.

Board of Governors of the Federal Reserve System, December 12, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–29914 Filed 12–16–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Opportunity for Co-Sponsorship of the President's Challenge Physical Activity and Fitness Awards Program

AGENCY: President's Council on Fitness, Sports, and Nutrition, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The President's Council on Fitness, Sports, and Nutrition (PCFSN) announces the opportunity for non-federal public and private sector entities to co-sponsor and administer a series of financially self-sustaining activities related to the President's Challenge Physical Activity and Fitness Awards Program (President's Challenge). Potential co-sponsors must have a demonstrated interest in and be capable of managing the day-to-day operations associated with the program and be willing to participate substantively in the co-sponsored activity.

DATES: To receive consideration, a request to participate as a co-sponsor must be received by 5:00 p.m. EST on Friday, January 31, 2014, at the address listed. Requests will meet the deadline if they are either (1) received on or before the deadline; or (2) postmarked on or before the deadline. Private metered postmarks will not be accepted as proof of timely mailing. Hand-delivered requests must be received by 5:00 p.m. e.s.t. Requests that are received after the deadline date will be returned to the sender.

ADDRESSES: Proposals for co-sponsorship should be sent to Yesenia Díaz, Public Health Advisor, President's Council on Fitness, Sports, and Nutrition, 1101 Wootton Parkway, Suite 560, Rockville, MD 20852; Telephone: (240) 276–9865, Fax: (240) 276–9860. Proposals may also be submitted via email to: *Yesenia.diaz@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Yesenia Díaz, Public Health Advisor, President's Council on Fitness, Sports, and Nutrition, Telephone: (240) 276–9865, email: *Yesenia.diaz@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

PCFSN was originally established as the President's Council on Youth Fitness by President Dwight D. Eisenhower in 1956. In 2010, President Barack Obama issued Executive Order (EO) 13545, dated June 22, 2010, to amend EO 13265, dated June 6, 2002. EO 13545 changed the organization's name from the President's Council on Physical Fitness and Sports (PCPFS) to the President's Council on Fitness, Sports, and Nutrition (PCFSN); expanded the mission of the Council to include nutrition; and, increased the maximum number of members who serve on the Council from 20 to 25.

The Council advises the President, through the Secretary of Health and Human Services, about the challenges and opportunities to promote fitness, sports and nutrition across the United States. Specifically, the Council, as outlined in EO 13265, Section (3)(b), is directed to ''advise the Secretary on ways to promote regular physical activity, fitness, sports participation, and good nutrition. Recommendations may address, but are not necessarily limited to, public awareness campaigns; federal, state and local physical activity; fitness, sports participation, and nutrition initiatives; and partnership opportunities between public- and private-sector health-promotion entities.'' Section (3)(c) adds, ''The Council shall function as a liaison to relevant state, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the local, state, and national levels.'' In addition, the Council, as stated in Section (3)(d) ''shall monitor the need to enhance programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and shall advise the Secretary as necessary concerning such need.'' The EO also states in Section (1) that in implementing this order, the ''Secretary shall be guided by the science-based federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans.'' Through the authority of section 1704 of the Public Health Service Act, PCFSN may support and ''encourage others to support'' activities related to health information and promotion, including the publication of information and securing the cooperation of communication media.

The purpose of the President's Challenge is to motivate individuals six years of age and older to start and maintain a regular program of physical activity and good nutrition leading to improved health and fitness. Since its inception in 1966, the program has reached millions of American youth. In 2002, the program expanded to include adults aged 18 and older. Program materials are available in English and Spanish.

Requirements of Co-Sponsorship: PCFSN is seeking a co-sponsoring organization capable of managing the development and distribution of program awards and materials, responding to program inquiries, administering program Web sites, and identifying ways to enhance the program and participation. This co-sponsorship agreement will be in place for a period of four years beginning on September 1, 2014.

Awards Programs

A. Presidential Active Lifestyle Award (PALA+): Recognizing individuals aged six and older for being physically active and adopting healthy eating habits on a regular basis. Participants are encouraged to track their participation using an interactive web-based physical activity tracker or a paper log.

B. Presidential Champions: A web-based points program for individuals aged six and older. This program allows individuals to earn points based on the amount of daily of physical activity tracked. With an unlimited amount of time, individuals can earn different awards based on their levels of physical activity in the program. Awards included in this program: Platinum, Gold, Silver, and Bronze Awards.

C. Presidential Youth Fitness Program: The Presidential Youth Fitness Program provides a model for fitness education within a comprehensive, quality physical education program. The program provides resources and tools for physical educators to enhance their fitness education process. The Presidential Youth Fitness Program has replaced the President's Challenge Physical Fitness Test to emphasize the role of schools in promoting the health and well-being of ALL students.

D. Adult Fitness Test: A web-based test for adults aged 18 and older. No awards are currently linked to this test.

Distribution Center

Each of these program areas shall involve the promotion and distribution of award items. These items may include, but are not limited to, emblems, medallions, ribbons, lapel pins, certificates, bumper stickers, magnets, booklets, pedometers, and apparel. Participating organizations and individuals purchase awards and other program materials directly from the administering organization for a nominal fee. This program is designed to be financially self-sustaining.

Web SIte Administration

Administration of the President's Challenge Program Web sites (*www.pyfp.org, www.presidentschallenge.org,* and *www.adultfitnesstest.org*) shall consist of, but not be limited to, the following: hosting, maintenance, and customer service for an online order center as well as a listserv. Additionally, the co-sponsoring organization shall manage the President's Challenge Advocate on-boarding process and database with approval from PCFSN. All work performed in association with these Web sites shall be consistent with Section 508 compliance requirements.

Additional Roles and Responsibilities

The co-sponsoring organization shall help promote the program through outreach activities which may include: Exhibiting at conferences, speaking at events, and using social media. The co-sponsoring organization shall identify and recommend ways to enhance the program experience, delivery, and outreach.

Eligibility for Co-Sponsorship: To be eligible, a requestor shall: (1) Have a demonstrated interest and understanding of physical activity, physical fitness, sports, and nutrition; (2) participate substantively in the co-sponsored activity (not just provide funding or logistical support); (3) have an organizational or corporate mission that is consistent with the public health and safety mission of the Department of Health and Human Services; and (4) agree to sign a co-sponsorship agreement with PCFSN which will set forth the details of the co-sponsored activity including the requirements such that any fees raised should not be designed to exceed the co-sponsor's costs, and fees collected by the co-sponsor shall be limited to the amount necessary to cover the co-sponsor's related operating expenses.

The organization selected shall furnish the necessary personnel, materials, services, and facilities to administer the President's Challenge program, including the purchase and/or production of all program and award materials; distribution of program and award materials; promotion and statistical evaluation of the program; quarterly and annual budget and demographic reports; maintenance of partnership list; and other administrative duties. These duties will

be determined in a Memorandum of Agreement and an annual plan.

Co-Sponsorship Proposal: Each co-sponsorship proposal shall contain a description of: (1) The entity or organization; (2) its background in promoting physical activity, physical fitness, sports, and nutrition; (3) its proposed involvement in the co-sponsored activity; and (4) plan for implementation with a timeline.

Evaluation Criteria: PCFSN will select the co-sponsor using the following evaluation criteria:

(1) Requestor's qualifications and capability to fulfill co-sponsorship responsibilities;

(2) Requestor's creativity related to enhancing the program, including the medium through which program messages are delivered and ideas for improving program offerings;

(3) Requestor's potential for reaching underserved/special populations;

(4) Requestor's experience administering national awards programs;

(5) Requestor's past or current work specific to national programs or projects in the area(s) of physical activity, physical fitness, sports, and nutrition among individuals and in schools and organizations;

(6) Requestor's personnel: name, professional qualifications and specific expertise of key personnel who would be available to work on these projects;

(7) Requestor's facilities: availability and description of facilities required to administer the program including office space and information technology and telecommunication resources;

(8) Requestor's description of financial management: discussion of experience in developing an annual budget and collecting and managing monies from organizations and individuals; and

(9) Requestor's proposed plan for managing PCFSN awards programs, including such financial aspects as Web site development and/or enhancement, cost of program materials, and distribution of those items.

Availability of Funds: There are no federal funds available for this co-sponsorship.

Dated: December 11, 2013.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition, U.S. Department of Health and Human Services.

[FR Doc. 2013–29919 Filed 12–16–13; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 15, 2014, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 204886, vorapaxar sulfate, proposed trade name ZONTIVITY, 2.5 milligram tablets, submitted by Merck Sharp & Dohme Corp., Inc., for the proposed indication of reduction of atherothrombotic events in patients with a history of myocardial infarction (MI). The applicant also proposes that ZONTIVITY has been shown to reduce the rate of a combined endpoint of cardiovascular death, MI, stroke, and urgent coronary revascularization.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 9, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 3, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 6, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–29933 Filed 12–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 16, 2014, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss supplemental new drug application (sNDA) 202439/S–002, rivaroxaban, trade name XARELTO 2.5 milligram tablets, submitted by Janssen Pharmaceuticals, Inc., for the proposed indication to reduce the risk of thrombotic cardiovascular events in patients in the first 90 days after suffering acute coronary syndrome [ST elevation myocardial infarction, non-ST elevation myocardial infarction, or unstable angina].

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 9, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 3, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 6, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–29945 Filed 12–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 14, 2014, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room

(Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 203202, NORTHERA (droxidopa capsules), submitted by Chelsea Therapeutics, Inc., for the treatment of symptomatic neurogenic orthostatic hypotension in patients with primary autonomic failure (Parkinson's disease, multiple system atrophy, or pure autonomic failure), dopamine beta-hydroxylase deficiency, and non-diabetic autonomic neuropathy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 9, 2014. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 3, 2014. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 6, 2014.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–29917 Filed 12–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: HRSA AIDS Drug Assistance Program Quarterly Report *OMB No.* 0915–0294—Extension

Abstract: HRSA's AIDS Drug Assistance Program (ADAP) is funded through Part B of Title XXVI of the Public Health Service Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (The Ryan White HIV/AIDS Program), which provides grants to states and territories. ADAP provides medications for the treatment of HIV disease. Program funds may also be used to purchase health insurance for eligible clients or for services that enhance access, adherence, and monitoring of drug treatments.

Need and Proposed Use of the Information: Each of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific territories receive ADAP grants. As part of the funding requirements, ADAP grantees submit quarterly reports that include information on patients served, pharmaceuticals dispensed, pricing, sources of support to provide HIV/AIDS medications, eligibility requirements, cost data, and coordination with

Medicaid. Each quarterly report requests updates from programs on the number of patients served, type of pharmaceuticals dispensed, and prices paid to provide medications. The first quarterly report of each ADAP fiscal year (due in July of each year) also requests information that only changes annually (*e.g.,* state funding, drug formulary, eligibility criteria for enrollment, and cost-saving strategies including coordination with Medicaid).

Describe the need for the information and proposed use of the information: The quarterly report represents the best method for HRSA to determine how ADAP grant funds are expended and to provide answers to requests from Congress and other organizations.

Likely Respondents: ADAP Grantees.

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 Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
ADAP Quarterly Report—Qtr. 1	57	1	57	3.0	171.0
ADAP Quarterly Reports—Qtr. 1, 2, & 3	57	3	171	1.5	256.5
Total	57		228		427.5

HRSA specifically requests comments on (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.

Dated: December 9, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29991 Filed 12–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Health Resources and Services Administration (HRSA) has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received within 30 days of this notice.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Evaluation of the Frontier Community Health Care Network Coordination Grant

OMB No. 0915–xxxx—NEW.

Abstract: In fiscal year (FY) 2012, the Office of Rural Health Policy (ORHP) funded an evaluation of the Frontier Community Health Care Network Coordination (FCHCNC) grant. This 3-year grant program awarded to the Montana Department of Public Health and Human Services focuses on a community-based, client-centered clinical service coordination and health promotion model. The program will be coordinated by a clinically-trained Care Transitions Coordinator (CTC) working with Community Health Workers (CHW) in 11 participating network communities. By developing intervention with clients, the CTC and CHWs will work to improve care transitions and client outcomes by reducing or eliminating avoidable hospitalizations and re-hospitalizations, emergency room (ER) visits, and nursing home placements.

The program will be subject to a 3-year independent evaluation. As part of this 3-year evaluation, HRSA will be collecting qualitative and quantitative information. To support the qualitative analysis, HRSA will conduct site visits and telephonic key informant interviews with the critical access hospitals, tertiary hospitals, and the support staff coordinating the program. Data collection will focus on client/family satisfaction, whether goals were achieved in working with clients, and the strengths and challenges associated with implementing the program. Additionally, HRSA will be collecting data quarterly from the grantee sites in order to gain a deeper understanding of the program's implementation. Finally, quantitative data will be gathered for studying the effectiveness of each intervention, specifically identifying differences between pre- and post-intervention health care utilization, hospital readmissions, and other client-specific outcomes. Where data are available, HRSA will assess cost effectiveness of the program.

Need and Proposed Use of the Information

This evaluation will consist of reviewing the implementation and effectiveness of the FCHCNC grant for the 11 participating network communities. The evaluation will allow HRSA to determine the following objectives:

1. Identify the strengths and challenges that grantees and key partners used to implement the FCHCNC grant;

2. Assess the effectiveness of the grantees' implementation of the FCHCNC grant;

3. Determine client satisfaction and whether clients are meeting intervention goals; and

4. Assess health care utilization and cost savings associated with FCHCNC grant participation.

The evaluation will collect data from key stakeholders, grantee sites, and clients using the following methods:

1. In person and telephonic interviews;

2. Grantee data collection forms; and

3. Client satisfaction surveys.

ORHP is seeking approval from OMB for the three methods of data collection. A brief description of the data collection activities for which OMB approval is being sought is included below:

In Person and Telephonic Key Informant Interviews: Interviews will be conducted with hospital administrators, providers, the care transitions coordinator, community health workers, and clients participating in the program. The interview guides consist of open-ended questions designed to gather information on successes and challenges associated with the program design and implementation. Additionally, the interviews seek to gather information about the CHW training, client enrollment, intervention design for participants, and satisfaction with the program.

Grantee Data Collection: The data collected from each grantee site will provide details on program/client activity on a quarterly basis. The data will include the number of clients with whom the CHWs are involved, the intervention goals and objectives for each participant, resources used as part of the interventions, and the time it took for achievement of the goals. To provide insight on the effectiveness of the grantees' recruitment, grantee data collection will also provide information on CHWs' efforts to enroll clients and the successes and failures that they have with various recruitment methods.

Client Satisfaction Survey: The data collected as part of the client satisfaction survey will include data on types of health services used during their intervention and overall satisfaction with the FCHCNC program.

CMS Utilization and Cost Data: The data accessed for the FCHCNC program will include overall utilization of health services by clients enrolled in the program (including number of hospitalizations) and the cost of the associated care received by the clients enrolled in the program.

Likely Respondents: Hospital Administrators, primary care providers, community health workers, the care transition coordinator, staff from the Montana Department of Public Health and Human Services, staff from Montana Health Education and Research Foundation, and CHW clients.

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.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Client satisfaction survey	85	1	85	.16	13.6
Hospital Administrator Interview Protocol	22	1	22	.5	11.0
Primary care Provider Interview Protocol	22	1	22	.5	11.0
Community Health Worker Interview Protocol	11	1	11	1.0	11.0
Care Transitions Coordinator Interview Protocol	1	1	1	1.0	1.0
Grantee Interview Protocol	2	1	2	.5	1.0
Client Interview/Focus Group Protocol	22	1	22	.5	11.0
Grantee Data Collection Form	11	4	44	4	176.0
Total	176				231.6

Dated: December 9, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29944 Filed 12–16–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Outcomes Evaluation of the National Cancer Institute (NCI) Cancer Prevention Fellowship Program (CPFP)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 12, 2013, (Vol. 78 FR p. 48879) and allowed 60 days for public comment. One public comment was received on August 18, 2013 which questioned the effectiveness of the program and whether the study was an effective use of taxpayer funds. An email response was sent on September 9, 2013 stating, ''Your response will be reviewed in further consideration of all comments submissions made during the 60-day public notice period for this proposed information collection. Thank you for your inquiry, comments and/or suggestions''. The purpose of this notice is to allow an additional 30 days for

public comment. The National Cancer Institute (NCI), National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Attention: NIH Desk Officer.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Jessica Faupel-Badger, Ph.D., MPH, Cancer Prevention Fellowship Program, National Cancer Institute, 9609 Medical Center Drive, Room 2W136 MSC 9712, Bethesda, Maryland 20892–9712 or call non-toll-free number 240–276–5650 or Email your request, including your address to: *badgerje@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Outcomes Evaluation of the National Cancer Institute (NCI) Cancer Prevention Fellowship Program (CPFP)—0925—NEW—National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute's (NCI) Cancer Prevention Fellowship Program (CPFP) mission is to train early career scientists from diverse disciplines to become outstanding independent researchers and leaders. This postdoctoral program conducted on-site at NCI has been in existence for over 25 years and has approximately 200 alumni. The current study will focus on the implementation of a new survey instrument to capture career outcomes from CPFP alumni and two comparison groups, CPFP applicants and NCI F32 awardees. With the diversity of disciplines represented by CPFP alumni, the results of this evaluation will be of broad interest to the biomedical research training community.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 197.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
CPFP Alumni	160	1	25/60	67
CPFP Applicants	170	1	20/60	57
F32 Awardees	220	1	20/60	73

Dated: December 5, 2013.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2013–29868 Filed 12–16–13; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Approved by the Office of Management and Budget (OMB)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Leslie Smith, Office of the Managing Director, at (202) 418–0217, or email: *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1181.

OMB Approval Date: July 31, 2013.

OMB Expiration Date: July 31, 2016.

Title: Study Area Boundary Data Reporting in Esri Shapefile Format, DA 12–1777 and DA 13–282.

Form Number: N/A.

Respondents: Incumbent local exchange carriers, and state regulatory entities.

Number of Respondents and Responses: 1,443 respondents; 1,443 responses.

Estimated Time per Response: 26 hours.

Frequency of Response: Annually if changes to study area boundaries; biannually for recertification or previously submitted data.

Obligation to Respond: Required. Statutory authority for this information collection is contained in 47 U.S.C. 254(b).

Total Annual Burden: 7,924 hours for in-house work for large incumbent local exchange carriers.

Total Annual Cost: $705,935.00 contracting costs for small incumbent local exchange carriers.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission. Also, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission requires incumbent local exchange carriers (ILECs) to file shapefile maps of their service territories in a state (study area). State commission can also submit these data voluntarily for ILECs in their state. Shapefiles are a commonly used, digitized, geographic information system (GIS) format. Accurate study area boundaries are necessary for implementing various reforms adopted as part of the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, including the legitimate distribution of universal service support to rural, high cost carriers. Once ILECs have uploaded shapefiles to a web interface provided by the Commission, they must certify to

the accuracy of the study area boundary map data. Filers must submit updated boundary shapefiles if their study area boundaries change and must recertify the accuracy of the boundary data every two years.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–29866 Filed 12–16–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FW–R2–ES–2013–N286; FRES480102200B0–XXX–FF02ENEH00]

Proposed Information Collection; Survey of Residents' Attitudes on Jaguar Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by February 18, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–Jaguar Resident Survey'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

This survey is designed to elicit information about the public's perspectives on attitudes towards and beliefs about jaguars in the Northwestern Recovery Unit (southern Arizona and southwestern New Mexico). We plan to survey 200 residents, land-based business owners/operators, related government agency personnel, and local wildlife association and/or conservation organization members in the Northwestern Recovery Unit. The survey will gather information on people's current level of knowledge about jaguar ecology and status, people's attitudes towards jaguars, and the social barriers and opportunities to jaguar conservation in this region. The surveys will be in-person interviews. This information will aid us in identifying groups that might be interested in being involved or staying informed about jaguar conservation and highlighting groups with particular concerns that might be addressed in forthcoming policies or programs. We will use information gained from this survey to formulate future jaguar conservation strategies as well as to create educational and outreach materials for jaguar recovery.

II. Data

OMB Control Number: 1018–XXXX. This is a new collection.

Title: Survey of Residents' Attitudes on Jaguar Conservation.

Service Form Number: None.

Type of Request: Request for new OMB control number.

Description of Respondents: Individuals, businesses, organizations and State, local, or tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 50 hours.

Estimated Annual Nonhour Burden Cost: None.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone 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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 12, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29923 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–DMA–2013–N288; FXIA16710900000–145–FF09A30000]

Proposed Information Collection; Federal Fish and Wildlife Permit Applications and Reports—Management Authority

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on February 28, 2014. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by February 18, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0093'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about

this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection covers permit applications and reports that our Division of Management Authority uses to determine the eligibility of applicants for permits requested in accordance with the criteria in various Federal wildlife conservation laws and international treaties. Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50, Code of Federal Regulations (CFR). These regulations stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited.

We are not proposing any major changes to the applications and reports currently approved under OMB Control Number 1018–0093. You may view the currently approved forms at *http://www.fws.gov/forms/display.cfm?number1=200.* We are proposing a new application: FWS Form 3–200–88 (Musical Instrument (CITES)). The Musical Instrument application will be for multiple border crossings for noncommercial use (including, but not limited to, personal use, performance, display, or competition).

II. Data

OMB Control Number: 1018–0093.

Title: Federal Fish and Wildlife Permit Applications and Reports—Management Authority, 50 CFR 13, 15, 16, 17, 18, 21, and 23.

Service Form Numbers: 3–200–19 through 3–200–37, 3–200–39 through 3–200–44, 3–200–46 through 3–200–53, 3–200–58, 3–200–61, 3–200–64 through 3–200–66, 3–200–69 to 3–200–70, 3–200–73 through 3–200–76, 3–200–80, and 3–200–85 through 3–200–88.

Type of Request: Revision of a currently approved collection.

Description of Respondents: Individuals; biomedical companies; circuses; zoological parks; botanical gardens; nurseries; museums; universities; antique dealers; exotic pet industry; hunters; taxidermists; commercial importers/exporters of wildlife and plants; freight forwarders/brokers; and State, tribal, local, and Federal governments

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Number of Annual Respondents: 13,095.

Form/activity	Number of responses	Completion time per response	Total annual burden hours *
3–200–19—application	1,083	20 minutes	361
3–200–20—application	21	1 hour	21
3–200–21—application	201	45 minutes	151
Report—Argali Sheep	135	15 minutes	34
3–200–22—application	95	20 minutes	32
3–200–23—application	241	45 minutes	181
3–200–24—application	485	45 minutes	364
3–200–25—application	64	1 hour	64
3–200–26—application	618	20 minutes	206
3–200–27—application	113	45 minutes	85
3–200–28—application	95	30 minutes	48
3–200–29—application	270	2.5 hours	676
3–200–30—application	81	1 hour	81
3–200–30A—report	69	30 minutes	35
3–200–31—application	3	2 hours	6
3–200–32—application	614	1 hour	614
3–200–33—application	303	2 hours	606
3–200–34—application	107	20 minutes	36
3–200–35—application	3	1 hour	3
3–200–36—application	3	1 hour	3
3–200–37—application	165	2 hour	330
3–200–39—application	7	1 hour	7
3–200–39A—report	7	30 minutes	4
3–200–40—application	2	1 hour	2
3–200–40A—report	2	30 minutes	2
3–200–41—application	87	2 hours	174
3–200–41A—report	83	30 minutes	42
3–200–42—application	21	1 hour	21
3–200–43—application	19	2.33 hours	44
3–200–44—application	2	20 minutes	1
3–200–44A—report	1	1 hour	1
3–200–46—application	369	0.5	185
3–200–47—application	16	2 hours	32
3–200–48—application	4	1 hour	4
3–200–49—application	4	3 hours	12
3–200–50—application	2	10 hours	20
3–200–51—application	2	8 hours	16
3–200–52—application	198	15 minutes	50
3–200–53—application	4	2 hours	8
3–200–58—application	50	1 hour	50
3–200–61—application	25	43.5 hours	1,088
3–200–64—application	137	30 minutes	69
3–200–65—application	2	40 hours	80
3–200–66—application	50	15 minutes	12
3–200–69—application	3	30 minutes	2
3–200–70—application	16	30 minutes	8

Form/activity	Number of responses	Completion time per response	Total annual burden hours *
3–200–73—application	5,566	30 minutes	2,783
3–200–74—application	1,000	6 minutes	101
3–200–75—application	25	30 minutes	13
3–200–76—application	120	3 hours	360
3–200–80—application	15	3 hours	45
3–200–85—application	90	1 hour	90
3–200–86—application	15	1.5 hours	23
3–200–87—application	25	1 hour	25
3–200–88—application	40	45 minutes	30
Request for Approval of American Ginseng Program	2	12 hours	24
Report—Furbearers CITES Export Program	52	1 hour	52
Report—American Alligator CITES Export Program	10	1 hour	10
Application—Plant Rescue Center Program	3	1 hour	3
Report—Receipt and Condition of Specimens	250	30 minutes	125
Totals	13,095		9,555

* Rounded.

Estimated Annual Nonhour Burden Cost: $982,781 associated with application fees.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone 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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 12, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29921 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2013–N248; FRES480102200B0–XXX–FF02ENEH00]

Proposed Information Collection; Survey of Rancher Knowledge and Attitudes About Jaguar Habitat Conservation in Southern Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by February 18, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–Landowner'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

We have contracted with the University of Arizona to conduct a survey of approximately 300 southern Arizona landowners, ranchers, and ranch managers to determine their knowledge of and attitudes toward jaguar habitat, the level of knowledge regarding payments for ecosystem services, and attitudes and interest toward a payment for ecosystem services intended to benefit jaguar habitat. This survey is necessary because there is currently no statistically significant information available about rancher attitudes toward jaguar habitat or their understanding of payments for ecosystem services.

The survey will improve landowner knowledge on these issues and will inform our evaluation of the practicality of a payment for ecosystem services for the benefit of jaguar habitat in southern Arizona. It will also aid in the implementation of jaguar habitat conservation efforts by increasing our knowledge of landowner, rancher, and ranch manager attitudes toward jaguars and jaguar habitat management in southern Arizona.

Information collected in the survey will include data on knowledge of jaguar habitat attributes, opinions and attitudes about the designation of critical habitat in southern Arizona, knowledge of payment for ecosystem services programs generally, and opinions and attitudes about participation in payment for ecosystem services programs.

II. Data

OMB Control Number: 1018–None. This is a new collection.

Title: Survey of Rancher Knowledge and Attitudes about Jaguar Habitat Conservation in Southern Arizona.

Service Form Number: None.

Type of Request: Request for a new OMB control number.

Description of Respondents: Individuals.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Number of Annual Responses: 200.

Estimated Completion Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 67.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone 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 can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 12, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29922 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2013–N285; FF09E00000–134–FXES11120900000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on December 31, 2013. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before January 16, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0094'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0094.

Title: Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species.

Type of Request: Extension of a currently approved collection.

Affected Public: Individuals/households, businesses, State and local agencies, private organizations, and scientific and research institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for application forms and notifications; annually for reports.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Total annual burden hours
3–200—54 permit application	11	11	3	33
3–200—54 annual report	64	64	8	512
3–200—54 notifications (incidental take and change in landowner)	2	2	1	2
2–200—55 permit application	579	579	4	2,316
3–200—55 annual report	1,034	1,034	8	8,272
3–200—55 notification (escape of living wildlife)	1	1	1	1
3–200—56 permit application	60	60	3	180
3–200—56 annual report	748	748	10	7,480
Totals	2,499	2,499	.....	18,796

Estimated Annual Nonhour Burden Cost: $55,000 for fees associated with permit applications.

Abstract: We use the information we collect on permit applications to determine the eligibility of applicants for permits requested in accordance with various Federal wildlife conservation laws, including:

- Endangered Species Act (16 U.S.C. 1531 et seq.).
- Migratory Bird Treaty Act (16 U.S.C. 703 et seq.).
- Lacey Act (16 U.S.C. 3371 et seq.).

• Bald and Golden Eagle Protection Act (16 U.S.C. 668).

• Marine Mammal Protection Act (16 U.S.C. 1374).

Service regulations implementing these statutes and treaties are in chapter I, subchapter B of title 50 of the Code of Federal Regulations. These regulations stipulate general and specific requirements that when met allow us to issue permits to authorize activities that are otherwise prohibited. This ICR includes the following permit application forms and the reporting requirements for each permit:

• FWS Form 3–200–54 (Enhancement of Survival Permits Associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances).

• FWS Form 3–200–55 (Permits for Scientific Purposes, Enhancement of Propagation or Survival (i.e., Recovery) and Interstate Commerce).

• FWS Form 3–200–56 (Incidental Take Permits Associated with a Habitat Conservation Plan).

Comments: On June 17, 2013, we published in the **Federal Register** (78 FR 36237) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on August 16, 2013. We received one public comment stating that permits are issued too easily. The commenter did not address the information collection, and we did not make any changes to our requirements.

We again invite comments concerning this information collection on:

• Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

• The accuracy of our estimate of the burden for this collection of information;

• Ways to enhance the quality, utility, and clarity of the information to be collected; and

• Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone 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 can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: December 11, 2013.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2013–29920 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2013–N271; FXRS12610800000V2–134–FF08RSRC00]

Llano Seco Riparian Sanctuary Unit Restoration and Pumping Plant/Fish Screen Facility Protection Project, CA; Record of Decision

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (CDFW), announce that the record of decision (ROD) for the Llano Seco Riparian Sanctuary Unit Restoration and Princeton, Codora, Glenn & Provident Irrigation Districts (PCGID–PID) Pumping Plan/Fish Screen Facility Protection Project is now available. The ROD includes a statement of the decisions made, the basis for the decisions, a description of the alternative considered, a description of the environmentally preferable alternative, an overview of the measures to minimize environmental impacts, and a summary of public involvement in the decision-making process.

ADDRESSES: The ROD is available at:

• *Internet: www.fws.gov/refuge/sacramento river/* and *http://www.riverpartners.org/where-we-work/sanctuary/documents.html.*

FOR FURTHER INFORMATION CONTACT: Kelly Moroney, Refuge Manager, Sacramento River National Wildlife Refuge, 530–934–2801 (phone) or *kelly_moroney@fws.gov* (email); or Helen Swagerty, River Partners, 530–894–5401 (phone) or *hswagerty@riverpartners.org* (email).

SUPPLEMENTARY INFORMATION:

Background

The Llano Seco Riparian Sanctuary Unit was acquired by the Service in 1991 and added to the Sacramento River National Wildlife Refuge. The Service acquired the Llano Seco Riparian Sanctuary Unit as part of the Joint Management Agreement between Parrot Investment Co., The Nature Conservancy, California Department of Fish and Game, and the Service to cooperatively manage lands on the Llano Seco Ranch. The Llano Seco Riparian Sanctuary Unit is one piece of the larger Llano Seco Ranch, and was cleared of riparian vegetation for agricultural production by the previous landowner during the 1970s. Although the property has been out of agricultural production for close to 15 years, the habitat remains dominated by nonnative and invasive noxious weeds. Currently, just over 200 acres is farmed to dryland cereal crops to help control nonnative weeds.

Prior to acquisition by the Service, rock revetment was placed on the north end of the Llano Seco Riparian Sanctuary Unit by the Department of Water Resources in 1985 and 1986. The rock was placed in order to lock the Sacramento River in place, ensuring that flood flows would continue to be diverted from the Sacramento River through the Goose Lake overflow structure and into the Butte Basin. When the Service acquired the ranch property in 1991, we did so with the understanding that our management activities would not impact the Goose Lake overflow structure that diverts flood water into the Butte Basin.

Since the placement of rock revetment in 1986, the natural riverbank that is south of the revetment has eroded approximately 600 feet. The erosion on refuge property is directly across from the PCGID–PID pumping plant and fish screening facility. In 1999, the PCGID–PID consolidated three pumping plants into one new facility equipped with state-of-the-art fish screens. The fish-screening efficiency of the new PCGID–PID pumping plant is now endangered by the bank erosion on the refuge property and the migration of the Sacramento River. Although the rock revetment on the north edge of refuge property is decades old and eroding, it plays a key role in protecting the PCGID–PID pumping plant. As the bank erodes, the angle of flow and velocity of the water passing the screens will change, trapping fish against the screen rather than sweeping them past. Without some type of protection, it is likely the bank will continue to erode and the pumping plant facility will fail to meet guidelines for operation of the pumping-plant fish screens that were published by the National Marine Fisheries Service of National Oceanic and Atmospheric Administration (Department of Commerce).

National Environmental Policy Act Compliance

The Draft EIS/EIR was available for a 45-day public review and comment period, which we announced via several

methods, including public notices in local newspapers and a notice in the **Federal Register** (77 FR 26569, May 4, 2012). We held a public meeting to solicit comments on the Draft EIS/EIR on May 30, 2012. We identified and analyzed four alternatives in the Draft EIS/EIR.

Following public review of the Draft EIS/EIR, the Service and CDFW, in coordination with PCGID–PID, River Partners, and the design engineers, identified the preferred alternative, which includes installation of traditional riprap on the northwest bank of the Riparian Sanctuary, including a low berm along the gravel bar and a toe trench just off the gravel bar; removal of upstream rock; and site-specific plantings on the Riparian Sanctuary. A notice of availability of the Final EIS/EIR was published in the **Federal Register** on March 15, 2013. The record of decision documents our decision to support the implementation of the preferred alternative described in the Final EIS/EIR.

We provide this notice under regulations in the Code of Federal Regulations for implementing the National Environmental Policy Act (40 CFR 1506.6).

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region .

[FR Doc. 2013–30016 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10555, AA–10575, AA–10601; LLAK–944000–L14100000–HY0000–P]

Alaska Native Claims Selections

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Koniag, Inc. The decision will approve conveyance of only the surface estate in certain lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). The lands are located on Kodiak Island, Alaska, and aggregate 45.57 acres. Notice of the decision will also be published once a week for four consecutive weeks in the *Anchorage Daily News.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until January 16, 2014 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4 shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *blm_ak_akso_public_room@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Dina L. Torres,

Land Transfer Resolution Specialist, Division of Lands and Cadastral.

[FR Doc. 2013–29982 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM004410.L16100000.DO0000.LXSSG0690000]

Notice of Intent To Extend the Public Scoping Period for the Oklahoma, Kansas, and Texas Resource Management Plan and Call for Coal Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) is extending the scoping period for the Oklahoma, Kansas, and Texas planning area, which was originally initiated on July 26, 2013 (78 FR 45266). The purpose of the ongoing scoping process is to solicit public comments and identify issues. The BLM is also soliciting resource information for coal and other resources in the planning area.

DATES: This notice extends the scoping period for the Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS). Comments on issues may be submitted in writing until January 24, 2014. The date(s) and location(s) of scoping meetings will be announced at least 15 days advance through the local media, newspapers and the BLM Web site at: *http://www.blm.gov/nm/oktrmp.* In order to be included in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the Oklahoma/Kansas/Texas RMP by any of the following methods:

- *Web site: http://www.blm.gov/nm/oktrmp.*
- *Email: BLM_NM_OKT_RMP@blm.gov.*
- *Fax:* 918- 621–4130; Attention: Laurence Levesque.
- *Mail:* Oklahoma Field Office, BLM, 7906 East 33rd Street, Suite 101, Tulsa, Oklahoma 74145; Attention: Laurence Levesque.

Documents pertinent to this proposal may be examined at the Oklahoma Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Laurence Levesque, Planning and Environmental Specialist; telephone 918–621–4136; address 7906 East 33rd Street, Suite 101, Tulsa, OK 74145; email *laurence_levesque@blm.gov.* Contact Mr. Levesque if you wish to have your name added to our mailing list. 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: This document provides notice that the BLM

Oklahoma Field Office, Tulsa, Oklahoma, is extending the scoping period for an RMP with an associated EIS for the Oklahoma, Kansas, and Texas planning area. The EIS will also analyze decisions for Indian lands and mineral interests administered by the BIA Eastern Oklahoma and Southern Plans Regional Offices. The BLM will be the lead agency in the RMP/EIS development effort, and the BIA will participate as a cooperating agency and sign a separate Record of Decision for management decisions for Indian lands and mineral interests. For additional information regarding the planning area, issues, and planning criteria, please refer to the original Notice of Intent published on July 26, 2013 (78 FR 45266).

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30 day scoping period or within 15 days after the last public meeting, whichever is later.

Parties interested in leasing and development of Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR part 3461. This information will be used for any necessary updating of coal screening determination (43 CFR 3420.1–4) in the Decision Area and in the environmental analysis for the RMP. In addition to coal resource data, the BLM seeks resource information and data for other public land values (*e.g.,* air quality, cultural and historic resources, fire/fuels, fisheries, forestry, lands and realty, non-energy minerals and geology, oil and gas, paleontology, rangeland management, recreation, soil, water, and wildlife) in the planning area. The purpose of this request is to assure that the planning effort has sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for the public lands.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Minerals and geology, archaeology, wildlife and fisheries, lands and realty, hydrology, soils, livestock grazing, recreation, sociology, and economics.

Authority: 40 CFR 1501.7, 43 CFR 1610.2

Sheila K. Mallory,

Acting State Director, Minerals.

[FR Doc. 2013–29964 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT921000–12–L13200000–EL0000–P; MTM 106757]

Notice of Invitation—Coal Exploration License Application MTM 106757, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Signal Peak Energy, LLC on a pro rata cost sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Yellowstone and Musselshell Counties, Montana, encompassing 2,039.64 acres.

DATES: Any party seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Signal Peak Energy, LLC as provided in the **ADDRESSES** section below no later than January 16, 2014 or 10 calendar days after the last publication of this Notice in the *Roundup Record Tribune and Winnett Times* newspaper, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the *Roundup Record Tribune and Winnett Times,* Roundup, Montana. Such written notice must refer to serial number MTM 106757.

ADDRESSES: The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through Friday, in the public room at the BLM Montana State Office, 5001 Southgate Drive, Billings, MT. The exploration license application and exploration plan are also available for viewing on the Montana State Office coal Web site at *http://www.blm.gov/mt/st/en/prog/energy/coal.html.*

A written notice to participate in the exploration licenses should be sent to the State Director, BLM Montana State Office, 5001 Southgate Drive, Billings, MT 59101–4669 and Signal Peak Energy, LLC, 100 Portal Drive, Roundup, MT 59072.

FOR FURTHER INFORMATION CONTACT: Craig Drake by telephone at 406–896–5349 or by email at *cdrake@blm.gov;* or Connie Schaff by telephone at 406–896–5060 or by email at *cschaff@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: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. The lands to be explored for coal deposits in exploration license MTM 106757 are described as follows:

Principal Meridian, Montana

T. 5 N., R. 27 E.,
  Sec. 4, S½NE¼, S½NW¼, S½;
T. 6 N., R. 27 E.,
  Sec. 24, NE¼, W½, NW¼SE¼, and S½SE¼;
  Sec. 32, SW¼;
  Sec. 34, SE¼;
T. 6 N., R. 28 E.,
  Sec. 18, lots 1 thru 4, inclusive, E½, and E½W½.

Containing 2,039.64 acres.

The Federal coal within the lands described for exploration license MTM 106757 is currently unleased for development of Federal coal reserves.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 2013–29965 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land

Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs or Bureau of Reclamation. The lands surveyed are:

Mount Diablo Meridian, California

T. 31 S., R. 16 E., dependent resurvey and metes-and-bounds survey accepted July 19, 2013.
T. 23 S., R. 16 E., dependent resurvey and subdivision of section 28 accepted August 8, 2013.
T. 6 N., R. 17 E., amended protraction diagram for unsurveyed area accepted August 9, 2013.
T. 18 N., R. 11 W., dependent resurvey and subdivision accepted August 19, 2013.
T. 21 N., R. 15 E., dependent resurvey and subdivision of sections accepted November 4, 2013.
T. 45 N., R. 15 E., dependent resurvey and subdivision accepted November 4, 2013.
T. 26 S., R. 36 E., dependent resurvey accepted November 8, 2013.
T. 18 N., R. 1 W., metes-and-bounds survey accepted December 4, 2013.

San Bernardino Meridian, California

T. 1 S., R. 17 W., dependent resurvey, metes-and-bounds survey and informative traverse accepted July 12, 2013.
T. 7 S., R. 12 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted August 8, 2013.
T. 8 S., R. 12 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted August 19, 2013.
T. 9 S., R. 14 E., dependent resurvey and metes-and-bounds survey accepted August 19, 2013.
T. 9 S., R. 13 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted August 20, 2013.
T. 10 S., R. 14 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted September 18, 2013.
T. 7 S., R. 13 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted September 18, 2013.
T. 11 S., R. 15 E., dependent resurvey accepted September 19, 2013.
T. 11 S., R. 16 E., dependent resurvey accepted September 19, 2013.
T. 10 S., R. 18 E., dependent resurvey accepted September 19, 2013.
T. 9 S., R. 16 E., dependent resurvey, subdivision of sections and metes-and-bounds survey accepted September 19, 2013.
T. 10 S., R. 15 E., dependent resurvey and metes-and-bounds survey accepted September 19, 2013.
T. 12 S., R. 16 E., dependent resurvey and informative traverse accepted September 19, 2013.
T. 11 S., R. 19 E., dependent resurvey and retracement accepted September 20, 2013.
T. 13 S., R. 18 E., dependent resurvey, independent resurvey and subdivision of section accepted September 24, 2013.
T. 12 S., R. 17 E., dependent resurvey and informative traverse accepted September 24, 2013.
T. 9 S., R. 17 E., dependent resurvey, independent resurvey, subdivision of sections, informative traverse and metes-and-bounds survey accepted September 25, 2013.
T. 10 S., R. 19 E., dependent resurvey and independent resurvey accepted September 25, 2013.
T. 12 S., R. 19 E., dependent resurvey and subdivision of section accepted September 25, 2013.
T. 3 S., R. 1 E., supplemental plat of tract 52 in section 1 accepted November 14, 2013.
T. 2 N., R. 5 W., dependent resurvey and subdivision of fractional sections 26, 27, 35, and 36 accepted November 21, 2013.
T. 7 S., R. 12 E., supplemental plat of the S 1/2 of section 34 accepted November 26, 2013.
T. 7 S., R. 12 E., supplemental plat of the S 1/2 of section 35 accepted November 26, 2013.
T. 7 S., R. 12 E., supplemental plat of the SW 1/4 of section 36 accepted November 26, 2013.
T. 7 S., R. 13 E., supplemental plat of section 31 accepted November 27, 2013.
T. 7 S., R. 13 E., supplemental plat of sections 13 and 14 accepted November 27, 2013.
T. 7 S., R. 13 E., supplemental plat of the NW 1/4 of section 22 accepted November 27, 2013.
T. 8 S., R. 12 E., supplemental plat of section 2 accepted November 27, 2013.
T. 10 S., R. 14 E., supplemental plat of the E 1/2 of the NE 1/4 of section 22 accepted November 27, 2013.

Humboldt Meridian, California

T. 12 N., R. 2 E., dependent resurvey, subdivision and survey accepted August 8, 2013.

Authority: 43 U.S.C., Chapter 3.

Dated: December 9, 2013.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2013–29943 Filed 12–16–13; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–879]

Advisory Opinion Proceeding; Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof; Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on April 25, 2013, based on a complaint filed on March 28, 2013, and supplemented on April 19, 2013, on behalf of ResMed Corp. of San Diego, California; ResMed Inc. of San Diego, California; and ResMed Ltd. of Australia (collectively, ''ResMed''). 78 *FR* 25475 (May 1, 2013). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale within the United States after importation of certain sleep-disordered breathing treatment systems and components thereof by reason of

infringement of claims 1, 2, 4, 5, 17, and 28 of U.S. Patent No. 6,216,691, claims 1 and 20 of U.S. Patent No. 6,935,337, claim 15 of U.S. Patent No. 7,159,587, claims 1, 5, 6, 11, 12, 18–20, 35, and 36 of U.S. Patent No. 7,487,772, claims 1–7 of U.S. Patent No. 7,614,398, claims 59, 60, 63, and 72–75 of U.S. Patent No. 7,743,767, and claims 17, 21–24, 29, and 32–37 of U.S. Patent No. 7,997,267. The Commission's notice of investigation named as respondents Apex Medical Corp. of New Taipei City, Taiwan and Apex Medical USA Corp. of Brea, California (collectively, ''Apex'') and Medical Depot Inc., d/b/a Drive Medical Design & Manufacturing of Port Washington, New York. The Office of Unfair Import Investigations participated in the investigation.

Medical Depot Inc. and Apex were previously terminated from the investigation on the basis of consent orders. Order Nos. 8 (unreviewed by the Commission, July 18, 2013) and 11 (unreviewed by the Commission, Aug. 8, 2013).

On September 23, 2013, Apex filed a request with the Commission asking for institution of an advisory opinion proceeding to declare that their redesigned sleep-disordered breathing treatment systems are not covered by the consent order. Apex also requests that the proceeding be conducted expeditiously. ResMed filed a response on October 18, 2013 opposing Apex's request.

The Commission has determined that Apex's request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79. Accordingly, the Commission has determined to institute an advisory opinion proceeding and referred Apex's request to the Chief Administrative Law Judge to designate a presiding administrative law judge. The following entities are named as parties to the proceeding: (1) Complainant ResMed; (2) respondent Apex; (3) the Office of Unfair Import Investigations.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 11, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–29887 Filed 12–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–503–504 and 731–TA–1229–1230 (Preliminary)]

Monosodium Glutamate From China and Indonesia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Indonesia of monosodium glutamate, provided for in subheading 2922.42.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV) and subsidized by the Governments of China and Indonesia.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

On September 16, 2013, a petition was filed with the Commission and Commerce by Ajinomoto North America Inc. (''AJINA''), Itasca, Illinois, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of monosodium glutamate from China and Indonesia that are subsidized by the Governments of China and Indonesia. Accordingly, effective September 16, 2013, the Commission instituted countervailing duty investigation Nos. 701–TA–503–504 and antidumping duty investigation Nos. 731–TA–1229–1230 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 20, 2013 (78 FR 57881). The conference was held in Washington, DC, on October 23, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 18, 2013. The views of the Commission are contained in USITC Publication 4437 (November 2013), entitled *Monosodium Glutamate from China and Indonesia: Investigation Nos. 701–TA–503–504 and 731–TA–1229–1230 (Preliminary).*

By order of the Commission.

Issued: November 19, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–29882 Filed 12–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–038]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 17, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None
2. Minutes

3. Ratification List
4. Vote in Inv. Nos. 701–TA–405, 406, and 408 and 731–TA–899–901 and 906–908 (Third Review) (Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine). The Commission is currently scheduled to complete and file its determinations and views on or before January 14, 2014.
5. Outstanding action jackets: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: December 13, 2013.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–30058 Filed 12–13–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0036]

Agency Information Collection Activities: Proposed Collection; Comments Requested: FFL Out-of-Business Records Request

ACTION: 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until February 18, 2014 This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, *Tracey.Robertson@atf.gov* or (304) 616–4647, Chief, Federal Firearms Licensing Center, 244 Needy Road, Martinsburg, WV 25405. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* FFL Out-of-Business Records Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.3A. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection: Firearms licensees are required to keep records of acquisition and disposition. These records remain with the licensee as long as they are in business. The ATF F 5300.3A, FFL Out-of-Business Records Request is used by ATF to notify licensees who go out of business. When discontinuance of the business is absolute, such records shall be delivered within thirty days following the business discontinuance to the ATF Out-of-Business Records Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,924 respondents will take approximately 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 160.3 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: December 11, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–29885 Filed 12–16–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas Neuschatz, M.D.; Decision and Order

On July 2, 2013, the Deputy Assistant Administrator, Office of Diversion Control, issued an Order to Show Cause to Thomas Neuschatz, M.D. (hereinafter, Applicant), of Marysville, California. GX 9. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration as a practitioner, on the ground that his ''registration would be inconsistent with the public interest.'' *Id.* (citing 21 U.S.C. 823(f)).

The Show Cause Order specifically alleged that on April 29, 2011, Applicant had surrendered his DEA registration, and that on May 30, 2011, Applicant applied for a new registration as a practitioner. *Id.* Next, the Order alleged that a DEA investigation had found that Applicant ''prescribed and dispensed inordinate amounts of controlled substances . . . under circumstances where [he] knew or should have known the prescriptions were not for legitimate medical purposes.'' *Id.*

Next, the Show Cause Order alleged that a medical Expert had reviewed the medical records of three of Applicant's patients (E.G., R.E., and J.G.) and concluded that he ''prescribed controlled substances to those patients without a legitimate medical purpose and/or outside the usual course of professional practice.'' *Id.* at 1–2. More specifically, with respect to E.G., the Order alleged that over the course of E.G's first five visits, Applicant escalated the daily dose of medication from 22.5 mg of hydrocodone to 80 mg of hydrocodone and 320 mg of oxycodone. *Id.* at 2. The Order further alleged that ''[f]rom approximately January 4, 2011 through April 16, 2011, [Applicant] prescribed Dilaudid to E.G. without conducting an in-person physical examination'' and during this period, E.G. made a single office visit. *Id.* The Order then alleged that based on

Applicant's ''prescribing of high dosages of opioid medications and failing to perform a diagnostic evaluation of E.G.'s pain complaints,'' the Expert concluded that Applicant's ''treatment of E.G. fell outside the usual course of professional practice.'' *Id.* at 2.

After alleging that R.E. died of ''acute poisoning by multiple pharmaceuticals and illegal substances,'' the Show Cause Order alleged that Applicant had failed to inquire into the patient's history of drug abuse, notwithstanding that R.E.'s intake forms had suggested that such history existed, and that R.E. ''provided no medical records and was unable to list previous physicians or pharmacies.'' *Id.* The Order further alleged that Applicant ''performed limited physical examinations of R.E. over the course of approximately 11 office visits.'' *Id.* Based on Applicant's alleged ''failure to confirm R.E.'s medical history, [his] failure to determine R.E.'s source of pain, and'' that he ''escalated dosages of highly addictive pain medications despite an unconfirmed . . . diagnosis,'' the Order further alleged that the Expert had concluded that Applicant acted ''outside the usual course of professional practice'' in prescribing controlled substances to R.E. *Id.*

With respect to J.G., the Show Cause Order alleged that Applicant violated federal law by prescribing methadone to treat J.G.'s ''opioid dependence'' because he was ''not authorized to prescribe [s]chedule II controlled substances to treat narcotic dependent patients.'' *Id.* (citing 21 U.S.C. 823(g)(1); 21 CFR 1306.07(a)). The Order further alleged that ''J.G. died of an apparent overdose of prescription medications'' after his last visit with Applicant. *Id.*

The Show Cause Order, which also notified Applicant of his right to request a hearing on the allegations or to submit a written a statement regarding the allegations while waiving his right to a hearing, the procedure for electing either option, and the consequences for failing to elect either option, *id.* at 3, was served on Applicant by certified mail addressed to him at the address of his proposed registered location. GX 10, at 1. As evidenced by the signed return receipt card, service was accomplished on July 10, 2013. *Id.* at 2.

On August 13, 2013, the Government submitted a Request for Final Agency Action. Therein, the Government noted that since the date of service of the Show Cause Order, Applicant had not requested a hearing. Request for Final Agency Action, at 4. The Government thus contends that Applicant has waived his right to a hearing and requests the issuance of a final order denying the application. *Id.* at 4, 7.

Subsequently, on August 22, 2013, the Government filed an addendum to its Request for Final Agency Action. Therein, the Government noted that on July 23, 2013, the Medical Board of California (MBC) adopted a Stipulated Surrender of License and Order (hereinafter, Stipulated Surrender), pursuant to which Applicant surrendered his California Physician's and Surgeon's Certificate, and that the MBC's Order ''became effective on August 22, 2013.'' Addendum to Request for Final Agency Action, at 1–2. The Government attached a copy of the MBC's Decision, the Stipulated Surrender of License and Order, and the Accusation, which alleged forty-nine (49) causes for discipline. The Government also served a copy of the addendum on Applicant.

Based on the Government's submission, I find that since the date of service of the Order to Show Cause, neither Applicant, nor anyone purporting to represent him, has either requested a hearing on the allegations or submitted a written statement in lieu of a hearing. *See* 21 CFR 1301.43(a) & (c). Accordingly, I find that Applicant has waived his right to a hearing or to submit a written statement. *Id.* § 1301.43(c) & (d). I therefore issue this Decision and Final Order based on the Investigative Record submitted by the Government. *Id.* § 1301.43(e). I make the following findings of fact.

Findings

Applicant previously held DEA Certificate of Registration BN5628194, which authorized him to dispense controlled substances, as a practitioner, in schedules II–V. GX 2, at 1. However, on April 29, 2011, Applicant voluntarily surrendered this registration. *Id.* On May 30, 2011, Applicant submitted an application for a new registration. GX 1, at 1.

Applicant also previously held a Physician's and Surgeon's Certificate which was issued by the MBC. However, on May 23, 2012, the MBC's Executive Director issued a forty-nine (49) count administrative complaint, which sought the revocation of Applicant's state license. *See* Accusation, *In re Thomas Neuschatz, M.D.,* (M.B.C. 2012) (No. 02–2009–199792). On June 25, 2013, Applicant voluntarily entered into the Stipulated Surrender, and on July 23, the MBC adopted the order, which became effective on August 22, 2013. Accordingly, I find that Applicant no longer possesses authority under California law to dispense controlled substances.

In the Stipulated Surrender, Applicant ''agree[d] that, at a hearing, [the MBC] could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline.'' Stipulated Surrender, at 3. Applicant agreed that if he ''should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in [the] Accusation . . . shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.'' *Id.* at 4–5.

With respect to E.G. (Show Cause Order, at 2), the MBC alleged that Applicant ''prescribed excess quantities of controlled substances and dangerous drugs'' to her. Accusation, at 18. More specifically, the MBC, after noting the large doses that Applicant had prescribed to her, found that he:

(1) ''failed to make a specific diagnosis regarding E.G.'s pain'';

(2) never evaluated ''her psychological status'';

(3) ''never followed up on x-rays that he ordered'';

(4) never documented whether E.G. had complied with the exercise and stretching program he had recommended;

(5) never specified the functional goals of treatment in the pain treatment plan;

(6) increased her medications but never provided clear reasons for doing so in the medical record and found that the increases were ''never based on [her] functional status'';

(7) never documented that she brought in her pain medication bottles even though this was required by her pain contract;

(8) ordered an x-ray for E.G., but there was no x-ray in E.G.'s chart and no further reference to the x-ray in ''later progress notes'';

(9) never spoke with other physicians who had ordered various tests nor ''formally requested the results of these studies'';

(10) found that ''[t]he only treatment [he] employed for E.G. was opiate mediations, the doses of which were increased with alarming rapidity[,] [and that] [d]uring the initial months of treatment[,] [he] doubled her opiate doses every month until at one point E.G. was receiving a mixture of opiate medications equal to 1,035 mg a day of oral morphine,'' which compares with ''the average dose . . . for patients with

cancer pain [of] between 100 mg to 200 mg per day'';

(11) ''failed to document that he informed E.G. about the risks of opiate medications''; and

(12) ''failed to document that E.G. was ever referred to physical therapy or any physician specialist for evaluation or treatment of her chronic pain condition.''

Id. at 17–18. Based on the above findings, the MBC concluded that Applicant's conduct ''constitute[d] excessive prescribing of controlled substances and dangerous drugs in the care and treatment of E.G.'' *Id.* at 18.

With respect to R.E. (Show Cause Order, at 2), the MBC alleged that Applicant ''prescribed excess quantities of controlled substances and dangerous drugs'' to him. *Id.* More specifically, the MBC found that he:

(1) failed to comment on R.E.'s history of drug abuse (which included one hospitalization and three rehabilitation programs) during any of ''R.E.'s 11 office visits, or on the 'opiate risk tool' that [Applicant] used to evaluate his patient's risk of prescription misuse'';

(2) prescribed controlled substances after performing a ''limited physical examination'' and without requesting previous medical records;

(3) failed to document prescriptions in the medical records;

(4) prescribed increased doses of opiates without any explanation in the medical records;

(5) prescribed a muscle relaxer to R.E. despite his ''occupational function and physical improvement'';

(6) prescribed 300 tablets of hydromorphone 8 mg and 150 tablets of methadone 10 mg to R.E. on April 23; then, only 14 days later, prescribed 128 tablets of oxycodone 30 mg and 80 tablets of methadone 10 mg;

(7) increased the dose of methadone from 50 mg to 70 mg per day ''because his pain control is slightly down'';

(8) prescribed controlled substances when the patient was in a detoxification program;

(9) failed to document in the medical record any of the prescriptions he provided R.E. while he was in the detoxification program;

(10) failed to address the patient's recent inpatient treatment for drug detoxification, and instead refilled all medications without adjusting the dosage;

(11) increased the doses of opiate medications to a point where R.E. was receiving 740 mg of oral morphine every day, when ''the average dose of oral morphine required by patients with cancer pain is between 100 to 250 mg per day'';

(12) failed to question R.E. when he ''should have suspected that R.E. was using the medications for a non-medical purpose'';

(13) failed to record any formal referral to physical therapy; and

(14) failed to order any traditional diagnostic tests, including laboratory studies, MRIs, or x-rays.

Id. at 19–23. Based on the foregoing, the MBC concluded that Applicant's conduct ''constitute[d] excessive prescribing of controlled substances and dangerous drugs.'' *Id.* at 24.

With respect to J.G. (Show Cause Order, at 2), the MBC alleged that Applicant prescribed excess controlled substances to her. *Id.* at 29. More specifically, the MBC found that he:

(1) knew that J.G. was receiving methadone from a drug treatment clinic, yet failed to document any substance abuse history for J.G.;

(2) failed to order any diagnostic tests, such as laboratory studies, x-rays, or MRIs;

(3) falsely documented that J.G. attended the methadone treatment clinic for chronic right shoulder pain and back pain instead of for her addiction;

(4) began treating J.G.'s anxiety with narcotics instead of the previously prescribed non-habituated medications;

(5) assumed responsibility for treatment of J.G.'s known addiction, ''but inaccurately represented this as a treatment for a chronic pain condition'';

(6) failed to discuss the care of J.G. with her primary physician or with any of the addiction specialists at the methadone clinic she was attending;

(7) ''assumed the methadone maintenance of a known opiate addict despite his lack of qualification and without the guidance of qualified addiction specialists''; and

(8) failed to document all of the medications J.G. was taking.

Id. at 25–28. Similarly, the MBC found that Applicant ''prescribed excess quantities of controlled substances and dangerous drugs to'' J.G. *Id.* at 29.

The MBC relied on a medical report prepared by an Expert, who, after reviewing the medical files for E.G., R.E., and J.G., concluded that Applicant's conduct with respect to each patient ''reflect[ed] an extreme departure from the usual practice of general medicine.'' [1] Expert Report, at 8–32. With respect to E.G., the Expert noted that Applicant increased the patient's dose of controlled substances from the equivalent of 157.5 mg/day oral morphine to 1,035 mg/day oral morphine over a seven month period (constituting a roughly 100% dose increase per month). *Id.* at 6. The Expert concluded that Applicant's ''conduct reflect[ed] an extreme departure from the usual practice of general medicine, because, of his failure to ever render a diagnosis regarding [E.G.'s] pain complaints or to more thoroughly evaluate her psychological status.'' *Id.* at 8. The Expert noted that ''[n]o specific diagnosis corresponding to [E.G.'s] pain complaints was ever made'' and ''[t]here [was] no specific evaluation of her psychological status other than frequent notations about her anxious affect.'' *Id.* Moreover, the Expert observed that while Applicant ordered an x-ray of E.G.'s lumbar spine, there was no report in E.G.'s record and while E.G. has supposedly undergone x-rays and CT spans which were ordered by her prior physicians, Applicant did not request the results. *Id.* at 9–10.

The Expert further observed that Applicant failed ''to develop a treatment plan with objectives,'' and that he rapidly increased the dosage of opioids ''with alarming rapidity.'' *Id.* Applicant did not, however, document a justification for the increases, which in the Expert's observation, were ''never based on [E.G.'s] functional status.'' *Id.* Finally, the Expert found that ''signs of misuse on the part of [E.G.] did not seem to affect [Applicant's] prescribing'' practices.[2] *Id.* at 11. In sum, the Expert found that Applicant's ''prescription treatment of patient [E.G.] fell outside the usual course of the professional practice of medicine.'' *Id.* at 13.

As for R.E., the Expert noted that, notwithstanding that at the first visit, R.E. stated that he had previously taken Norco, OxyContin 40mg, and was currently taking three OxyContin 80mg tablets a day for neck pain, he ''claimed not to know the name of his treating physician, the location of any pharmacy[,] nor was he able to produce a prescription bottle.'' *Id.* at 26. Moreover, the Expert noted that R.E. told Applicant that ''[h]e ha[d] no records.'' *Id.* Also, the Expert observed that on the medical history form which R.E. completed at the initial visit, R.E. had disclosed that in 2004, he had a ''drug related'' hospitalization. GX 7, at 32; GX 4, at 23.

[1] In reaching her conclusions, the Expert relied on the ''Model Guidelines for the Use of Controlled Substance for the Treatment of Pain.'' Stipulated Surrender, at 4. California adopted these guidelines in 1994 and later revised them in 2007. *See* MBC, *Guidelines for Prescribing Controlled Substances for Pain, http://www.mbc.ca.gov/pain_guidelines.html.*

[2] As example, the Expert noted that on November 4, 2008, Applicant increased E.G.'s dose of both OxyContin and Norco because ''[s]he would like to go up on the Norco and I said fine.'' GX 4, at 9.

The Expert explained that under these circumstances, ''most clinicians [would] suspect drug seeking for non-medical uses,'' and that ''when aspects of [a] patient's case appear suspicious, the standard practice is to request medical records or to speak with the most recent treating physician in order to verify the patient's history and past treatment.'' GX 4, at 26. The Expert then found that there was no evidence in the medical record that Applicant ever confirmed the medical history or prior treatment of R.E. with prescriptions.'' *Id.*

The Expert noted that at R.E.'s first visit, Applicant documented in the medical record that he had prescribed only 45 dosage units of oxycodone 30mg. *Id.* at 23. Yet, the Expert found that the actual prescription issued by Applicant authorized the dispensing of 240 oxycodone 30mg. *Id.* at 23; GX 7, at 23 & 45.

The Expert further found that Applicant failed ''to evaluate the reason for [R.E.'s] unremitting pain despite high doses of controlled substances.'' *Id.* at 27. Moreover, Applicant committed an extreme departure from the standard of care by failing to develop ''a treatment plan with clear functional objective.'' *Id.* at 30.

Moreover, according to the Expert, Applicant failed to address numerous signs that R.E. ''was misusing or diverting medication.'' *Id.* The Expert found that at several visits, R.E. requested specific drugs such as oxycodone and methadone, sought an increase in Xanax, and reported that his medications had been stolen. *Id.* at 24 & 29. Yet the Expert also found that ''[a]t no time was laboratory testing done to confirm medication use by the patient and exclude [the] possibility of diversion'' [and] [a]t no time did [Applicant] document having performed a random pill count to confirm medication adherence.'' *Id.* at 29. The Expert thus concluded that Applicant's continued treatment of R.E. ''with rapidly escalating doses of controlled substances despite an unconfirmed medical diagnosis,'' fell outside the usual course of the professional practice of medicine. *Id.* at 32.

Finally, with respect to J.G., the Expert noted that Applicant never documented nor referenced her ''substance abuse history, although this was known to him'' from prior treatment and it was ''also . . . implied given her ongoing treatment at a methadone maintenance clinic.'' *Id.* at 16. The Expert noted that Applicant ''assumed responsibility for treatment of this known addict with methadone, but inaccurately represented his prescriptions for methadone as treatment for her chronic pain condition.'' *Id.* at 18; *see also id.* at 22 (Applicant ''knowingly prescribed methadone to prevent opiate withdrawal rather than for the treatment of pain.''). Applicant did this ''despite his lack of qualification and without the guidance of a qualified addiction specialist.'' *Id.* at 20. As such, ''his misrepresentation that methadone was indicated for the treatment of her chronic pain rather than as treatment for her opioid addiction was patently false.'' *Id.* at 18. The Expert thus concluded that Applicant's ''treatment of [J.G.] fell far outside the usual professional practice of medicine.'' *Id.* at 32.

Discussion

Section 303(f) of the Controlled Substances Act (CSA) provides that an application for a practitioner's registration may be denied ''if the Attorney General determines that the issuance of such registration . . . would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, Congress directed that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). ''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors and may give each factor the weight . . . [I] deem[] appropriate in determining whether . . . an application for registration [should be] denied.'' *Id.; see also Kevin Dennis, M.D.,* 78 FR 52787, 52794 (2013); *MacKay* v. *DEA,* 664 F.3d 808, 816 (10th Cir. 2010).

The Government has the burden of proving, by a preponderance of the evidence, that the requirements for a denial of an application, pursuant to 21 U.S.C. 823(f), are met. 21 CFR 1301.44(e). This is so even in a non-contested case. *Gabriel Sanchez, M.D.,* 78 FR 59060, 59063 (2013). Having considered all of the factors,[3] I conclude that the Government's evidence with respect to factors two and four establishes, *prima facie,* that the issuance of a DEA Certificate of Registration to Applicant ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f).

Factors Two and Four—The Applicant's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

A. The Preclusive Effect of the MBC Order

Under the doctrine of collateral estoppel, the MBC's findings of fact and conclusions of law are entitled to preclusive effect in this proceeding if the parties had an adequate opportunity to litigate the issues. *Robert L. Dougherty, M.D.,* 76 FR 16823, 16830 (2011); *Univ. of Tenn.* v. *Elliot,* 478 U.S. 788, 797–98 (1986) (''When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata[.]'') (internal quotations and citations omitted). Moreover, a State Board's findings may be entitled to preclusive effect even where an Applicant/Registrant chose not to dispute the allegations and entered into a consent agreement or stipulated settlement. *David A. Ruben,* 78 FR 38363, 38365 (2013) (holding that findings of a consent agreement which supported state board's disciplinary action were not subject to relitigation before DEA, because, *inter alia,* physician agreed that he could not contest the findings in any future proceeding involving the Board or other state agency); *cf. Jose G. Zavaleta, M.D.,* 78 FR 27431, 27433–34 (2013) (holding that the findings of a prior DEA proceeding are entitled to preclusive effect in a subsequent DEA proceeding notwithstanding that the Applicant/Registrant waived his right to a hearing in the first proceeding).

Thus, in *Ruben,* the Administrator held that the findings of a consent agreement were entitled to preclusive

[3] The Government presented evidence that, as of August 22, 2013, Applicant no longer possessed a state license to practice medicine. Stipulated Surrender, at 4–5. The CSA only permits the Attorney General to register practitioners ''if the applicant is authorized to dispense . . . controlled s ubstances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). As such, the CSA requires the denial of an application for registration when the applicant's state license has been suspended or revoked. *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993). Applicant's loss of his state license thus provides an independent ground to deny his application for a DEA Certificate of Registration.

effect in a DEA proceeding, even though the registrant had not actually litigated them, noting that under the relevant State's law, a judgment entered by stipulation or consent '''may be conclusive, with respect to one or more issues, if the parties have entered an agreement manifesting such intention.' '' 78 FR at 38366 (quoting *Chaney Building Co.* v. *City of Tucson,* 716 P.2d 28, 30 (Ariz. 1986)). Because in *Ruben,* it was clear that the parties intended that the findings of the consent agreement would be binding between them and could not be relitigated in a subsequent proceeding before the state board (or another state agency), and under the relevant state law, the agreement was entitled to preclusive effect, the Administrator rejected the contention that the findings were subject to relitigation before this Agency.[4] *Id.*

Relevant to the Order at issue here, the Supreme Court of California has held that ''a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms.'' *Cal. State Auto. Assn. Inter-Ins. Bureau* v. *Super. Ct.,* 50 Cal.3d 658, 665 (1990). The crux of the issue is whether the parties, in agreeing to the settlement order, ''manifest[ed] an intent to be collaterally bound by its terms.'' *Id.; see also Landeros* v. *Pankey,* 46 Cal. Rptr. 2d 165, 167 (Cal. App. 1995) (discussing same).[5]

Here, I conclude that the terms of the Stipulated Surrender and Disciplinary Order manifest that the parties agreed to be bound by the stipulation in subsequent proceedings. Applicant, who was represented by counsel, ''voluntarily, knowingly, and intelligently'' waived his right to a hearing before the Board, *id.* at 2, at which he could have ''contest[ed] that cause for discipline exists based on'' the Board's charges. *Id.* at 3.

Most significantly, Applicant ''agree[d] that, at a hearing, [the MBC] could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline.'' Stipulated Surrender, at 3. The Order further provided that ''if [Applicant] should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in [the] Accusation . . . shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.'' *Id.* at 4–5.[6] Accordingly, because Applicant and the MBC manifested their intent to be bound by the terms of the Stipulated Surrender, the Board's findings are entitled to preclusive effect in this proceeding. *Ruben,* 78 FR at 38366.

(A) Analysis of the Public Interest Factors

Under a longstanding Agency regulation, ''[a] prescription for a controlled substance [is not] effective [unless it is] issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [his] professional practice.'' 21 CFR 1306.04(a). This regulation further provides that ''an order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of [21 U.S.C. 829] and . . . the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.'' *Id. See also* Cal. Health & Safety Code § 11153(a) (a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice,'' and ''an order purporting to be a prescription which is issued not in the usual course of professional treatment'' is not a legal prescription).

As the Supreme Court has explained, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse. As a corollary, [it] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales,* 546 U.S. at 274 (citing *United States* v. *Moore,* 423 U.S. 122, 135, 143 (1975)); *United States* v. *Alerre,* 430 F.3d 681, 691 (4th Cir. 2005), *cert. denied,* 574 U.S. 1113 (2006) (prescription requirement stands as a proscription against doctors acting not ''as a healer[,] but as a seller of wares'').

Under the CSA, it is fundamental that a practitioner must establish and maintain a legitimate doctor-patient relationship in order to act ''in the usual course of . . . professional practice'' and to issue a prescription for a ''legitimate medical purpose.'' *Zavaleta,* 78 FR at 27440. What constitutes a legitimate doctor-patient relationship is generally determined by the applicable state law. *Id.*

Under California law, a physician must first conduct ''an appropriate prior examination,'' and determine that there is ''a medical indication'' for prescribing a controlled substance. Cal. Bus. & Prof. Code § 2242(a); *see also id.* § 725(c). Moreover, as the Expert explained, the MBC has issued extensive guidelines setting forth the standards of professional practice in prescribing controlled substances for the treatment of pain. Expert's Report, at 4. These standards provide that:

> A medical history and physical examination must be accomplished. This includes assessment of the pain, physical and psychological function; a substance abuse history; history of prior pain treatment; an assessment of underlying or coexisting diseases or conditions; and documentation of the presence of a recognized medical indication for the use of a controlled substance.

MBC, *Guidelines for Prescribing Controlled Substances for Pain.* As also set forth in the Expert's Report, the Guidelines also address such other areas as the development of a treatment plan, the need to obtain informed consent for treatment, the importance of conducting periodic review of a patient's response treatment, the need to refer a patient for additional evaluations and consultation, especially where a patient presents the ''risk for misusing [his] medications,'' the obligation to keep complete and accurate records, and the obligation to comply with both federal and state controlled substances laws and regulations. *Id.*

With respect to patients E.G. and R.E., the MBC found that Applicant overprescribed controlled substances without documenting a medical necessity, thereby practicing outside the usual course of professional practice.

[5] A ''stipulated judgment'' is akin to a stipulated settlement, as a stipulated judgment arises when ''parties to [a] pending litigation stipulated . . . for settlement of the case.'' *Cal. State Auto. Assn.,* 50 Cal.3d at 665.

[6] It is noted that the Stipulated Surrender contains a provision which states that ''[t]he admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.'' Stipulated Surrender, at 3.

Under the Controlled Substances Act, ''[t]o issue lawful prescriptions'' for any controlled substance, a ''physician[] must 'obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him.' '' *Gonzales* v. *Oregon,* 546 U.S. 250–51 (2006) (quoting 21 U.S.C. 822(a)(2)). Thus, DEA is a professional licensing agency with respect to the dispensing of controlled substances. Moreover, even if Applicant and the MBC intended to limit the preclusive effect of the Stipulated Surrender to proceedings involving other California health care licensing agencies, they cannot prevent an Agency of the United States from giving preclusive effect to the proceeding when they have agreed that such effect shall be given in a subsequent proceeding between Applicant and the State. *See supra* n.4.

See Cal. Bus. & Prof. Code § 725(c) (requiring a medical basis for prescribing controlled substances); 21 CFR 1306.04(a) (''A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose''). Applicant only treated the patients with controlled substances, failed to document treatment plans, failed take into account the patient's past history of drug abuse, and continuously prescribed high doses of opiates without documenting any explanation for doing so in their medical records. Stipulated Surrender, at 17–23.

Moreover, as the Expert explained, Applicant ignored signs of misuse with respect to E.G., and signs of misuse and diversion with respect to R.E. Expert's Report, at 11 (''signs of misuse on the part of [E.G.] did not seem to affect [Applicant's] prescribing practices''); *id.* at 29–30 (noting that R.E. requested specific controlled substances, reported stolen opioids, and ''reported persistent or increased pain at almost every visit'' notwithstanding that ''the opioid . . . doses had been significantly increased'' and that Applicant ''fail[ed] to respond to clues that [R.E.] was misusing or diverting medication''). Most significantly, with respect to both E.G. and R.E., the Expert concluded that Applicant's treatment ''fell far outside the usual professional practice of medicine.'' *Id.* at 32.

I therefore find that Applicant violated the CSA's prescription requirement when he prescribed controlled substance to E.G. and R.E. 21 CFR 1306.04(a). I also find that Applicant unlawfully distributed controlled substances to E.G. and R.E. *See* 21 U.S.C. 841(a)(1); *see also Moore,* 423 U.S. at 142–43 (noting that evidence established that physician ''exceeded the bounds of 'professional practice,''' when ''he gave inadequate physical examinations or none at all,'' ''ignored the results of the tests he did make,'' and ''took no precautions against . . . misuse and diversion'').

Finally, with respect to patient J.G., the evidence shows that Applicant ''assumed the methadone maintenance of a known opiate addict despite his lack of qualification and without the guidance of qualified addiction specialists.'' *Id.* at 28. Applicant did so notwithstanding that he did not hold the registration required by the CSA to dispense narcotic drugs for the purposes of providing maintenance or detoxification treatment. *See* 21 U.S.C. 823(g)(1) (''practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment shall obtain annually a *separate* registration for that purpose.'') (emphasis added); *George C. Aycock, M.D.,* 74 FR 17529, 17543 n.32 (2009) (''Under federal law, a practitioner must meet extensive requirements and be separately registered to lawfully dispense narcotic drugs for maintenance or detoxification treatment.'').

Applicant further violated federal law when he prescribed methadone, a schedule II narcotic, for the purpose of treating J.G.'s opioid dependency. Expert Report, at 22. Under a DEA regulation, a practitioner (who is properly registered), ''may administer or dispense (but not prescribe) a narcotic drug . . . to a narcotic depend[e]nt person for the purpose of maintenance or detoxification treatment.'' 21 CFR 1306.07(a). Applicant thus also violated this provision when he prescribed methadone to treat J.G.'s opioid dependency.[7]

Accordingly, I hold that the evidence with respect to factors two and four supports the conclusion that Applicant's registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f). Because Applicant waived his right to a hearing or to submit a written statement in lieu of hearing, there is no evidence to the contrary. *See, e.g., Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (internal quotation marks omitted). Accordingly, I will deny Applicant's application.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) and 0.104, I hereby order that the application of Thomas Neuschatz, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This order is effective immediately.

Dated: December 6, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–29956 Filed 12–16–13; 8:45 am]

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[7] To similar effect, California law provides that a physician cannot ''administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.'' Cal. Bus. & Prof. Code § 2241(b). Thus, ''an order for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment or as part of an authorized narcotic treatment program, for the purpose of providing the user with controlled substances,'' is illegal. Cal. Health & Safety Code § 11153(a)(2); *People* v. *Gandotra,* 14 Cal. Rptr. 2d 896, 901 (Cal. Ct. App. 1992) (''[S]ection 11153 . . . prohibits practitioners from writing controlled substance prescriptions that . . . are outside the course of their usual professional practice.'').

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Approval of South Carolina's Application for Avoidance of 2013 Credit Reduction Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Sections 3302(c)(2) and 3302(d)(3) of the Federal Unemployment Tax Act (FUTA) provide that employers in a state that has an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if a balance of advances remains at the beginning of November 10 of that year. Because the account of South Carolina in the Unemployment Trust Fund had a balance of advances at the beginning of January 1 of 2009, 2010, 2011, 2012, and 2013, and still had a balance of advances at the beginning of November 10, 2013, South Carolina employers were potentially liable for a reduction in their FUTA offset credit for 2013.

Section 3302(g) of FUTA provides that a state may avoid credit reduction for a year by meeting certain criteria. South Carolina applied for avoidance of the 2013 credit reduction under this section. It has been determined that South Carolina met all of the criteria of section 3302(g) and thus qualifies for credit reduction avoidance. Therefore, South Carolina employers will have no reduction in FUTA offset credit for calendar year 2013.

Signed in Washington, DC, this 5th day of December, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–29851 Filed 12–16–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Denial of Georgia's Application for a ''Cap'' of the 2013 Credit Reduction Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Sections 3302(c)(2) and 3302(d)(3) of the Federal Unemployment Tax Act (FUTA) provide that employers in a state that has an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if a balance of advances remains at the beginning of November 10 of that year. By virtue of Georgia's Unemployment Trust Fund account having an outstanding balance of Title XII advances on January 1 of four consecutive years, Georgia employers are potentially liable for a 0.9 percent reduction in their FUTA offset credit for 2013.

Georgia applied for a cap on the credit reduction under FUTA, section 3302(f), and 20 CFR 606.20. If the State meets the specified criteria the 2013 credit reduction would have stayed at the 2012 percentage of 0.6 percent instead of increasing to 0.9 percent.

It was determined that Georgia did not meet all of the criteria of section 3302(f) since the estimated State average tax rate on total wages for calendar year 2013 did not equal or exceed the State's average benefit cost rate for calendar years 2008–2012. Thus Georgia does not qualify for a credit reduction cap and therefore employers in Georgia will have a 0.9 percent FUTA credit reduction for calendar year 2013.

Signed in Washington, DC, this 5th day of December, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–29854 Filed 12–16–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Approval of South Carolina's Application for a Waiver of the Additional Credit Reduction That Was To Be Applied to the 2013 Credit Reduction Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Sections 3302(c)(2) and 3302(d)(3) of the Federal Unemployment Tax Act (FUTA) provide that employers in a state that has an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if a balance of advances remains at the beginning of November 10 of that year. Further, section 3302(c)(2) of FUTA provides that a state may face additional credit reduction for a year by failing to meet certain criteria.

South Carolina applied for a waiver of the 2013 additional credit reduction under section 3302 (c)(2)(C) of FUTA and it has been determined that South Carolina met all of the criteria of this section necessary to qualify for the waiver of the additional credit reduction. Therefore, South Carolina employers will have no additional credit reduction applied for calendar year 2013.

Signed at Washington, DC, this 5th day of December, 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–29850 Filed 12–16–13; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Approval of Indiana's Application for a Waiver of the Additional Credit Reduction That Was To Be Applied to the 2013 Credit Reduction Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Sections 3302(c)(2) and 3302(d)(3) of the Federal Unemployment Tax Act (FUTA) provide that employers in a state that has an outstanding balance of advances under Title XII of the Social Security Act at the beginning of January 1 of two or more consecutive years are subject to a reduction in credits otherwise available against the FUTA tax for the calendar year in which the most recent such January 1 occurs, if a balance of advances remains at the beginning of November 10 of that year. Also section 3302(c)(2) of FUTA provides that a state may face additional credit reduction for a year by failing to meet certain criteria. Indiana applied for a waiver of the 2013 additional credit reduction under section 3302(c)(2)(C) of FUTA and because Indiana has taken no action to reduce the solvency of their Unemployment Insurance Trust Fund in the 12 months ending September 30, 2013, they have successfully qualified for the waiver. It has therefore been determined that Indiana meets all of the criteria of this section and thus qualifies for the waiver of additional credit reduction and therefore employers in Indiana will have no additional credit reduction applied for calendar year 2013.

Signed in Washington, DC, this 5th day of December 2013.

Eric M. Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–29849 Filed 12–16–13; 8:45 am]

BILLING CODE 4510–FW–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7018; NRC–2008–0369]

Application for Renewal of Special Nuclear Material License SNM–2014 From Tennessee Valley Authority for Watts Bar Nuclear Plant, Unit 2, Spring City, Tennessee

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact, notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Material (SNM) License SNM–2014, issued in June 2011 and held by Tennessee Valley Authority (TVA), to authorize the continued receipt, possession, inspection, and storage of Special Nuclear Material SNM in the form of fresh fuel assemblies at TVA's Watts Bar site in Spring City, TN.

ADDRESSES: Please refer to Docket ID NRC–2008–0369 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0369. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *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: Mary T. Adams, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9146; email: *Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The U.S. Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Material (SNM) License SNM–2014, issued in June 2011 and held by Tennessee Valley Authority (TVA), to authorize the continued receipt, possession, inspection, and storage of SNM in the form of fresh fuel assemblies at TVA's Watts Bar site in Spring City, TN. Fresh fuel assemblies are fuel assemblies that have not yet been placed in the reactor vessel. This license is and would continue to be subject to the requirements in part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR), Domestic Licensing of SNM. TVA plans to use this SNM in operating its proposed Watts Bar Nuclear Plant, Unit 2 (WBN2). TVA's request for authorization to operate WBN2 is the subject of a separate licensing action being evaluated by the NRC in accordance with 10 CFR part 50, Domestic Licensing of Production and Utilization Facilities. TVA's existing reactor at the Watts Bar site (WBN1) has operated since 1996 under NRC license NPF–90.

In accordance with 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions, which implements Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321, et seq., the NRC has prepared an environmental assessment (EA) in support of renewal of SNM–2014. Based on the EA's analysis, the NRC concludes that a Finding of No Significant Impact (FONSI) is appropriate regarding renewal of the SNM–2014 license.

NRC has also prepared a Supplemental Final Environmental Statement for issuance of the Operating License for WBN2, titled NUREG–0498, Supplement 2, ''Final Environmental Statement Related to the Operation of WBN2'' (Final Report), May 2013 (NUREG–0498). Notice of issuance of this Supplemental Final Environmental Statement was published in the **Federal Register** on June 14, 2013 (78 FR 35989). The NRC has not yet issued the Operating License for WBN2.

NEPA requires a Federal agency to prepare an environmental impact statement (EIS) for any major federal action having the potential to significantly affect the quality of the human environment. Consistent with their responsibilities as Federal agencies under NEPA, both TVA and the NRC previously prepared EISs regarding the operation of Units 1 and 2 at the Watts Bar Nuclear site. Some of the relevant history in this regard is briefly summarized below.

In 1978, the NRC published NUREG–0498, Final Environmental Statement Related to the Operation of WBN1 and 2 (FES–OL). After safety issues were raised, TVA decided not to pursue its WBN reactor licenses for several years. When TVA did decide to pursue its WBN reactor licenses, the NRC prepared Supplement 1 to NUREG–0498 in April 1995 (ML081430592), regarding Unit 1, to evaluate changes in environmental impacts that occurred as a result of changes made in the WBN Plant design and methods of operations after the 1978, FES–OL.

The TVA Final Supplemental EIS for Unit 2 was issued in June 2007. The related Record of Decision by the TVA Board of Directors was published in the **Federal Register** on August 15, 2007 (72 FR 45859), and TVA submitted its 2007, Final Supplemental EIS to the NRC on February 15, 2008 (ML080510469).

On March 4, 2009, pursuant to 10 CFR part 50, TVA submitted an updated application to the NRC for a power reactor operating license for WBN2 (ML090700378). The TVA Final Safety Analysis Report (FSAR) supporting the WBN2 operating license request was submitted to the NRC on April 30, 2009 (ML091400067). In May 2013, NRC published NUREG–0498, Supplement 2, ''Final Environmental Statement Related to the Operation of WBN2'' (Final Report); however, the NRC has not yet issued the Operating License for Unit 2.

The Construction Permit held by TVA for construction of WBN2, Docket 50–391, CPPR–92, does not authorize the receipt or possession of fresh fuel assemblies. On November 12, 2009, TVA requested a license pursuant to 10 CFR part 70, to receive, inspect, possess, and store fresh fuel for WBN2 (ML100120487). On June 13, 2011, (76 FR 34273) the NRC published an EA and FONSI for SNM License Application from TVA for WBN2, Spring City, Tennessee. On June 14, 2011, the NRC issued SNM–2014 to authorize TVA to receive, possess, inspect, and store fresh fuel assemblies at WBN2. SNM–2014 was issued for 2 years, expiring on June 30, 2013. On August 23, 2012, TVA requested renewal of SNM–2014. In accordance with 10 CFR 70.38(a), because this application for renewal was filed not less than 30 days before the expiration date of SNM–2014; the existing license continues in effect until the Commission makes a final decision on the renewal application.

The scope of the EA summarized below is limited to assessing the potential impacts of the continued receipt, possession, inspection, and storage of fresh reactor fuel at the WBN2 that would be used to operate WBN2 if such operating authorization is later granted. This EA's scope does not include completion of construction, or operation, of WBN2.

II. Summary of the Environmental Assessment

Pursuant to 10 CFR part 70, Domestic Licensing of Special Nuclear Material, TVA requested renewal of SNM–2014 by application dated August 23, 2012 (ML12278A337 and ML12264A545). The license renewal would authorize TVA to continue to receive, possess, inspect, and store SNM in the form of 193 fully-assembled fresh fuel assemblies for potential future use in its proposed WBN2 reactor.

Description of the Proposed Action

The proposed action is to renew TVA's SNM–2014 license which would reauthorize TVA to receive, possess, inspect, and store SNM in the form of fully-assembled fuel assemblies that would later form the initial reactor core of WBN2. The SNM in the fuel assemblies is enriched up to 5% in the isotope U–235. The fresh fuel assemblies for WBN2 would continue to be stored in areas common to WBN1 and WBN2. Specifically, these assemblies would continue to be stored with the WBN1 fuel in the existing

auxiliary building containing storage racks within a storage vault, and a WBN1 spent fuel pool. TVA did not propose new storage areas or new management practices for fuel storage in the license renewal application.

TVA requested that the renewed SNM–2014 license be extended to September 30, 2016. The additional time requested will allow TVA to complete the engineering, construction, and testing necessary to obtain an operating license for WBN2. TVA is currently in possession of the fuel authorized by the SNM–2014 license. The fuel is stored and maintained in accordance with the existing SNM–2014 license. By letter dated May 17, 2012, TVA requested an extension of the WBN2 Construction Permit (CPPR–92) until September 30, 2016 (ML12143A346). The requested SNM–2014 extension date was chosen to match that requested for the construction permit extension. The safety and environmental reviews for the proposed WBN2 OL are not part of the proposed action evaluated in this EA. The environmental impacts of the proposed WBN2 OL are evaluated in NUREG–0498 Supplement 2, which also evaluates the impacts of fresh fuel receipt, possession, inspection, and storage during WBN2 operations.

Need for the Proposed Action

As authorized by SNM–2014, TVA received the initial core for WBN2. The NRC has not yet issued the OL for the Unit 2 reactor. The construction permit held by TVA for WBN2, CPPR–92, does not authorize the receipt or possession of reactor fuel. TVA needs this renewed SNM license to authorize WBN2 to continue to receive, possess, inspect, and store the fresh fuel while the NRC continues its review of the Unit 2 OL application. If an OL is issued, the OL would authorize use of the fresh fuel as well as the receipt, possession, storage, and use of additional fresh fuel that would be needed for operating Unit 2. If the OL is issued, a separate part 70 license would no longer be required and SNM–2014 would be terminated.

Alternative to the Proposed Action

An alternative to the proposed action is for the NRC not to renew the SNM license. Pursuant to 10 CFR 70.38(a), if the NRC does not renew the license, SNM–2014 would expire at the end of the day on which the Commission makes a final determination to deny the renewal application, or, if the determination states an expiration date, the expiration date stated in the determination. In that case, TVA would be required to take one of the alternatives to the proposed action described in the EA.

Environmental Impacts of the Proposed Action

The November 12, 2009, SNM license application described the affected environment; this license application is included in the SNM–2014 renewal application by reference. The proposed action is limited to the continued receipt, possession, inspection, and storage of SNM in the form of fuel assemblies. The NRC determined that the proposed action would have no significant impact on any of resource areas discussed in the EA, therefore the renewal of the license to continue to receive, possess, inspect, and store SNM in the form of fresh fuel assemblies at the Watts Bar site is thus not expected to have any significant impact on the environment. A summary of the analysis supporting these conclusions is discussed below.

Part 20, Standards for Protection Against Radiation, establishes standards for the protection of workers and members of the public against ionizing radiation resulting from activities conducted under licenses issued by the NRC. Sections 20.1201–20.1208 contain occupational dose limits, and 10 CFR 20.1301 contains dose limits for members of the public. The effluent limits in 10 CFR part 20, appendix B, ensure that the effluent discharges are kept within the dose limits. In addition to meeting the dose limits, an NRC licensee is required under 10 CFR 20.1101(b) to have a program with the goal of achieving doses that are as low as is reasonably achievable (ALARA). The worker protection and environmental protection programs that are currently used for the receipt and storage of WBN1 fuel would also continue to be used for the receipt and storage of WBN2 fuel, and will ensure that there would be no significant exposure to workers and members of the public under the proposed action. Thus, the proposed renewal of SNM–2014 will not result in any change to radioactive effluents that affect radiation exposures to plant workers and members of the public.

The proposed renewal of SNM–2014 does not result in changes to land use, water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Fishery Conservation and Management Act are expected from the continued receipt and storage of fresh fuel at WBN2. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Because all of the fresh fuel assemblies authorized by SNM–2014 have already been transported to WBN2, the renewal of SNM–2014 will have no transportation impacts. The fresh fuel assemblies will continue to be stored in the vault and pool, and there is no change to the existing conditions.

If WBN2 is licensed to operate, TVA would be required to comply with all NRC, State, and Federal requirements for the transport of un-irradiated fuel, as it currently does for fuel deliveries to WBN1. The environmental impacts of the transport and delivery of fuel for two reactors, if WBN2 is licensed to operate, are addressed in NUREG–0498. Based on the above, the NRC finds that the impacts of WBN2 fresh fuel transport and delivery on human health and the environment would be minimal.

Environmental Impacts of the No-Action Alternative

An alternative to the proposed action is for the NRC not to renew SNM–2014. In that case, SNM–2014 would expire on the date on which the Commission makes a final determination to deny the renewal application, or, if the determination states an expiration date, the expiration date stated in the determination. In that case TVA would be unable to continue to receive, possess, inspect, and store the fresh fuel and would be required to take some other actions regarding the material present on the site. TVA has received 193 fuel assemblies from Westinghouse for use in the first operating cycle of WBN2. These fuel assemblies are stored in both the Spent Fuel Pool and the New Fuel Storage Area. By letter dated July 1, 2013, (ML13189A033) TVA identified three potential alternatives that could be used if SNM–2014 is not renewed. These no-action alternatives and their impacts are discussed in the EA. The NRC has determined that none of the three alternatives is preferable to the proposed action.

List of Agencies and Persons Consulted and Identification of Sources Used

The NRC staff consulted with the Tennessee Division of Radiological Health regarding this EA. By email dated September 9, 2013, (ML13253A053), the state official concurred with the EA and finding of no significant impact.

Because the fuel is already on site and the requested license renewal would only continue to authorize the receipt, possession, inspection, and storage of the fuel, the NRC staff has determined that the proposed action will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. Likewise, the NRC staff has determined that the proposed action is not the type of activity that has potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC reviewed the documents submitted by TVA in support of its application for renewal of SNM–2014 for the WBN2 facility, including those incorporated by reference from its part 50 operating license application for the WBN2 facility. The NRC also performed independent assessments, as discussed in the EA, and found no significant environmental impacts from the proposed continued fresh fuel receipt, possession, inspection and storage. On the basis of this EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an EIS for the proposed action.

References

1. WBN2 2, Request for Renewal for Special Nuclear Material License No. SNM–2014 (Docket No. 70–7018), August 23, 2012, ML12278A337.
2. WBN2—Response to Request for Additional Information Regarding 10 CFR Part 70 Special Nuclear Material License Renewal (TAC L33242), July 1, 2013, ML13189A033.
3. Letter to A. Bhatnagar, Issuance of Special Nuclear Materials License No. SNM–2014 for WBN2 (TAC L32918), June 15, 2011, ML110830141.
4. Enclosure 1: Form 374—Part 70 License for WBN2; June 14, 2011, ML110830115.
5. Enclosure 2: Safety Evaluation Report for the Special Nuclear Material License Application, WBN2, June 14, 2011, ML110830114.
6. **Federal Register** Notice Regarding Availability of Environmental Assessment and Finding of No Significant Impact for Issuance of Part 70 License for WBN2, June 7, 2011, ML103430330.
7. **Federal Register** Notice, Environmental Assessment and Finding of No Significant Impact for Special Nuclear Material License Application From Tennessee Valley Authority for WBN2, Spring City, TN, 76 *FR* 34273, June 13, 2011.
8. WBN2—Request for Extension of Construction Permit CPPR–92, May 17, 2012, ML12143A346.
9. NUREG–0498 Supplement 2, Final Environmental Statement Related to the Operation of WBN2, May 2013, ML13144A202.
10. NUREG–0847 Supplement 26 Safety Evaluation Report Related to the Operation of WBN2, June 30, 2013, ML13205A136.
11. Email from D. Shults, Director, Division of Radiological Health, to M. Adams, September 9, 2013, ML13253A053.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 5th day of December, 2013.

For the Nuclear Regulatory Commission.

Robert K. Johnson,

Chief, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–29940 Filed 12–16–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meeting Notice

DATE: Weeks of December 16, 23, 30, 2013, January 6, 13, 20, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of December 16, 2013

There are no meetings scheduled for the week of December 16, 2013.

Week of December 23, 2013—Tentative

There are no meetings scheduled for the week of December 23, 2013.

Week of December 30, 2013—Tentative

There are no meetings scheduled for the week of December 30, 2013.

Week of January 6, 2014—Tentative

Monday, January 6, 2014

9:00 a.m. Briefing on Spent Fuel Pool Safety and Consideration of Expedited Transfer of Spent Fuel to Dry Casks (Public Meeting); (Contact: Kevin Witt, 301–415–2145).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

1:30 p.m. Briefing on Flooding and Other Extreme Weather Events; (Public Meeting) (Contact: George Wilson, 301–415–1711).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Friday, January 10, 2014

9:00 a.m. Briefing on the NRC Staff's Recommendations to Disposition Fukushima Near-Term Task Force (NTTF) Recommendation 1 on Improving NRC's Regulatory Framework (Public Meeting); (Contact: Dick Dudley, 301–415–1116).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of January 13, 2014—Tentative

There are no meetings scheduled for the week of January 13, 2014.

Week of January 20, 2014—Tentative

There are no meetings scheduled for the week of January 20, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/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: December 12, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–30090 Filed 12–13–13; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans, 29 CFR Part 4062 (OMB control number 1212–0017; expires March 31, 2014). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by February 18, 2014.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

Comments received will be posted to *www.pbgc.gov.*

The collection of information may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulation on Liability for Termination of Single-Employer Plans can be found on PBGC's Web site at *http://www.pbgc.gov/res/laws-and-regulations/code-of-federal-regulations/part-4062---liability-for-termination-of-single-employer-plans.html.*

FOR FURTHER INFORMATION CONTACT: Dan Liebman, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, *liebman.daniel@pbgc.gov* or 202–326–4400, ext. 6510. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify PBGC and to submit net worth information. This information is necessary to enable PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017 through March 31, 2014. PBGC intends to request that OMB extend its approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that an average of thirty contributing sponsors or controlled group members per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $4,200 per respondent, with an average total annual burden of 360 hours and $126,000.

PBGC is soliciting public comments to:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, this 11 day of December 2013.

Judith Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–29855 Filed 12–16–13; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–9 and CP2014–10; Order No. 1898]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings requesting the addition of Priority Mail Contract 71 to the competitive product list. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 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:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a request and associated supporting information to add Priority Mail Contract 71 to the competitive product list.[1] The Postal Service asserts

[1] Request of the United States Postal Service to Add Priority Mail Contract 71 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2013 (Request).

that Priority Mail Contract 71 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2014–9.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014–10.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approvals. *Id.* at 3. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party or renewed by mutual agreement. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within seven days of the contract's expiration date. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).[2]

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014–9 and CP2014–10 to consider the Request pertaining to the proposed Priority Mail Contract 71 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014–9 and CP2014–10 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 18, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–29825 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–FW–P

[2] Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

POSTAL REGULATORY COMMISSION

[Docket No. CP2011–4; Order No. 1901]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting an amendment to Priority Mail Contract 29. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 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:

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I. Information
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III. Ordering Paragraphs

I. Introduction

On December 9, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 29 subject to this docket.[1] The Postal Service includes one attachment in support of its Notice:

- Attachment A—a redacted copy of the amendment to the existing Priority Mail Contract 29.

The Postal Service also filed the unredacted amendment under seal. It asserts that the ''supporting financial documentation and financial certification initially provided in this docket remain applicable.'' *Id.* at 1. It also contends that the amendment ''will not materially affect the cost coverage'' of the product. *Id.* The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment

[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 29, With Portions Filed Under Seal, December 9, 2013 (Notice).

originally filed in this docket for the protection of customer-identifying information that it has filed under seal. *Id.*

The amendment makes three changes. First, it changes the duration of the contract from three to five years after the effective date. *Id.* Attachment A at 2. Second, the amendment allows two 90-day extensions of the contract if the preparation of a successor agreement is active and the Commission is notified within at least seven days of the contract's expiration date. *Id.* at 3. Finally, it provides pricing for the fourth year of the contract as well as an annual adjustment provision which calculates prices during the fifth year of the contract. *Id.* at 2.

II. Notice of Filings

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to represent the interests of the general public (Public Representative) in this case.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2011–4 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due no later than December 18, 2013.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–29975 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–13; Order No. 1900]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting an amendment to Parcel Select Contract 6. This notice informs the public of filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system *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:

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I. Introduction
II. Notice of Filings
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I. Introduction

On December 9, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Parcel Select Contract 6 subject to this docket.[1]

The Postal Service includes on attachment in support of its Notice:

- Attachment A—a redacted copy of the amendment to the existing Parcel Select Contract 6.

The Postal Service also filed the unredacted amendment under seal. It asserts that the ''supporting financial documentation and financial certification initially provided in this docket remain applicable.'' *Id.* at 1. It also contends that the amendment ''will not materially affect the cost coverage'' of the product. *Id.* The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of customer-identifying information that it has filed under seal. *Id.*

The amendment modifies both the mythology for pricing applicable to the second year of the contract and the annual price adjustment provision used to calculate prices for the third year of the contract. *Id.* Attachment A at 1. In addition, the amendment alters the date on which the Postal Service must provide an updated price chart to the customer. *Id.*

[1] Notice of United States Postal Service of Amendment to Parcel Select Contract 6, With Portions Filed Under Seal, December 9, 2013 (Notice).

II. Notice of Filings

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

James F. Callow, previously designated to serve as Public Representative in this proceeding, will continue in that capacity.[2]

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2013–13 for consideration of matters raised by the Postal Service's Notice.
2. James F. Callow, previously designated to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding, will continue in that capacity.
3. Comments are due no later than December 18, 2013.

The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–29973 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–10 and CP2014–11; Order No. 1899]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings requesting the addition of Priority Mail Contract 72 to the competitive product list. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 18, 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

[2] Order No. 1521, Notice and Order Concerning the Addition of Parcel Select Contract 6 to the Competitive Product List, October 26, 2012.

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:

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I. Introduction
II. Notice of Filings
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I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a request and associated supporting information to add Priority Mail Contract 72 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 72 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2014–10.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2014–11.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day after the Commission issues all necessary regulatory approvals. *Id.* at 2. The contract will expire three years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party or renewed by mutual agreement. *Id.* The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within at least seven days of the contract's expiration date. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).[2]

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014–10 and CP2014–11 to consider the Request pertaining to the proposed Priority Mail Contract 72 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 18, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2014–10 and CP2014–11 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than December 18, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–29826 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 72 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 9, 2013 (Request).

[2] Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). See Request at 2; Attachment E.

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 17, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 71 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–9, CP2014–10.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–29876 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 17, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 72 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–10, CP2014–11.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–29877 Filed 12–16–13; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Self-Employment and Substantial Service Questionnaire; OMB 3220–0138.

Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop nonrailroad work or self-employment.

The RRB considers some work claimed as ''self-employment'' to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These circumstances are prescribed in 20 CFR 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a ''Last Pre-Retirement Nonrailroad Employer'' (LPE). However, Section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from the ''LPE'' employer.

''LPE'' is defined as the last person, company, or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. If a spouse never worked for a railroad, the LPE employer is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire,* when an applicant claims to be self-employed to obtain information needed to determine if the applicant's work is LPE, railroad service or self-employment. If the work is self-employment, the questionnaire identifies any months in which the applicant did not perform substantial service. One response is requested of each respondent. Completion is voluntary. However, failure to complete the form could result in the nonpayment of benefits. The RRB proposes no changes to Form AA–4.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form	Annual responses	Time (min)	Burden (hrs)
AA–4 (With assistance)	570	40	380
AA–4 (Without assistance)	30	70	35
Total	600		415

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–29846 Filed 12–16–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law. 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, December 16, 2013 at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice was practicable.

The subject matter of the Closed Meeting will be:

Post argument discussion

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 12, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–30052 Filed 12–13–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 19, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings;

consideration of amicus participation; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 12, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–30053 Filed 12–13–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71048; File No. SR–EDGX–2013–44]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to(i) remove Flag RS, which routes to PSX and adds liquidity; and (ii) increase the rebate to add liquidity under the Market Depth Tier 1 from $0.0032 per share to $0.00325 per share and amend the criteria necessary to achieve the tier. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) remove Flag RS, which routes to PSX and adds liquidity; and (ii) increase the rebate to add liquidity under the Market Depth Tier 1 from $0.0032 per share to $0.00325 per share and amend the criteria necessary to achieve the tier.

Flag RS

The Exchange proposes to amend its Fee Schedule to remove Flag RS, which routes to PSX and adds liquidity. The Exchange currently rebates orders that yield Flag RS $0.0020 per share for securities priced at or above $1.00 and charges no fee for securities priced below $1.00. These fees represent a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders to PSX when it does not qualify for a volume tiered rate. The Exchange recently began to incur increased excessive messaging fees from PSX.[4] To mitigate the increased messaging fees, the Exchange intends to delete Flag RS from its Fee Schedule and no longer permit Members to route orders via DE

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

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* the *Excessive Messaging Policy* under the Nasdaq Stock Market LLC fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (last visited November 20, 2013).

Route to post on the PSX. Members would continue to be able to route orders to PSX and remove liquidity via DE Route.

Amendments to the Market Depth Tier 1

The Exchange proposes to amend its Fee Schedule to increase the rebate to add liquidity under the Market Depth Tier 1 and amend the criteria necessary to achieve the tier. Footnote 1 of the Fee Schedule currently provides that Members may qualify for the Market Depth Tier 1 and receive a rebate of $0.0032 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the TCV in average daily trading volume (''ADV'') on EDGX in total, where at least 1,800,000 shares are Non-Displayed Orders that yield Flag HA. First, the Exchange proposes to increase the rebate to add liquidity under the Market Depth Tier 1 from $0.0032 per share to $0.00325 per share. Second, the Exchange proposes to amend Footnote 1 of its Fee Schedule to increase the ADV requirement of the Market Depth Tier from 1,800,000 shares of ADV to 4,000,000 shares of ADV of Non-Displayed Orders that yield Flag HA. Lastly, the Exchange also proposes to increase the requirement to post greater than or equal to 0.50% of the TCV in ADV on EDGX in total to 0.85% of the TCV on EDGX. The remainder of the footnote as it pertains to the Market Depth Tier 1 would remain unchanged.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on December 2, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RS

The Exchange believes that its proposal to delete Flag RS from its Fee Schedule represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it will no longer offer routing to the PSX via its System routing table. The Exchange recently began to incur increased excessive messaging fees from PSX.[7] To mitigate the increased messaging fees, the Exchange intends to delete Flag RS and no longer allow Members to route orders DE Route to post on the PSX. The Exchange notes that it will continue to comply with its obligations under Regulation NMS and will route to PSX to remove liquidity; however, it will not continue to offer Flag RS as a routing option to post liquidity to the PSX. Members seeking to post orders on the PSX may select alternative routing methods or to access the PSX directly. The Exchange believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Market Depth Tier 1

The Exchange believes that increasing the TCV and ADV requirements for the Market Depth Tier 1 represents an equitable allocation of reasonable dues, fees, and other charges because increasing the thresholds to achieve the tier encourages Members to add displayed liquidity to the EDGX Book[8] each month, as only the displayed liquidity in this tier is awarded the rebate of $0.00325 per share. This tier also recognizes the contribution that non-displayed liquidity provides to the marketplace, including: (i) adding needed depth to the EDGX market; (ii) providing price support/depth of liquidity; and (iii) increasing diversity of liquidity to EDGX. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. In addition, the Exchange also believes that the proposed amendment to the Market Depth Tier is non-discriminatory because it is available to all Members equally.

The Exchange also believes that the increased rebate for the Market Depth Tier 1 represents an equitable allocation of reasonable dues, fees, and other charges because the higher rebate is directly correlated with this tier's amended criteria. The Exchange believes that the increased volume requirements necessary to achieve the Market Depth Tier 1 justifies its increased rebate. For example, for a Member to qualify for the tier most similar to the Market Depth Tier 1, the Market Depth Tier 2 and receive a rebate of $0.0029 per share, a Member needs to add 10,000,000 shares or more of ADV on a daily basis, measured monthly, and add at least 1,000,000 shares as non-displayed orders that yield Flag HA. For a Member to qualify for the Market Depth Tier 1, a Member must post at least 0.85% of the TCV in ADV on EDGX in total, where at least 4 million shares are non-displayed orders that add liquidity to EDGX yielding Flag HA. Based on a TCV of six (6) billion shares, this would amount to 51,000,000 shares for the Market Depth Tier 1 while the Market Depth Tier 2 would require an ADV of 10,000,000 shares. Members seeking to achieve the Market Depth Tier 1 would also be required to post at least 4 million shares of non-displayed orders that add liquidity to EDGX yielding Flag HA, whereas the Market Depth Tier 2 would require that Members post 1,000,000 shares of non-displayed orders that add liquidity to EDGX yielding Flag HA.

Lastly, the Exchange believes that its proposal to increase the rebate offered by the Market Depth Tier 1 is non-discriminatory because the proposed rate would continue to be available to all Members equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposal amendments its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RS

The Exchange believes that its proposal to delete Flag RS from its Fee Schedule would not impact intermarket competition because Members seeking to access the PSX to add liquidity may select alternative routing methods or access the PSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed repeal of Flag RS would be available to all Members equally.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *See* the *Excessive Messaging Policy* under the Nasdaq Stock Market LLC fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (last visited November 20, 2013).

[8] The ''EDGX Book'' is defined as ''the System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

Market Depth Tier 1

The Exchange believes that its proposal amendments to the Market Depth Tier would increase intermarket competition because the increased volume requirements would incentivize Members to send higher volume to the Exchange. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the Market Depth Tier would continue to be available all Members equally and the ability of Members to meet the tier would benefit other Members by contributing to increased price discovery and better market quality at the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(2) [10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2013–44 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2013–44. 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–EDGX–2013–44 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29902 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71053; File No. SR–ISE–2013–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 27, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance. The proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to exclude from its average daily volume (''ADV'') calculations any trading day on which the Exchange is closed early for holiday observance. The Exchange provides volume-based tiered rebates for Priority Customer complex orders when these orders trade with non-Priority Customer orders in the complex order book, or trade with quotes and orders on the regular order book. These complex order rebates are provided to members in six tiers in both Standard and Mini Options based on the member's ADV in Priority Customer complex contracts. On September 30, 2013 the Exchange filed with the Commission an immediately

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

[2] 17 CFR 240.19b–4.

effective rule filing that, among other things, amended its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining Priority Customer complex order tiers, any day that the market is not open for the entire trading day.[3] On November 1, 2013 the Exchange further amended its Schedule of Fees to increase its Market Maker Plus rebate in Standard Options and Mini Options for Market Makers that meet the quoting requirements for Market Maker Plus and are affiliated with an Electronic Access Member that executes a total affiliated Priority Customer ADV of 200,000 contracts in a calendar month.[4] When introducing this new Market Maker Plus rebate the Exchange also included language indicating that, for purposes of determining total affiliated Priority Customer ADV, any day that the market is not open for the entire trading day may be excluded from such calculation. Currently, each of these provisions allows the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. In these filings, however, the Exchange noted that, in contrast to the NASDAQ OMX PHLX, LLC (''PHLX'') and NASDAQ Options Market (''NOM'') filings on which this language was based,[5] it would not exclude days on which the Exchange is closed early for holiday observance. The Exchange has since determined that it would be more equitable to exclude these days as well. While members are aware in advance of days subject to an early scheduled close—for example, the Friday after Thanksgiving—these are still low volume days, and including these days in the ADV calculation would have the detrimental effect of lowering members' daily and monthly ADV and thereby qualifying members for lower rebates. The Exchange believes that this effective cost increase during months where the Exchange has scheduled early market closes is undesirable to the Exchange and its members, and is therefore proposing to interpret this provision in the same manner as NOM and PHLX.[6] The Exchange notes that it will not be making any textual changes to its fees as this proposed change brings its interpretation in line with that of other markets with substantially similar language to that already included in the Schedule Fees [sic].[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is equitable and reasonable to eliminate days subject to an early scheduled closed [sic] from its ADV calculation because it preserves the Exchange's intent behind adopting volume-based pricing, and conforms the rules of the Exchange with those of other markets. The Exchange further believes that the proposed change is non-discriminatory because it applies equally to all members and to all volume tiers.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, this proposed rule change conforms the rules of the Exchange with those of other markets that have adopted substantially similar rules for excluding certain days from their ADV calculations. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–63 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2013–63. 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

[3] *See* Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2013) (ISE–2013–51).

[4] *See* Securities Exchange Act Release No. 70872 (November 14, 2013), 78 FR 69718 (November 20, 2013) (ISE–2013–57).

[5] *See* Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013) (PHLX–2013–93); 70470 (September 23, 2013), 78 FR 59740 (September 27, 2013) (NASDAQ–2013–117).

[6] *Id.*

[7] *Id.*

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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–ISE–2013–63 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29960 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71042; File No. SR–FINRA–2013–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Alternative Display Facility New Entrant

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''SEA'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 2, 2013, 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, II, and III 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.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to add a new entrant to the Alternative Display Facility (''ADF'').

The new ADF entrant, LavaFlow (''FLOW'') has prepared a summary of its policies and procedures regarding access to its quotations in an NMS stock displayed on the ADF, and a summary of its proposed fees for such access, which was filed as Exhibit 3.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (*i.e.,* ADF-registered market makers or electronic communications networks (''ECNs''))[3] the ability to post quotations, display orders and report transactions in NMS stocks[4] for submission to the Securities Information Processors for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by SEC Regulation NMS.[5]

The ADF was initially approved by the Commission on July 24, 2002, in connection with the SEC's approval of SuperMontage and Nasdaq's registration as a national securities exchange.[6] At that time, the ADF was approved for Nasdaq-listed securities for a nine-month pilot period to provide FINRA members with an alternative to the Nasdaq systems for reporting quotations and transactions in Nasdaq UTP Plan securities.

In 2005, the Commission adopted Regulation NMS, which included the Order Protection Rule.[7] With the adoption of the Order Protection Rule, Regulation NMS established trade-through protection for all NMS stocks.[8] Since the ADF is a display-only facility, a market participant would have to access the actual ADF participant that posted the protected quotation on the ADF in order to comply with the Order Protection Rule.[9] In the NMS Adopting Release, the Commission noted that market participants could potentially access an ADF participant either through direct access or through a private network.[10]

Given that market participants could be required to access multiple ADF participants to comply with the Order Protection Rule, the Commission formulated Rule 610 under SEC Regulation NMS to ensure that market participants would be afforded ''fair and efficient access'' to such trading centers.[11] Accordingly, Rule 610 requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility (such as the ADF) ''provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.''[12] Rule 610 also requires that a trading center displaying quotations in an NMS stock through an SRO display-only facility not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.[13]

In articulating this standard, the Commission noted that the level and cost of access would ''encompass both

[3] *See* FINRA Rule 6220(a)(3).

[4] *See* 17 CFR 242.600.

[5] *See* 17 CFR 242.600.

[6] *See* Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002) (Order Approving File No. SR–NASD–2002–97); *see also Notice to Members* 02–45 (August 2002).

[7] The Order Protection Rule provides that a trading center ''shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks'' that do not fall within one of the exceptions set forth in the rule. *See* 17 CFR 242.611.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37501 (June 29, 2005) (''NMS Adopting Release'').

[9] NMS Adopting Release, 70 FR at 37541.

[10] NMS Adopting Release, 70 FR at 37543.

[11] NMS Adopting Release, 70 FR at 37549.

[12] 17 CFR 242.610(b)(1).

[13] 17 CFR 242.610(b)(2).

(1) the policies, procedures, and standards that govern access to quotations of the trading center, and (2) the connectivity through which market participants can obtain access and the cost of such connectivity.'' [14] The nature and cost of connections for market participants seeking to access the ADF participant's quotations would need to be substantially equivalent to the nature and cost of connections to SRO trading facilities.[15]

In evaluating whether ADF participants are meeting the access standards under Rule 610, *i.e.,* that the cost of accessing an ADF participant is substantially equivalent to the cost of accessing an SRO trading facility, the Commission stated that the NASD (now FINRA) would act as a gatekeeper in this process. As such, FINRA would be required to submit a proposed rule change pursuant to Section 19(b) of the Act in order to add a new ADF participant.[16] Since the second quarter of 2010, there have been no ADF Market Participants.

Consistent with the requirements of Rule 610 and the NMS Adopting Release, FINRA is submitting this proposed rule change so that FLOW may become an ADF Market Participant. As set forth in its summary, FLOW has proposed policies and procedures that are designed to ensure that the level of access to its quotations is substantially equivalent to the level of access to quotations displayed by SRO trading facilities in that stock, and to ensure that FLOW does not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations.

Specifically, firms wishing to access FLOW liquidity may connect in a variety of ways. Firms that are FLOW subscribers may connect to FLOW via the FLOW Smart Order Router, or through the FLOW Gateway. Non-FLOW subscribers may connect via a third party vendor or connectivity provider, or alternatively through an exchange or a third-party broker-dealer subscriber. FLOW allows a subscriber to determine its level of connectivity, and FLOW does not have any tiers or rules regarding execution of orders based upon Market Participant Identification. No participant is given any priority in the FLOW matching engine. One feature of FLOW is customer anonymity from matching orders through clearing executions, and the FLOW matching engine is blind to the identity of the participant, with the exception of orders using the anti-internalization feature. FLOW also has policies and procedures that require FLOW to respond to orders by non-subscribers as promptly as it responds to orders by subscribers, and have non-subscribers be able to automatically execute against quotations displayed by the system.

As set forth in its summary, FLOW has also established, and regularly maintains, policies and procedures designed to maintain a linkage with at least one SRO trading facility, or SRO display-only facility. It also has policies and procedures to transmit to such SRO trading facility or SRO display-only facility for display either the best priced order of those orders entered by OTC market makers and exchange market makers for those securities in which they make markets (or act as specialists) or the best priced orders entered by all ECN subscribers. FLOW has policies and procedures to provide, to any broker or dealer, access to such orders that is functionally equivalent to the access that is generally available for quotes displayed by a SRO trading facility or, for orders displayed in an SRO display-only facility, a level and cost of access that is substantially similar to the level and cost of access to quotations displayed by SRO trading facilities in that stock. FLOW also has established and maintains policies and procedures to conduct regular periodic system capacity reviews and tests to ensure future capacity, and to identify potential weaknesses and reduce the risks of system failures and threats to system integrity. FLOW's policies and procedures also require continuous monitoring of its connections with SRO trading facilities or SRO display-only facilities and in the event that FLOW loses connection with any SRO trading facility or SRO display-only facility FLOW will cancel all quotes previously published by the system to that facility and notify its subscribers of such interruption.

FLOW also has policies and procedures, also set forth in its summary, that are designed to ensure that the cost of access to its quotations is substantially equivalent to the cost of access to quotations displayed by SRO trading facilities in that stock, and that FLOW will not charge a fee for accessing its quotations that exceeds the maximum fee permitted by Rule 610 of Regulation NMS.[17] The cost of accessing the quotation of a trading center may consist of several distinct costs, such as port fees, market data fees, general connectivity fees, and transaction fees, and FLOW proposes to assess costs in these respects that are substantially equivalent to the costs assessed by SRO trading facilities.

With respect to port fees, FLOW charges port fees to subscribers based upon the number of ports requested. FLOW provides one port per subscriber in each of its data centers (primary and secondary) for free, and reserves the right to charge a port fee for all subsequent connections. Fee-eligible port connections may be charged $400 per connection, per month. In comparison, exchange port fees on average range from $100 to $1,000 per port, per month.[18]

With respect to other connectivity fees, FLOW is already connected in its production environment to most outbound routers via intranets, cross connects and other direct connections. FLOW has represented that the cost to establish connections to FLOW for users of these services and for individual firms not using these services should be substantially the same as the costs to connect to an exchange. Both FLOW subscribers and non-subscribers are responsible for paying for their own external telecommunications costs to connect to FLOW, and FLOW has represented that such fees would be equivalent to the costs to connect to any other trading center, such as an exchange.

With respect to market data fees, FLOW has represented that it does not have any plans to charge its subscribers or non-subscribers for access to FLOW's market data in either of its two forms of distribution (TCP or multicast). In comparison, market data fees vary by exchange, with some exchanges charging fees that range from under

[14] NMS Adopting Release, 70 FR at 37549.

[15] NMS Adopting Release, 70 FR at 37549.

[16] NMS Adopting Release, 70 FR at 37549.

[17] With respect to the requirement that the nature and cost for market participants seeking to access an ADF Trading Center need to be substantially equivalent to the nature and cost of connection to SRO trading facilities, FINRA notes that the Commission stated in the NMS Adopting Release that this requirement does not apply on an absolute basis, but rather applies on a per-transaction basis to reflect the costs relative to the ADF participant's trading volume. *See* NMS Adopting Release, 70 FR at 37549 n.449. Based on FLOW's representations, FINRA believes that FLOW's proposed level and cost of access to its quotations is substantially equivalent to the level and cost of access to quotations displayed by an SRO trading facility, both in absolute and relative terms.

[18] For example, The Chicago Board Options Exchange, Incorporated Stock Exchange (''CBSX'') assesses a fee of $100 per month per FIX port. *See http://www.cboe.com/publish/cbsxfeeschedule/cbsxfeeschedule.pdf.* BATS Exchange, Inc. (''BATS'') assesses a monthly port fee of $400 for certain ports. *See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf.* EDGA Exchange, Inc. assesses a monthly port fee of $500. *See https://www.directedge.com/Portals/0/01Trading/EDGA%20Fee%20Schedule/2013/EDGA.11.2013.pdf.* CBSX assess a fee of $1,000 per month for a 10-gigabit network access port. *Id.*

$100 per month to $750 to $2,500, and some exchanges charging $5,000 for external distribution.[19]

Finally, exchanges currently charge a range of other fees, including but not limited to membership fees, trading rights fees, risk gateway fees and other miscellaneous fees. FLOW has represented that it does not assess similar charges.

With respect to the specific fees for accessing protected quotations that it has displayed on the ADF, the FLOW fee structure is currently a maker-taker model where FLOW pays a rebate for added executed liquidity and charges a fee for removed liquidity. FLOW charges a standard rate of $0.0030 to remove liquidity.[20] Pricing is subject to change with advance notice provided to subscribers. For non-subscribers, notice of a price change is published to the FLOW Web site in advance of such price change. FLOW charges subscribers and non-subscribers the same fees for utilizing its system, and monitors the average fee charged to non-subscribers and compares it to the average fee paid by subscribers in order to ensure the prices are the same.[21]

All members in good standing of a self-regulatory organization (''SRO'') are eligible to become FLOW subscribers, and will be subject to credit limits set by FLOW. In setting a subscriber's credit limits, FLOW considers the subscriber's financial condition and its regulatory history.

FINRA believes that the policies, procedures and standards governing access to protected quotations displayed on the ADF by FLOW are reasonably designed to provide market participants with fair and efficient access, and are not unfairly discriminatory such that they would prevent a market participant from obtaining efficient access to such quotations. For example, all members in good standing of an SRO are eligible to become FLOW subscribers, and both subscribers and non-subscribers may access FLOW liquidity. Additionally, both subscribers and non-subscribers have multiple options when accessing FLOW liquidity: subscribers may use either the FLOW Smart Order Router or the FLOW Gateway, and non-subscribers may connect to FLOW through a third-party vendor, an exchange, or through a third-party broker-dealer that is a subscriber. FLOW allows a subscriber to determine its level of connectivity, and FLOW does not have any tiers or rules regarding execution of orders based upon Market Participant Identification. No participant is given any priority in the FLOW matching engine, and the FLOW matching engine is blind to the identity of the participant, with the exception of orders using the anti-internalization feature. FLOW also has policies and procedures that require FLOW to respond to orders by non-subscribers as promptly as it responds to orders by subscribers, and allow for non-subscribers to be able to automatically execute against quotations displayed by the system.

FINRA also believes that the proposed level and cost of access is, in relative terms, substantially equivalent to the level and cost of access provided by SRO trading facilities. FLOW charges a standard rate of $0.0030 to remove liquidity; in comparison, BATS assesses a $0.0030 charge per share for orders in securities priced $1 or above that remove liquidity.[22] Also by way of comparison, Nasdaq assesses a fee for removing liquidity for orders in securities that are priced at or above $1 that ranges from $0.0029 to $0.0030.[23] FLOW provides one port per subscriber in each of its data centers (primary and secondary) for free, and reserves the right to charge a port fee for all subsequent connections, which would be assessed $400 per connection, per month. This is comparable to port fees assessed by certain exchanges. Both FLOW subscribers and non-subscribers are responsible for paying for their own external telecommunications costs to connect to FLOW, and FLOW believes that these fees are equivalent to the costs to connect to any other trading center, such as an exchange.

FLOW also believes that the cost to establish connections to FLOW for users of most outbound routers via intranets, cross connects and other direct connections, and for individual firms not using these services, should be substantially the same as the costs to connect to an exchange. FLOW does not charge its subscribers or non-subscribers for access to FLOW's market data, in comparison to market data fees assessed by exchanges, which range from under $100 per month to costs for external distribution, for which some exchanges assess $5,000. FLOW does not assess other charges that may be assessed by exchanges, including membership fees, trading rights fees, risk gateway fees and other miscellaneous fees.

The proposal shall be effective upon Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[24] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[25] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes this proposal is consistent with the Act because it is being submitted pursuant to Rule 610

[19] For example, The NASDAQ Stock Market LLC (''Nasdaq'') assesses a user fee of $70 per month for professional and corporate subscribers and $14 for non-professional subscribers to its TotalView and OpenView products for Nasdaq issues. *See http://www.nasdaqtrader.com/Trader.aspx?id=DPUSdata.* NYSE Arca, Inc. charges a monthly access fee of $750 for its ArcaBook data feed. *See http://www.nyxdata.com/arcabook.* BATS assesses a fee of $5,000 per month for external distribution of its PITCH feed. *See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf.*

[20] FLOW also pays a current base rebate is $0.0024 per share for added executed visible liquidity and $0.0010 per share of added executed non-visible liquidity. There are increased rebate incentives for FLOW subscribers that maintain higher volumes on a daily basis.

[21] FINRA notes that these are the current fees assessed, and rebates paid, by FLOW, and that FLOW's fees may be subject to change. In that event that FLOW makes a material change to the policies and procedures governing access to FLOW, including a change to its fees, it will submit to FINRA, and FINRA will post on its Web site, an amended description of its policies, procedures and fees governing access.

[22] *See* BATS BZX Exchange Fee Schedule, available at *http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf.*

[23] *See* Nasdaq fee schedule, available at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

FINRA also notes that FLOW offers rebates that are substantially comparable to rebates offered by SRO trading facilities. FLOW's current base rebate is $0.0024 per share for added executed displayed liquidity and $0.0010 per share of added executed non-displayed liquidity. By way of comparison, BATS Exchange, Inc. pays a standard rebate of $0.0020 rebate per share for orders in securities priced $1 or above that add displayed liquidity, and a rebate of $0.0017 for orders in securities priced $1 or above that, with certain exceptions, add non-displayed liquidity. *See* BATS BZX Exchange Fee Schedule, available at *http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_Schedule.pdf.* FLOW offers increased rebate incentives for subscribers that maintain higher volumes on a daily basis. Similarly, BATS offers a tiered rebate structure for displayed liquidity for orders in securities priced $1 or above for members that meet certain volume thresholds.

FINRA also notes that Nasdaq offers rebates to firms that add displayed liquidity for orders in securities priced at or above $1 that range, with certain exceptions, from $0.0015 to $0.00305, depending in part on whether the firm meets certain volume thresholds. Nasdaq offers rebates to firms that add non-displayed liquidity for orders in securities priced at or above $1 that range, with certain exceptions, from $0.0005 to $0.0017. *See* Nasdaq fee schedule, available at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] 15 U.S.C. 78*o*–3(b)(9).

and the requirements set forth in the NMS Adopting Release, which require FINRA to submit a proposed rule change upon the addition of a new ADF participant. This rule change is also consistent with the Act in that it sets forth the fees, policies and procedures governing access to protected quotations FLOW may display on the ADF, which were identified by the Commission as central concerns surrounding the adoption of Rule 610.

As set forth above, FINRA believes that the policies, procedures and standards governing access to protected quotations displayed on the ADF by FLOW are reasonably designed to provide market participants with fair and efficient access, and are not unfairly discriminatory such that they would prevent a market participant from obtaining efficient access to such quotations. FINRA also believes, as set forth above, that the proposed level and cost of access is, in relative terms, substantially equivalent to the level and cost of access provided by SRO trading facilities.

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. FINRA notes that the purpose of this filing is to provide for the opportunity for public notice and comment on the addition of a new ADF entrant as required by SEC Rule 610 and the NMS Adopting Release, along with that new entrant's proposed fees and policies and procedures for accessing protected quotations that it may display on the ADF. As such, FINRA believes that this filing may in fact promote competition by providing information about the level of access provided, and fees assessed, by a new ADF entrant.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–052 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–2013–052. 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 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–2013–052 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29897 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71035; File No. SR–BX–2013–058]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Under Rule 7030(d) for Use of the Carteret Testing Facility Test Environment

December 11, 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 27, 2013, NASDAQ OMX BX, Inc. (''BX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees under Rule 7030(d) for use of the Testing Facility (''NTF'') test environment located in Carteret, New Jersey, which will provide a virtual trading environment for testing. The Exchange will begin assessing the fees immediately; however, the installation fee will be waived for subscriptions ordered through March 31, 2014.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

7030. Other Services

(a)–(c) No change.

(d) Testing Facilit[y]*ies*

The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise

[26] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

noted, reference to the ''Testing Facility'' applies to both environments.

(1)–(3) No change.

(4) Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of $1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of $1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.

The connectivity provided under this rule also provides connectivity to the other testing environments of The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 7030(d) to establish fees for connection to a test environment. Specifically, the Exchange proposes a one-time, per hand-off installation fee and a per hand-off monthly fee assessed for direct connectivity to the Testing Facility [3] test environment located in Carteret, New Jersey (''Carteret''), which is also the location of the Exchange's primary trading System.[4] The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing upcoming Exchange releases and product enhancements, as well as testing firm software prior to implementation.

The Testing Facility is currently housed solely in the Exchange's Ashburn, Virginia facility (''Ashburn''). In addition to housing the Testing Facility, Ashburn is also an Exchange disaster recovery facility and, as such, some member firms connect to Ashburn for disaster recovery purposes in addition to trading system testing. The Exchange currently assesses fees on members for physical connectivity to Ashburn.[5] In addition, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn. The relatively large distance to between the Ashburn Testing Facility and the majority of NASDAQ OMX firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for Testing Facility connectivity. In an effort to improve the utility of the Testing Facility, the Exchange is developing a test environment located in Carteret that will provide the same functionality as the trading testing functionality of Ashburn, yet more closely approximate the live trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades the Exchange is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.[6] This connectivity will also provide connectivity to the trading testing environments of BX's sister exchanges, The NASDAQ Stock Market LLC and NASDAQ OMX PHLX LLC, also located in Carteret, New Jersey.[7] The Exchange will ultimately sunset the trading testing functionality at Ashburn, yet retain post trade reporting and ACES functionality at that location.[8]

The Exchange notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn if the sole purpose for connecting to Ashburn is for trading testing. Such member firms may use an existing connection to Carteret to access the Testing Facility through the use of a dedicated switch port and cross connect within the facility. The Exchange is proposing to assess a fee for connection to the test environment within the Carteret facility. Specifically, the Exchange proposes assessing a $1,000 per hand-off, per month fee assessed for connectivity to the Carteret test environment for either 1Gb or 10Gb, and a one-time per hand-off installation fee of $1,000, which will cover the Exchange's costs incurred in setting up a subscriber in the Carteret facility. The Exchange is proposing to waive the installation fee through March 31, 2014, after which the Exchange will begin phasing out trading testing at the Ashburn test environment.

The Exchange is also making a minor clarifying change to the rule in light of the operation of dual Testing Facility test environments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act [11] 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. The new fees are equitably allocated because all member firms receive connectivity to the Carteret test environment for the same fee. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live trading environment for participants, including matching the capacity of each participant's live environment switch

[3] *See http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility* for a description of the Testing Facility.

[4] As defined by Rule 4751(a). The Exchange's System is mirrored at other locations as well.

[5] The Exchange assesses fees for direct connection to Ashburn and fees for co-location connectivity. *See* Rules 7051 and 7034(b), respectively.

[6] Member firms currently use their connectivity to the Ashburn test environment for both testing and disaster recovery purposes.

[7] Similar to colocation connectivity under Rule 7034(b), firm that is a member of multiple NASDAQ OMX exchanges may access the testing environments of the exchanges of which it is a member through a single connectivity subscription.

[8] The Exchange is not upgrading the hardware used for post trade reporting and ACES testing at this time, but may do so in the future. As noted, the new hardware implemented in the Carteret test environment is part of the larger technology upgrade to the System's hardware also located in Carteret.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] 15 U.S.C. 78f(b)(4).

port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. The Exchange believes that charging a uniform fee rather than mirroring the fees for the live trading environment [12] will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment. The Exchange also believes that waiver of the installation fee for all installations ordered prior to March 31, 2014 is an equitable allocation as it is available to all member firms during the time frame; thus any member firm may avail itself of the free period if it so chooses.

The new fees are reasonable because they are designed to cover the costs the Exchange has incurred in developing and offering the new test environment. The proposed fee should allow the Exchange to recoup these costs and make a profit, while providing member firms with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. The Exchange believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Carteret participants use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment. Waiver of the installation fee for a limited period is reasonable because the Exchange believes such a waiver will attract new users to the test environment, thus ensuring a certain minimum level of monthly revenue to support the facility initially.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [13] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to the Exchange may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. The Exchange does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all member firms that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, member firms are able to subscribe to Carteret without regard to the cost of their switch port capacity election. The Exchange believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live test environment, as discussed above. Providing a more useful and accurate test environment will serve to improve live trading on the Exchange and the national market system by permitting member firms the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, the Exchange does not believe that waiver of the installation fee is unfairly discriminatory as it is uniformly applied for a limited time, during which any member firm may subscribe.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the new test environment more closely approximates the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[14] and paragraph (f) [15] of Rule 19b–4, thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2013–058 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2013–058. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also

[12] Members are assessed a monthly fee of $5,000 for 10 Gb and $1,000 for 1 Gb direct connectivity to BX. *See* Rule 7051.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–058, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29891 Filed 12–16–13; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71044; File No. SR–NASDAQ–2013–150]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Modifications to Fees and Credits Under Rules 7014 and 7018

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on November 29, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to make changes to its schedule of fees and credits applicable to execution of orders under Rule 7018, and related changes in Rule 7014. NASDAQ proposes to implement the proposed rule change on December 2, 2013. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In November 2013, NASDAQ introduced a rebate tier under which it provides a credit of $0.0029 per share executed for displayed orders that provide liquidity if a member (i) has shares of liquidity provided in all securities during the month representing more than 0.10% of Consolidated Volume during the month, through one or more of its NASDAQ Market Center MPIDs, and (ii) adds Total NASDAQ Options Market (''NOM'') Market Maker Volume, as defined in Chapter XV, Section 2 of the NOM rules, of 90,000 or more contracts per day executed during the month through one or more of its NOM MPIDs.[3] NASDAQ is amending the tier by reducing the requirement for Total NOM Market Maker Volume to 80,000 or more contracts per day. Pricing tiers that require participation in both the NASDAQ Market Center and NOM recognize the prevalence of trading in which members simultaneously trade different asset classes within the same strategy. Because cash equities and options markets are linked, with liquidity and trading patterns on one market affecting those on the other, NASDAQ believes that pricing incentives that encourage market participant activity in NOM also support price discovery and liquidity provision in the NASDAQ Market Center. The change enhances these incentives by reducing the requirement for participation in this tier.

Second, NASDAQ is amending Rule 7018(e), which governs fees for orders that execute in the NASDAQ Opening Cross (the ''Cross''), to eliminate an erroneous reference to a potential $0.0005 per share executed charge for ''Day'' orders (*i.e.,* orders designated to have a time-in-force under which they remain in effect until executed or the end of either regular market hours at 4:00 p.m. or the end of the System hours at 8:00 p.m.) that execute in the Cross. Charging Day orders that participate in the Cross would mean that virtually all orders in the Cross would be subject to a fee, which is not consistent with NASDAQ's intention or past practice. Rather, the reference appears to have been included in the rule in error. Accordingly, NASDAQ is deleting the reference to make it clear that Day orders executing in the Cross are not to be charged.

Finally, NASDAQ is amending the definition of ''Consolidated Volume'' in Rules 7018 and 7014 to exclude executed orders with a size of less than one round lot. In addition, NASDAQ is modifying some of the words used in both definitions to make them use consistent terminology (but is not thereby changing their meanings). The amended definitions refer to ''the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month, excluding executed orders with a size of less than one round lot.'' The exclusion for executed orders of less than a round lot is necessitated by recent amendments to the Consolidated Tape Association and NASDAQ UTP Plans[4] under which odd lots must be reported to the consolidated tape. These amendments are taking effect in December 2013. When calculating a member's percentage, NASDAQ has historically included odd lots in the member's own total volume, but excluded them from Consolidated Volume, since they have not historically been included in the trades reported to consolidated transaction reporting plans. Accordingly, including odd lots in the calculation of a member's percentage of Consolidated Volume would make it more difficult for members to achieve certain percentages, and thus could constitute an unintended de facto price increase. To avoid this result, odd lots will be excluded from the definitions of Consolidated Volume for pricing purposes, but would continue to be included in the member's own total volume.

[3] Securities Exchange Act Release No. 70860 (November 13, 2013), 78 FR 69512 (November 19, 2013) (SR–NASDAQ–2013–138).

[4] Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05); Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89).

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The change to the tier for members active in both the NASDAQ Market Center and NOM is reasonable because it broadens the availability of a price reduction for members that support liquidity on both markets. The changes are consistent with an equitable allocation of fees because the pricing tier requires significant levels of liquidity provision, which benefits all market participants, and because activity in NOM also supports price discovery and liquidity provision in the NASDAQ Market Center due to the increasing propensity of market participants to be active in both markets and the influence of each market on the pricing of securities in the other. Moreover, the change has the potential to make the applicable credit available to a wider range of market participants by reducing the threshold for qualification. The change is not unreasonably discriminatory because market participants may qualify for a comparable or a higher rebate through alternative means that do not require participation in NOM, including through existing volume-based NASDAQ Market Center tiers, the use of Designated Retail Orders, or through a combination of qualification for volume-based tiers and participation in NASDAQ's Investor Support Program under Rule 7014.

The change with respect to Day orders that execute in the Cross is reasonable because it makes it clear that the execution of such orders in the Cross is free of charge, rather than being subject to a potential $0.0005 per share fee. The change is consistent with an equitable allocation of fees and is not unfairly discriminatory because members entering Day limit orders before the Cross do not generally have a strong expectation that such orders will execute in the Cross; rather, although such orders are given the opportunity to execute in the Cross if their limit price is consistent with the Cross price, their designation as Day orders would generally reflect an expectation that the order will not execute but rather will post to the NASDAQ book and execute thereafter only if the market moves in a manner consistent with the order's limit price. Accordingly, NASDAQ believes that it is equitable and not unfairly discriminatory to make the execution of such orders free when they do happen to execute in the Cross.

The change with respect to exclusion of odd lots from the definition of Consolidated Volume is reasonable because it avoids a de facto price increase that could occur due to the upcoming requirement to report odd lots to the consolidated tape. Similarly, the change is consistent with an equitable allocation of fees and is not unfairly discriminatory because it will maintain the status quo with respect to pricing tiers and incentive programs that require calculations based on Consolidated Volume. Thus, the change avoids a potential inequitable and unfair result under which members with volumes close to a required percentage would be unable to achieve a pricing tier for which they had formerly qualified.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and rebates in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee or rebate changes in this market may impose any burden on competition is extremely limited. In this instance, the change to the tier with respect to members active in NASDAQ and NOM will serve to decrease members' costs, thereby enhancing NASDAQ's competitiveness. Similarly, the change with respect to Day orders executing in the Cross confirms the absence of a charge with respect to such orders, and the change with respect to the definition of Consolidated Volume avoids a potential de facto price increase, thereby also enhancing NASDAQ's competitiveness. Because members and competing order execution venues remain free to adopt competitive responses, the changes do not impair the ability of markets or market participants to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–150 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2013–150. 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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4) and (5).

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

[8] 17 CFR 240.19b–4(f).

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–NASDAQ–2013–150 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29898 Filed 12–16–13; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71054; File No. SR–Topaz–2013–12]

Self-Regulatory Organizations; Topaz Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

December 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 27, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Topaz is proposing to amend its Schedule of Fees to exclude from its ADV calculations any trading day on which the Exchange is closed early for holiday observance. The proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to exclude from its average daily volume (''ADV'') calculations any trading day on which the Exchange is closed early for holiday observance. The Exchange provides tiered rebates to market participants that add liquidity in Standard Options and Mini Options based on members' ADV in a given month. On October 1, 2013 the Exchange filed with the Commission an immediately effective rule filing that, among other things, amended its Schedule of Fees to permit the Exchange to exclude from its ADV calculation, when determining applicable rebate tiers, any day that the market is not open for the entire trading day.[3] Currently, this allows the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. In that filing, however, the Exchange noted that, in contrast to the NASDAQ OMX PHLX, LLC (''PHLX'') and NASDAQ Options Market (''NOM'') filings on which this language was based,[4] it would not exclude days on which the Exchange is closed early for holiday observance. The Exchange has since determined that it would be more equitable to exclude these days as well. While members are aware in advance of days subject to an early scheduled close—for example, the Friday after Thanksgiving—these are still low volume days, and including these days in the ADV calculation would have the detrimental effect of lowering members' daily and monthly ADV and thereby qualifying members for lower rebates. The Exchange believes that this effective cost increase during months where the Exchange has scheduled early market closes is undesirable to the Exchange and its members, and is therefore proposing to interpret this provision in the same manner as NOM and PHLX.[5] The Exchange notes that it will not be making any textual changes to its fees as this proposed change brings its interpretation in line with that of other markets with substantially similar language to that already included in the Schedule Fees [sic].[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that it is equitable and reasonable to eliminate days subject to an early scheduled closed [sic] from its ADV calculation because it preserves the Exchange's intent behind adopting volume-based pricing, and conforms the rules of the Exchange with those of other markets. The Exchange further believes that the proposed change is non-discriminatory because it applies equally to all members and to all volume tiers.

[3] *See* Securities Exchange Act Release No. 70670 (October 11, 2013), 78 FR 62815 (October 22, 2013) (Topaz-2013–08).

[4] *See* Securities Exchange Act Release Nos. 70472 (September 23, 2013), 78 FR 59738 (September 27, 2013) (PHLX–2013–93); 70470 (September 23, 2013), 78 FR 59740 (September 27, 2013) (NASDAQ–2013–117).

[5] *Id.*

[6] *Id.*

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed modification to its ADV calculation is pro-competitive and will result in lower total costs to end users, a positive outcome of competitive markets. Moreover, this proposed rule change conforms the rules of the Exchange with those of other markets that have adopted substantially similar rules for excluding certain days from their ADV calculations. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes a due, fee, or other charge imposed by Topaz.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Topaz–2013–12 on the subject line.

Paper Comments

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

All submissions should refer to File Number *SR-Topaz-2013–12.* 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–Topaz–2013–12 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29961 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71036; File No. SR–Phlx–2013–116]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees Under the PHLX Pricing Schedule for Use of the Carteret Testing Facility Test Environment

December 11, 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 27, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 the Substance of the Proposed Rule Change

The Exchange proposes to establish fees under the Pricing Schedule for use of the Testing Facility (''NTF'') test environment located in Carteret, New Jersey, which will provide a virtual equities trading environment for testing. The Exchange will begin assessing the fees immediately; however, the installation fee will be waived for subscriptions ordered through March 31, 2014.

The text of the proposed rule change is below. Proposed new language is italicized.

* * * * *

NASDAQ OMX PHLX LLC[1] PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES

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

[2] 17 CFR 240.19b–4.

MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO–LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE WILL CALCULATE FEES ON A TRADE DATE BASIS.

[1] PHLX® is a registered trademark of The NASDAQ OMX Group, Inc.

* * * * *

VIII. NASDAQ OMX PSX FEES

* * * * *

Testing Facilit*ies*[y]†

The Exchange operates two test environments. One is located in Ashburn, Virginia and the other in Carteret, New Jersey. Unless otherwise noted, reference to the ''Testing Facility'' applies to both environments.

(a)–(c) No change.

(d) Subscribers to the Testing Facility located in Carteret, New Jersey shall pay a fee of $1,000 per hand-off, per month for connection to the Testing Facility. The hand-off fee includes either a 1Gb or 10Gb switch port and a cross connect to the Testing Facility. Subscribers shall also pay a one-time installation fee of $1,000 per hand-off, which is waived for all installations ordered prior to March 31, 2014.

† Testing Facility fees will be waived for the period ending on the sixth full calendar month following the launch of NASDAQ OMX PSX.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Pricing Schedule to establish fees for connection to a test environment. Specifically, the Exchange proposes a one-time, per hand-off installation fee and a per hand-off monthly fee assessed for direct connectivity to the Testing Facility [3] test environment located in Carteret, New Jersey (''Carteret''), which is also the location of the Exchange's primary trading System.[4] The Testing Facility provides subscribers with a virtual Exchange System test environment that closely approximates the production environment and on which they may test their automated systems that integrate with the Exchange. For example, the Testing Facility provides subscribers a virtual System environment for testing upcoming Exchange releases and product enhancements, as well as testing firm software prior to implementation.

The Testing Facility is currently housed solely in the Exchange's Ashburn, Virginia facility (''Ashburn''). In addition to housing the Testing Facility, Ashburn is also an Exchange disaster recovery facility and, as such, some member firms connect to Ashburn for disaster recovery purposes in addition to trading system testing. The Exchange currently assesses fees on members for physical connectivity to Ashburn.[5] In addition, member firms pay fees to third party connectivity providers to provide connection from the member firm to Ashburn. The relatively large distance to between the Ashburn Testing Facility and the majority of NASDAQ OMX firms results in expensive connectivity costs for customers that connect via telecommunication providers. As a consequence, a large majority of member firms do not connect to Ashburn for Testing Facility connectivity. In an effort to improve the utility of the Testing Facility, the Exchange is developing a test environment located in Carteret that will provide the same functionality as the equity trading testing functionality of Ashburn, yet more closely approximate the live PSX [6] trading environment due to its proximity to the System and upgraded hardware. In particular, the Carteret test environment will take advantage of technology upgrades the Exchange is making to its trading-related systems. Unlike the Ashburn test environment, the Carteret test environment will provide dedicated connectivity to the facility via a cross-connection to either a member firm's direct connection router in Carteret or its co-location cabinet.[7] This connectivity will also provide connectivity to the trading test environments of the Phlx's sister exchanges, The NASDAQ Stock Market LLC and NASDAQ OMX BX, Inc., also located in Carteret, New Jersey.[8] The Exchange will ultimately sunset the trading testing functionality at Ashburn, yet retain post trade reporting and ACES functionality at that location.[9]

The Exchange notes that, because the Carteret facility also houses the System, subscribers to the Carteret test environment will no longer need to pay for third party connectivity to Ashburn if the sole purpose for connecting to Ashburn is for trading testing. Such member firms may use an existing connection to Carteret to access the Testing Facility through the use of a dedicated switch port and cross connect within the facility. The Exchange is proposing to assess a fee for connection to the test environment within the Carteret facility. Specifically, the Exchange proposes assessing a $1,000 per hand-off, per month fee assessed for connectivity to the Carteret test environment for either 1Gb or 10Gb, and a one-time per hand-off installation fee of $1,000, which will cover the Exchange's costs incurred in setting up a subscriber in the Carteret facility. The Exchange is proposing to waive the installation fee through March 31, 2014, after which the Exchange will begin phasing out trading testing at the Ashburn test environment.

The Exchange is also making a minor clarifying change to the rule in light of the operation of dual Testing Facility test environments.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and with

[3] *See http://www.nasdaqtrader.com/Trader.aspx?id=TestingFacility* for a description of the Testing Facility.

[4] As defined by Rule 3301(a). The Exchange's System is mirrored at other locations as well.

[5] The Exchange assesses fees for direct connection to Ashburn and fees for co-location connectivity. *See* Chapters XI and X(b), respectively.

[6] PSX is the Exchange's equity trading platform.

[7] Member firms currently use their connectivity to the Ashburn test environment for both testing and disaster recovery purposes.

[8] Similar to colocation connectivity under Chapter X(b) of the Pricing Schedule, firm that is a member of multiple NASDAQ OMX exchanges may access the testing environments of the exchanges of which it is a member through a single connectivity subscription.

[9] The Exchange is not upgrading the hardware used for post trade reporting and ACES testing at this time, but may do so in the future. As noted, the new hardware implemented in the Carteret test environment is part of the larger technology upgrade to the System's hardware also located in Carteret.

[10] 15 U.S.C. 78f(b).

Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular. The Exchange believes that proposal is with Section 6(b)(4) of the Act [12] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The new fees are equitably allocated because all member firms receive connectivity to the Carteret test environment for the same fee. The Exchange believes that offering subscribers the option to subscribe to either 1Gb or 10Gb for the same fee is an equitable allocation because, unlike the live trading environment, there is no competitive advantage to possessing a higher capacity switch port in the test environment. The test environment is designed to closely mirror the live equity trading environment for PSX participants, including matching the capacity of each participant's live environment switch port. In the absence of any competitive advantage, charging a uniform fee for both 1Gb and 10Gb switch ports is an equitable allocation of fees. The Exchange believes that charging a uniform fee rather than mirroring the fees for the live trading environment [13] will encourage member firms to subscribe to Carteret, and further encourage those that subscribe to use the same hardware as is used by them for connectivity to the live trading environment. The Exchange also believes that waiver of the installation fee for all installations ordered prior to March 31, 2014 is an equitable allocation as it is available to all member firms during the time frame; thus any member firm may avail itself of the free period if it so chooses.

The new fees are reasonable because they are designed to cover the costs the Exchange has incurred in developing and offering the new test environment. The proposed fee should allow the Exchange to recoup these costs and make a profit, while providing member firms with a superior test environment that more closely mirrors that of the live trading environment on the Exchange. The Exchange believes that offering both 1Gb and 10Gb connectivity for the same fee is reasonable as the increased incremental cost it incurs by offering the 10Gb switch port at the lower fee is outweighed by the benefit all subscribers will receive if Carteret participants use hardware identical to what they use in the live trading environment, hence furthering the goal of creating a test environment that closely mirrors the live trading environment. Waiver of the installation fee for a limited period is reasonable because the Exchange believes such a waiver will attract new users to the test environment, thus ensuring a certain minimum level of monthly revenue to support the facility initially.

The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [14] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers. The Exchange does not believe that the proposed fees are unfairly discriminatory to subscribers to 10Gb live trading environment connectivity because, unlike the live trading environment where the capacity of connectivity to the Exchange may confer a competitive advantage to a market participant and therefore price differentiation is appropriate for the benefit conferred, there is no such benefit conferred in the trade test environment. The Exchange does not believe that the proposed fees are unfairly discriminatory among subscribers to the Carteret test facility because all member firms that subscribe to the service will be assessed the same fees. Because the proposed fees do not discriminate between 1Gb and 10Gb connectivity options, member firms are able to subscribe to Carteret without regard to the cost of their switch port capacity election. The Exchange believes that by not discriminating on this basis it will encourage participants to connect to the Carteret test environment in the same manner as they do to the live trading environment, and thereby help Carteret more closely mirror the live trading environment, as discussed above. Providing a more useful and accurate testing environment will serve to improve live trading on the Exchange and the national market system by permitting member firms the ability to accurately test changes prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. Last, the Exchange does not believe that waiver of the installation fee is unfairly discriminatory as it is uniformly applied for a limited time, during which any member firm may subscribe.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the new test environment more closely approximates the live trading environment, subscribing member firms will be able to more accurately test their trading systems and avoid potentially disruptive system failures in the live trading environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act,[15] and paragraph (f) [16] of Rule 19b–4, thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2013–116 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.

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78f(b)(4).

[13] Members are assessed a monthly fees of $5,000 for 10 Gb and $1,000 for 1 Gb direct connectivity to PSX. *See* Chapter XI of the Pricing Schedule.

[14] 15 U.S.C. 78f(b)(5).

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

[16] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–Phlx–2013–116. 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 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–116, and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29892 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71039; File No. SR–BX–2013–060]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 11, 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 December 2, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter XV, Section 2 entitled ''BX Options Market—Fees and Rebates'' to amend various fees for routing options to away markets.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Routing Fees in Section 2(3) of Chapter XV in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses a Non-Customer a $0.95 per contract Routing Fee to any options exchange. The Customer Routing Fee for option orders routed to The NASDAQ Options Exchange LLC (''NOM'') and NASDAQ OMX PHLX LLC (''PHLX'') is a $0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to all other options exchanges[3] (excluding NOM and PHLX) is a fixed fee of $0.15 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is $0.00 per contract.[4]

The Exchange proposes to increase the Customer Routing Fixed Fee of $0.15 per contract when an option order is routed to all other exchanges to $0.20 per contract. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router.[5] Each time NOS routes an order to an away market, NOS is charged a clearing fee[6] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (''ORFs'') and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

A new market entrant recently adopted an ORF.[7] The Exchange proposes to increase its Fixed Fee from $0.15 to $0.20 per contract to recoup costs associated with increased costs.

2. Statutory Basis

BX believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and

[3] Including BATS Exchange, Inc. (''BATS''), BOX Options Exchange LLC (''BOX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), International Securities Exchange, LLC (''ISE''), the Miami International Securities Exchange, LLC (''MIAX''), NYSE Arca, Inc. (''NYSE Arca''), NYSE MKT LLC (''NYSE Amex'') and Topaz Exchange, LLC (''Gemini'').

[4] For all Routing Fees, the transaction fee will continue to be based on the away market's actual transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee.

[5] *See* BX Rules at Chapter VI, Section 11(e) (Order Routing).

[6] The Options Clearing Corporation (''OCC'') assesses $0.01 per contract side.

[7] Gemini adopted an ORF of $0.0010 per contract. *See* Securities Exchange Act Release No. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–01).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing orders to away markets on behalf of Participants. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market. Specifically, new entrants have added costs associated with routing.[10] The Exchange believes that it is reasonable to recoup these costs borne by the Exchange on each transaction. The proposed $0.20 per contract Customer Routing Fixed Fee, which would be assessed when an option order is routed to all other exchanges, represents the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a $0.20 per contract Customer Routing Fixed Fee when an option order is routed to all other exchanges because this fee would be assessed uniformly on all market participants in addition to the actual transaction fees on all orders routed to non-NASDAQ OMX markets.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.05 per contract to route orders to NOM and PHLX because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to NOM and PHLX are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[11] NOS and the three NASDAQ OMX options (PHLX, BX Options and NOM) markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and PHLX. Orders are routed to away markets in accordance with Exchange rules based on price.[12] Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid incurring the Routing Fees proposed herein.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[14] Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets.

With respect to continuing to route orders to NOM and PHLX at a lower cost as compared to other away markets, the Exchange does not believe that the proposed amendments to increase those fees, while maintaining the same fee differential imposes a burden because all market participants would be assessed the same fees depending on the away market. Also, the Exchange is proposing to recoup costs incurred only when members request the Exchange route their orders to an away market. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and PHLX and is providing those saving to all market participants. Finally, the Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) price and based on price first.[15]

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.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–BX–2013–060 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2013–060. 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

[10] *See* note 7.

[11] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

[12] *See* BX Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

[13] *See* BX Rules at Chapter VI, Section 11(e) (Order Routing).

[14] *See* note 13.

[15] *See* BX Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2013–060 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29894 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71041; File No. SR–BATS–2013–061]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 2, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify pricing charged by the Exchange's options platform (''BATS Options'') for orders routed away from the Exchange and executed at the International Securities Exchange, LLC (''ISE'') and the NASDAQ OMX PHLX LLC (''PHLX'').

Background

The Exchange currently charges certain flat rates for routing to other options exchanges that have been placed into groups based on the approximate cost of routing to such venues. The grouping of away options exchanges is based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). To address different fees at various other options exchanges, the Exchange in most instances differentiates between either securities subject to the options penny pilot program (''Penny Pilot Securities'') and non-Penny Pilot Securities or between ''Make/Take issues'' and ''Classic issues.'' As set forth on the Exchange's fee schedule, pricing in Make/Take issues is for executions at the identified exchange under which rebates to post liquidity (*i.e.,* ''Make'') are credited by that exchange and fees to take liquidity (*i.e.,* ''Take'') are charged by that exchange; pricing in Classic issues applies to all other executions at such exchanges.

ISE Routing Fees

The Exchange currently charges $0.30 per contract for Customer[6] orders and $0.57 per contract for Professional,[7] Firm, and Market Maker[8] orders executed at ISE in Make/Take issues. Based on execution fees charged by ISE, which currently exceed the fee charged for Customer orders even without taking other Routing Costs into consideration, the Exchange proposes to increase fees for Customer orders routed to and executed at ISE in Make/Take issues. Specifically, the Exchange proposes to charge $0.52 per contract for Customer orders executed at ISE in Make/Take issues. This is the same fee charged for executions in Penny Pilot Securities for Customer orders routed to and executed at the Topaz Exchange, LLC (''ISE Gemini''), the NASDAQ Options Market (''NOM''), and NYSE Arca, Inc. (''ARCA''). Also, for consistency with such other markets, because the ISE's pricing model is now clearly differentiated between Penny Pilot Securities and non-Penny Pilot

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] As defined on the Exchange's fee schedule, a ''Customer'' order is any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), except for those designated as ''Professional''.

[7] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

Securities, the Exchange proposes to change the references for such pricing from Make/Take pricing to Penny Pilot Security pricing.

The Exchange does not propose any change to the fee of $0.57 per contract for Professional, Firm, and Market Maker orders executed at ISE other than to re-designate such pricing as applicable to Penny Pilot Securities rather than Make/Take issues. The Exchange also proposes to change the references for ISE pricing in Classic issues to refer to pricing in non-Penny Pilot Securities. The Exchange is not proposing any changes to the actual pricing for orders executed at ISE in non-Penny Pilot Securities, which will remain at $0.11 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders.

PHLX Routing Fees

The Exchange currently charges $0.11 per contract for Customer orders and $0.57 per contract for Professional, Firm, and Market Maker orders routed to and executed at PHLX in both Classic and Make/Take issues. Based on changes to pricing at PHLX that will set the fee to remove liquidity in options overlying the SPDR® S&P 500® exchange-traded fund (''SPY'') for all participants at $0.45 per contract effective December 2, 2013, the Exchange proposes to increase its fees for all Customer orders routed to and executed at PHLX from $0.11 to $0.45 per contract. The Exchange believes that this increase will allow it to cover applicable Routing Costs for all Customer orders routed to and executed at PHLX, as further described below. Effective December 2, 2013, PHLX also adopted increased rates to remove liquidity in Classic issues to $0.60 per contract. Based on this increase for Routing Costs for Professional, Firm, and Market Maker orders routed to and executed at PHLX in Classic issues, the Exchange proposes to increase the routing rate for all Professional, Firm, and Market Maker orders from $0.57 to $0.65 per contract. The Exchange believes that this increase will allow it to cover applicable Routing Costs for all Professional, Firm, and Market Maker orders routed to and executed at PHLX.

The Exchange notes that while the Exchange will be charging significantly more for certain Customer orders routed to and executed at PHLX than the PHLX charges directly for such Customer orders, in other instances the Exchange will be charging less than the total Routing Costs incurred by the Exchange for routing Customer orders to PHLX, namely in the most actively traded options contract, SPY. Because options on SPY account for a significant amount of volume routed to away markets (as well as executed on the Exchange), the Exchange does not want to charge less than the actual fee for executions of SPY options on PHLX. Also, in order to continue to maintain a relatively simple routing table and fee schedule, the Exchange does not want to charge a routing fee specific to one underlying security at this time. Similarly, with respect to Professional, Firm, and Market Maker orders, the Exchange's proposal to charge $0.65 per contract for all such orders will allow the Exchange to cover its Routing Costs for such orders routed to PHLX while also maintaining a simple pricing structure.

As it has done before, despite identical fees, the Exchange is maintaining separate references to Make/Take and Classic pricing for orders routed to and executed PHLX because it believes that participants that are accustomed to this distinction will be less confused if it continues to separately list each category.

The Exchange currently charges $0.60 per contract for Directed ISOs routed and executed at away destinations, with the exception of: (i) Directed ISOs in Mini Options, for which the Exchange charges $0.15 per contract; and (ii) in the following situations, for which the Exchange charges $0.95 per contract: (1) Orders in non-Penny Pilot Securities executed at NOM, ARCA and ISE Gemini; (2) Professional, Firm and Market Maker orders executed at BX Options in non-Penny Pilot Securities; and (3) Professional, Firm and Market Maker orders executed at C2. In order to cover anticipated Routing Costs for such orders taking recent PHLX pricing changes into account, the Exchange proposes to charge $0.95 per contract for Professional, Firm, and Market Maker orders if such orders are Directed ISOs routed to and executed at PHLX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

As explained above, the Exchange generally attempts to approximate the cost of routing to other options exchanges, including other applicable costs to the Exchange for routing. The Exchange believes that a pricing model based on approximate Routing Costs is a reasonable, fair and equitable approach to pricing. Specifically, the Exchange believes that its proposal to modify fees to ISE and PHLX is fair, equitable and reasonable because the fees are generally an approximation of the cost to the Exchange for routing orders to such exchanges. The Exchange believes that its flat fee structure for orders routed to various venues is a fair and equitable approach to pricing, as it provides certainty with respect to execution fees at groups of away options exchanges. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or slight loss for orders routed to and executed at both ISE and PHLX. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to such exchanges. The Exchange also believes that the proposed fee structure for orders routed to and executed at these away options exchanges is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

As explained above, other than Directed ISOs sent to ISE and PHLX that are Customer orders, for which pricing remains unchanged, the Exchange has proposed to charge increased fees for Customer orders routed to ISE and for all orders routed to PHLX. The Exchange believes that the proposed fee structure for Customer orders routed to and executed at ISE is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services to ISE. The Exchange also believes that the proposed fee structure for Customer orders routed to and executed at ISE is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members. The Exchange also believes that the change of references for ISE routing pricing from Classic and Make/Take to non-Penny Pilot Securities and Penny Pilot Securities is consistent with the Act

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

because this change is consistent with the current ISE pricing structure.

Consistent with the Exchange's general approach to routing fees, as described above, the Exchange believes that maintaining a simple routing table with respect to orders routed to PHLX despite recent changes by PHLX that will increase overall Routing Costs to the Exchange is also a fair and equitable approach to pricing. While the Exchange has proposed to maintain reference to both Classic and Make/Take pricing with respect to PHLX routing fees, the Exchange's proposal will actually maintain a single routing fee for all Customer orders executed at PHLX and a single routing fee for all Professional, Firm, and Market Maker orders executed at PHLX. The Exchange believes that this simple routing structure is fair, equitable and reasonable for the reasons describe above, including the certainty it provides market participants that choose to utilize the Exchange's routing services. The Exchange also believes that the proposed fee structure for orders routed to and executed at PHLX is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange has also proposed an increased fee for Directed ISOs routed to and executed at PHLX to the extent such orders are Professional, Firm, or Market Maker orders. This increase is proposed because without adjustment, the Routing Costs incurred by the Exchange for Directed ISOs in certain securities sent on behalf of Professional, Firm, and Market Maker participants to PHLX would exceed the fee charged by the Exchange for Directed ISOs. The Exchange believes that the proposed fee structure for Directed ISOs routed to and executed at PHLX is fair, equitable and reasonable because the fees are an approximation of the cost to the Exchange for routing such orders and will allow the Exchange to recoup and cover the costs of providing routing services to PHLX. The Exchange also believes that the proposed fee structure for Directed ISOs routed to and executed at PHLX is fair and equitable and not unreasonably discriminatory in that it applies equally to all Members.

The Exchange reiterates that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive. Finally, the Exchange notes that it constantly evaluates its routing fees, including profit and loss attributable to routing, as applicable, in connection with the operation of a flat fee routing service, and would consider future adjustments to the proposed pricing structure to the extent it was recouping a significant profit or loss from routing to either ISE or PHLX.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will assist the Exchange in recouping costs for routing orders to other options exchanges on behalf of its participants in a manner that is a better approximation of actual costs than is currently in place and that reflects recent pricing changes by such options exchanges. The Exchange also notes that Members may choose to mark their orders as ineligible for routing to avoid incurring routing fees.[11] As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or providers of routing services if they deem fee levels to be excessive.

(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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–BATS–2013–061 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BATS–2013–061. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2013–061 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29896 Filed 12–16–13; 8:45 am]

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[11] *See* BATS Rule 21.1(d)(8) (describing ''BATS Only'' orders for BATS Options) and BATS Rule 21.9(a)(1) (describing the BATS Options routing process, which requires orders to be designated as available for routing).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71032; File No. SR–ICC–2013–08]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Withdrawal of Proposed Rule Change To Add Rules Related to the Clearing of MCDX Index CDS Contracts and Make Conforming Changes to Existing Rules

December 11, 2013.

On October 25, 2013, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the clearing of MCDX Index CDS Contracts and making conforming changes to existing rules. Notice of the proposed rule change was published in the **Federal Register** on November 14, 2013.[3] The Commission did not receive comments on the proposed rule change.

On December 2, 2013, ICC withdrew the proposed rule change (SR–ICC–2013–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29888 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 70826 (Nov. 7, 2013), 78 FR 68480 (Nov. 14, 2013).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71040; File No. SR–Phlx–2013–118]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

December 11, 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 December 2, 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.

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

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section V of the Pricing Schedule entitled ''Routing Fees.''

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 purpose of this filing is to amend the Routing Fees in Section V of the Pricing Schedule in order to recoup costs the Exchange incurs for routing and executing certain orders in equity options to away markets. Today, the Exchange assesses a Non-Customer a $0.95 per contract Routing Fee to any options exchange. The Customer Routing Fee for option orders routed to The NASDAQ Options Exchange LLC (''NOM'') is a $0.05 per contract Fixed Fee in addition to the actual transaction fee assessed. The Customer Routing Fee for option orders routed to NASDAQ OMX BX, Inc. (''BX Options'') is $0.00. The Customer Routing Fee for option orders routed to all other options exchanges [3] (excluding NOM and BX Options) is a fixed fee of $0.15 per contract (''Fixed Fee'') in addition to the actual transaction fee assessed. If the away market pays a rebate, the Routing Fee is $0.00 per contract.[4]

The Exchange proposes to increase the Customer Routing Fixed Fee of $0.15 per contract when an option order is routed to all other exchanges to $0.20 per contract. With respect to the fixed costs, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router.[5] Each time NOS routes an order to an away market, NOS is charged a clearing fee [6] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (''ORFs'') and technical costs associated with routing options. The Exchange assesses the actual away market fee at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.

A new market entrant recently adopted an ORF.[7] The Exchange proposes to increase its Fixed Fee from $0.15 to $0.20 per contract to recoup costs associated with increased costs.

The Exchange also proposes to correct a reference in the Routing Fees to the Customer Rebate Program which was relocated from Section A to Section B.

[3] Including BATS Exchange, Inc. (''BATS''), BOX Options Exchange LLC (''BOX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), International Securities Exchange, LLC (''ISE''), the Miami International Securities Exchange, LLC (''MIAX''), NYSE Arca, Inc. (''NYSE Arca''), NYSE MKT LLC (''NYSE Amex'') and Topaz Exchange, LLC (''Gemini'').

[4] For all Routing Fees, the transaction fee will continue to be based on the away market's actual transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the Fixed Fee. A member organization qualifying for a Tier 2, 3 or 4 rebate in the Customer Rebate Program in Section B of the Pricing Schedule is entitled to receive a credit equal to the applicable Fixed Fee plus $0.05 per contract, unless the away market transaction fee is $0.00 or the away market pays a rebate, in which case the member organization is entitled to receive a credit equal to the applicable Fixed Fee.

[5] In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router. *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). NOS is utilized by the Exchange's fully automated options trading system, PHLX XL®.

[6] The Options Clearing Corporation (''OCC'') assesses $0.01 per contract side.

[7] Gemini adopted an ORF of $0.0010 per contract. *See* Securities Exchange Act Release No. 70200 (August 14, 2013), 78 FR 51242 (August 20, 2013) (SR–Topaz–2013–01).

The Exchange believes that amending the Routing Fees to reflect the correct location of the Customer Rebate Program will add clarity to the Routing Fees.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act[9] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of orders by the away market. Specifically, new entrants have added costs associated with routing.[10] The Exchange believes that it is reasonable to recoup these costs borne by the Exchange on each transaction. The proposed $0.20 per contract Customer Routing Fixed Fee, which would be assessed when an option order is routed to all other exchanges, represents the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a $0.20 per contract Customer Routing Fixed Fee when an option order is routed to all other exchanges because this fee would be assessed uniformly on all market participants in addition to the actual transaction fees on all orders routed to non-NASDAQ OMX markets.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.05 per contract to route orders to NOM and no cost to route orders to BX Options because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to NOM and BX Options are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[11] NOS and the three NASDAQ OMX options (PHLX, BX Options and NOM) markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure. Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.[12] It is important to note that when orders are routed to an away market they are routed based on price first.[13]

The Exchange believes its proposal to correct the reference to the Customer Rebate Program at Section B is reasonable, equitable and not unfairly discriminatory because it will add clarity to the Pricing Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant. Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.[14] It is important to note that when orders are routed to an away market they are routed based on price first.[15] Today, other options exchanges also assess similar fees to recoup costs incurred when routing orders to away markets.[16]

With respect to continuing to route orders to NOM and PHLX at a lower cost as compared to other away markets, the Exchange does not believe that the proposed amendments to increase those fees, while maintaining the same fee differential imposes a burden because all market participants would be assessed the same fees depending on the away market. Also, the Exchange is proposing to recoup costs incurred only when members request the Exchange route their orders to an away market. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to NOM and PHLX and is providing those savings to all market participants.

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.[17] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4), (5).

[10] *See* note 7.

[11] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and PHLX Rule 1080(m)(iii)(A).

[12] *See* Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

[13] PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price. *See* Rule 1080(m). The PHLX XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (''ISO'') to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the PHLX XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

[14] *See* note 12.

[15] *See* note 13.

[16] *See* Chicago Board of Options Exchange, Incorporated's Fee Schedule. *See* NYSE Amex's Fee Schedule.

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2013–118 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2013–118. 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–2013–118 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29895 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71047; File No. SR–EDGA–2013–35]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2013, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Remove Flag RS, which routes to NASDAQ OMX PSX (''PSX'') and adds liquidity; (ii) make a non-substantive, corrective change to both Step-Up Tier 1 and Step-Up Tier 2 under Footnote 4; and (3) amend the criteria of both Step-Up Tier 1 and Step-Up Tier 2 under Footnote 4. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Remove Flag RS, which routes to PSX and adds liquidity; (ii) make a non-substantive, corrective change to both Step-Up Tier 1 and Step-Up Tier 2 under Footnote 4; and (iii) amend the criteria of both Step-Up Tier 1 and Step-Up Tier 2 under Footnote 4.

Flag RS

The Exchange proposes to delete Flag RS from its Fee Schedule. Orders that yield Flag RS are routed to the PSX and add liquidity. The Exchange currently rebates orders that yield Flag RS $0.0020 per share for securities priced at or above $1.00 and charges no fee for securities priced below $1.00. These fees represent a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders to PSX when it does not qualify for a volume tiered rate. The Exchange recently began to incur increased excessive messaging fees from PSX.[4] To mitigate the increased messaging fees, the Exchange intends to delete Flag RS from its Fee Schedule and no longer permit Members to route orders via DE Route to post on the PSX. Members would continue to be able to route orders to PSX and remove liquidity via DE Route.

Step-Up Tiers 1 and 2

Footnote 4 of the Fee Schedule contains the Step-Up Tier 1 and Step-

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[18] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* the *Excessive Messaging Policy* under the Nasdaq Stock Market LLC fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (last visited November 20, 2013).

Up Tier 2 (collectively, the ''Step-Up Tiers''). Step-Up Tier 1 provides Members with a reduced fee of $0.0003 per share for adding liquidity to the Exchange when the Member, on an MPID basis, adds more than 0.10% of the total consolidated volume (''TCV'') on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 added TCV. The Step-Up Tier 2 provides Members with a reduced fee of $0.0003 per share to add liquidity to the Exchange when the Member: (i) On an MPID basis, adds more than 0.05% of the TCV on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 added TCV; and (ii) has an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85%. Under both tiers, where an MPID's December 2012 TCV is zero, the Exchange would apply a default TCV baseline of 10,000,000 shares. The Exchange now proposes to make two changes to both Step-Up Tiers.

First, the Exchange proposes to correct an inadvertent drafting error in the criteria related to TCV requirements for the Step-Up Tiers outlined above. Specifically, the Exchange proposes to amend the Step-Up Tiers to replace the term ''TCV'' [5] with ''ADV'' [6] when referring to the baseline the Member must exceed to achieve the tier. In practice, a Member cannot have an added TCV on the Exchange since TCV is comprised of volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans. Therefore, basing a Member's eligibility for the Step-Up Tiers on their added TCV is impracticable. The Exchange notes that its proposal conforms to an existing practice and does not modify the criteria that the Exchange has been using for its Members for achieving the tiers. The Exchange will continue to calculate whether a Member satisfied criteria based on the Member's ADV, not TCV, when considering the baseline the Member must exceed to achieve the tier.

Second, the Exchange proposes to amend the baseline eligibility criteria for the Step-Up Tiers to allow a greater number of Members to participate. In general terms, the baseline eligibility criteria is the liquidity in percentage of TCV a Member adds to the Exchange in excess of their December 2012 ADV. To the extent that a Member's added liquidity exceeds their December 2012 ADV, the Member may be eligible for the Step-Up Tiers. The current baseline eligibility for Step-Up Tier 1 requires the Member to, on an MPID basis, add more than 0.10% of the TCV on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 added ADV.[7] The current baseline eligibility for Step-Up Tier 2 requires the Member to, on an MPID basis, add more than 0.05% of the TCV on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 added ADV.[8]

The Exchange proposes to modify the baseline eligibility for the Step-Up Tiers to allow the Member's added liquidity in percentage of TCV to be more than the lower of its ADV for December 2012 *or September 2013.* Thus, to the extent a Member's eligibility is limited by having a high ADV in December 2012, the Member may have a greater chance to be eligible for either Step-Up Tier 1 or Step-Up Tier 2 to the extent its ADV was lower in September 2013 than December 2012. Conversely, a Member with a lower ADV in December 2012 would continue to be eligible for the Step-Up Tiers based on that ADV. Specifically, the Exchange proposes to amend the criteria for Step-Up Tier 1 to now require that the Member, on an MPID basis, measured monthly, add more than 0.10% of the MPID's December 2012 or September 2013 added ADV, whichever is lower. Likewise, the Exchange proposes amend the criteria for Step-Up Tier 2 to require that Members add more than adds more than 0.05% of the MPID's December 2012 or September 2013 added ADV, whichever is lower.

The revised criteria for Step-Up Tier 1 would read as follows:

On an MPID basis, add more than 0.10% of the TCV on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 *or September 2013* added *ADV, whichever is lower.*

Where an MPID's December 2012 *and September 2013 ADV* is zero, then the Exchange applies a default *ADV* baseline of 10,000,000 shares.

The revised criteria for Step-Up Tier 2 would read as follows:

On an MPID basis:

(1) Add more than 0.05% of the TCV on EDGA on a daily basis, measured monthly, more than the MPID's December 2012 *or September 2013* added *ADV, whichever is lower;* and

(2) Have an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85%. (No change).

Where an MPID's December 2012 *and September 2013 ADV* is zero, then the Exchange applies a default *ADV* baseline of 10,000,000 shares.

The remainder of the footnote as it pertains to Step-Up Tier 1 and Step-Up Tier 2 would remain unchanged.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on December 2, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RS

The Exchange believes that its proposal to delete Flag RS from its Fee Schedule represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because it will no longer offer routing to the PSX via its System routing table. The Exchange recently began to incur increased excessive messaging fees from PSX.[11] To mitigate the increased messaging fees, the Exchange intends to delete Flag RS and no longer allow Members to route orders DE Route to post on the PSX. The Exchange notes that it will continue to comply with its obligations under Regulation NMS and will route to PSX to remove liquidity; however, it will not continue to offer Flag RS as a routing option to post liquidity to the PSX. Members seeking to post orders on the PSX may select alternative routing methods or to access the PSX directly. The Exchange believes that the proposed amendment is non-

[5] ''TCV'' is defined as ''the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated.'' *See* Exchange Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx* (last visited November 27, 2013).

[6] ''ADV'' is defined as the ''average daily volume of shares that a Member executed on the Exchange for the month in which the fees are calculated.'' *See* Exchange Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx* (last visited November 27, 2013).

[7] The Exchange notes that the current criteria for the Step-Up Tiers inaccurately states ''. . . MPID's December 2012 added TCV.'' As stated above, the Exchange is proposing to amend the Step-Up Tiers to replace the term ''TCV'' with ''ADV.''

[8] *Id.*

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* the *Excessive Messaging Policy* under the Nasdaq Stock Market LLC fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2* (last visited November 20, 2013).

discriminatory because it applies uniformly to all Members.

Step-Up Tiers 1 and 2

The Exchange believes that its proposal to replace the term ''TCV'' with ''ADV'' in the Step-Up Tiers when referring to the baseline the Member must exceed to achieve the tier is reasonable because it will increase the level of transparency on the Exchange's Fee Schedule and improve the Exchange's ability to effectively convey the criteria necessary to achieve the tiers. The Exchange notes that its proposal conforms to an existing practice and does not modify the rebate that the Exchange has been providing its Members for achieving the Step-Up Tiers. The Exchange has historically calculated and will continue to calculate whether a Member satisfied the Step-Up Tier's criteria based on their ADV, and not TCV. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they would be available to all Members equally.

The Exchange believes its proposal to modify the baseline eligibility for the Step-Up Tiers to allow the Member's added liquidity in percentage of TCV to be based on the lower of its ADV for December 2012 or September 2013 represents an equitable allocation of reasonable dues, fees, and other charges since reduced fees reward higher liquidity provision commitments by Members. The primary objective to amending the baseline eligibility criteria for the Step-Up Tiers to increase the number of Members who may be eligible to achieve the tier. The change enhances the number of Members by modifying the baseline eligibility for the Step-Up Tiers to reflect the lower of its ADV for December 2012 or September 2013. Given the requirement that a Member must exceed a percentage of liquidity in excess of their December 2012 ADV, the change will enhance the value of the Step-Up Tiers to Members whose market participation was higher in December 2012 than September 2013, thereby encouraging them to increase their volume on the Exchange over such baseline. Such increased volume would increase potential revenue to the Exchange and allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, which would result in lower per share costs. The Exchange may then pass on these savings to Members in the form of reduced fees. The increased liquidity would also benefit all investors by deepening EDGA's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

In addition, the amended criteria for the Step-Up Tiers is also reasonable as compared to similar pricing mechanisms based on similar criteria (the lower volume of two months) employed by The Nasdaq Stock Market LLC (''Nasdaq''). Nasdaq's Investor Support Program enables members to receive a fee credit for providing additional liquidity to Nasdaq based on the Member equaling or exceeding a baseline volume of liquidity added to Nasdaq.[12] Under the Nasdaq program, the member's baseline is a percentage of monthly consolidated volume calculated by dividing the total number of share of liquidity that the member added on Nasdaq in August 2010 or August 2011, whichever is lower. Lastly, the Exchange believes that it is reasonable and equitable to offer a discounted rate to Members who satisfy a baseline eligibility based on the percentage of a Member's added liquidity to be based on the lower of its ADV for December 2012 or September 2013 because the Exchange believes that such Members are most likely to provide consistent liquidity during periods of market stress and to manage their quotes/orders in a coordinated manner that promotes price discovery and market stability.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RS

The Exchange believes that its proposal to delete Flag RS from its Fee Schedule would not impact intermarket competition because Members seeking to access the PSX to add liquidity may select alternative routing methods or access the PSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed repeal of Flag RS would be available to all Members equally.

Step-Up Tiers 1 and 2

The Exchange believes that correcting an inadvertent drafting error by replacing the term ''TCV' with ''ADV'' in the Step-Up Tiers when referring to the baseline the Member must exceed to achieve the tier would not impose a burden on intermarket competition because it simply clarifies for Members how the criteria under the Step-Up Tiers has and will continue to be calculated by the Exchange. The Exchange has historically and will continue to calculate whether a Member satisfied criteria based on the Member's ADV, and not TCV. The Exchange does not propose to amend any of the existing criteria under the Step-Up Tiers. It simply seeks to correct in its Fee Schedule how the criteria under the Step-Up Tiers has and will continue to be calculated. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the criteria, as amended, in Step-Up Tiers would continue to be available to all Members equally.

The Exchange also believes that its proposal to modify the baseline eligibility for the Step-Up Tiers to allow the percentage of a Member's added liquidity to be based on the lower of its ADV for December 2012 or September 2013 would increase intermarket competition because it offers Members increased opportunities to be eligible for the Step-Up Tiers and receive the discounted rate. Given the requirement that a Member must exceed a percentage of liquidity in excess of their December 2012 ADV, the change will enhance the value of the Step-Up Tiers to Members whose market participation was higher in December 2012 than September 2013, thereby encouraging them to increase their volume on the Exchange, and thereby increasing intermarket competition. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would be available to all Members equally.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

[12] *See* Nasdaq Rule 7014.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(2) [14] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGA–2013–35 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–2013–35. 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–EDGA–2013–35 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71034; File No. SR–ISE–2013–69]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Short Term Option Series Program

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 6, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 Supplementary Material .02 to Rule 504 to expand the Short Term Options Program with respect to non-index options. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Supplementary Material .02 to Rule 504 consistent with a recently approved filing by NASDAQ OMX PHLX, LLC (''PHLX'').[3] In particular, the Exchange proposes to expand the Short Term Options (''STO'') Program for non-index options so that the Exchange may: change the current thirty option class limitation to fifty option classes on which STOs may be opened; match the parameters for opening initial and additional STO strikes to what is permissible per the Options Listing Procedures Plan (''OLPP'');[4] open up to

[3] *See* Securities Exchange Act Release No. 70682 (October 15, 2012), 78 FR 62809 (October 22, 2013) (SR–PHLX–2013–101) (notice of filing; approval citation pending publication by the Commission).

[4] The full name of the OLPP (which is applicable to all option exchanges) is Plan For The Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934. With regard to the listing of new series on equity, ETF, or trust issued receipt (''TIRs'') option classes, subsection 3.(g)(i) of the OLPP states, in relevant part, that the exercise price of each option series listed by an exchange that chooses to list a series of options (known as the Series Selecting Exchange) shall be fixed at a price per share which is reasonably close to the price of the underlying equity security, ETF, or TIR at or about the time the Series Selecting Exchange determines to list such series. Except as provided in subparagraphs (ii) through (iv) of the OLPP, if the price of the underlying security is less than or equal to $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 100% above or below the price of the underlying security. If the price of the underlying security is greater than $20, the Series Selecting Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security.

Subsection 3.(g)(i) of the OLPP indicates that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying. The Exchange's proposal related to non-index options, while

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thirty initial STO series for each expiration date in an STO class; add an STO strike price interval of $2.50 or greater where the strike price is above $150; and in general harmonize the different parts of the Program (*e.g.,* initial listings and additional series).

The STO Program, which was initiated in 2010,[5] is codified in Supplementary Material .02 to Rule 504 for non-index options including equity, currency, and exchange traded fund (''ETF'') options.[6] These rules currently provide that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than thirty option classes that expire on each of the next five consecutive Fridays that are business days.[7] In addition to the thirty-option class limitation, there is also a limitation that no more than twenty initial series for each expiration date in those classes may be opened for trading; provided, however, that the Exchange may open up to 10 additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.[8]

Furthermore, the strike price of each STO has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOs are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. In terms of the strike price intervals, the STO Program currently allows the interval between strike prices on STOs to be (i) $0.50 or greater where the strike price is less than $75, and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the STO Program; or (ii) $0.50 for option classes that trade in one dollar increments, *i.e.,* in the Related non-STO,[9] and are in the STO Program. This proposal retains many of the fundamental limitations of the STO Program while proposing specific changes as described below.

The Proposal

First, the Exchange proposes to increase the number of STO classes that may be opened after an option class has been approved for listing and trading on the Exchange. Specifically, the Exchange proposes in Supplementary Material .02(a) to Rule 504 that the Exchange may select up to fifty currently listed option classes on which STO series may be opened. The Exchange also proposes in Supplementary Material .02(c) to Rule 504 that for each option class eligible for participation in the STO Program, the Exchange may open up to thirty initial STO series for each expiration date in that class. Currently ISE rules permit the Exchange to list up to twenty initial series, and up to ten additional series, for each option class that participates in the STO program.[10] While the ISE may currently list thirty STO series total, the Exchange is proposing to increase the number of initial series that it may list in order to remain competitive with other exchanges. The Exchange will continue to be limited to a total of thirty STO series, including both initial and additional series, and is proposing amendments to Supplementary Material .02(d) to Rule 504 to reflect the fact that the Exchange may only open additional series if it has opened fewer than thirty initial series. The Exchange believes that this proposed moderate increase in the number of STO classes and initial STO series is needed and advisable in light of the demonstrated acceptance and popularity of the STO Program among market participants, as discussed below.

Second, the Exchange proposes changes to Supplementary Material .02(c) and (d) to Rule 504 to indicate that any initial or additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security.[11] This proposal is in line with the process for adding new series of options found in subsection 3.(g)(i) of the OLPP, and harmonizes the STO Program internally by adopting consistent parameters for opening STOs and listing additional strike prices. The Exchange believes that this proposal is a reasonable and desirable enhancement to the STO Program.

Third, the Exchange proposes additional changes to Supplementary Material .02(d) to indicate that if the Exchange has opened less than thirty STO series for an STO expiration date, the Exchange may also open additional strike prices of STO series that are more than 50% above or below the current price of the underlying security if the price is greater than $20, provided that demonstrated customer interest exists for such series,[12] as expressed by institutional, corporate or individual customers or their brokers. This is done to further conform the additional strike price methodology to the proposed listing parameters described above, while retaining demonstrated interest language that may be useful in unforeseen circumstances. Furthermore, Rule 504A(b)(i) currently states that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. Immediately before this language, the Exchange proposes to also add a carve-out that states: ''Except as provided in Supplementary Material .02(d) to Rule 504 . . .''

Fourth, the Exchange proposes to simplify the delisting language in Supplementary Material .02(d) to Rule 504, by removing the current range methodology that states, in part, that the Exchange will delist certain series ''so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security.'' [13] In the event that the

conforming to the current structure of the Exchange's STO rules, is similar in practical effect to the noted OLPP subsection.

[5] *See* Securities Exchange Act Release No. 62444 (July 2, 2010), 75 FR 39595 (July 9, 2010) (SR–ISE–2010–72) (notice of filing and immediate effectiveness of proposed rule change to permanently establish the STO Program on the Exchange).

[6] The Exchange does not by this filing propose any changes to Supplementary Material .01 to Rule 2009 related to the STO Program for index options.

[7] The Exchange increased the number of option issues that could be opened pursuant to the STO Program in 2012. *See* Securities Exchange Act Release No. 66432 (February 21, 2012), 77 FR 11614 (February 27, 2012) (SR–ISE–2012–08).

[8] *See* Supplementary Material .02(c) and (d) to Rule 504.

[9] Related non-STOs are non-STOs that have similar options with longer expiration cycles (*e.g.,* monthly Apple (AAPL) options would be Related non-STOs to weekly AAPL options).

[10] *See* Supplementary Material .02(c) and (d) to Rule 504.

[11] The price of the underlying security will be calculated commensurate with Rule 504A(b)(i) as amended.

[12] Market Makers trading for their own account are not considered when determining customer interest.

[13] Currently, the delisting language states: ''In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower

underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will continue to delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week.[14] New series added after delisting will not be constrained by the prior range methodology. The Exchange believes that, like its other proposals, the delisting proposal will add clarity and certainty to the STO process on the Exchange.

Fifth, the Exchange proposes to add $2.50 strike price intervals to the STO Program. Specifically, the Exchange proposes in Supplementary Material .12 to Rule 504 to indicate that the interval between strike prices on STOs may be $2.50 or greater where the strike price is above $150. This proposed change complements the current STO strike price intervals of $0.50 or greater where the strike price is less than $75 (or for STO classes that trade in one dollar increments in the Related non-STO), and $1 or greater where the strike price is between $75 and $150. The proposed $2.50 strike price interval addresses the issue that above a $150 strike price STO strike price intervals must generally be an exceedingly wide $5 or greater.[15]

The principal reason for the proposed expansion is market demand for additional STO classes and series and a desire to make the STO Program more effective. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOs, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms,[16] and includes market moving events such as significant market volatility, corporate events, or large market, sector, or individual issue price swings. The Exchange has been requested by traders and other market participants to expand the STO Program to allow additional STO offerings and increased efficiency.

In order that the Exchange not exceed the current thirty option class and twenty initial option series restriction, the Exchange has on occasion had to turn away STO customers (traders and investors) because it could not list, or had to delist, STOs or could not open adequate STO series because of restrictions in the STO Program. This has negatively impacted investors and traders, particularly retail investors, who have continued to request that the Exchange add, or not remove, STO classes, or have requested that the Exchange expand the STO Program so that additional STO classes and series could be opened that would allow the market participants to execute trading and hedging strategies. There are, as discussed, substantial benefits to market participants having the ability to trade eligible option classes within the STO Program. Furthermore, the Exchange supports the objective of responding to customer need to enhance successful programs to make them more efficient for hedging and trading purposes. The Exchange notes that the STO Program has been well-received by market participants, in particular by retail investors. The Exchange believes that weekly expiration options will continue to grow in importance for all market participants, including institutional and retail investors.[17] The proposed revisions to the STO Program will permit the Exchange to meet customer demand for weekly expiration options by providing a reasonable expansion to the program, and will further allow the Exchange to harmonize STO Program rules with the OLPP as well as internally.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange represents that it will monitor the trading volume associated with the additional STO classes and series listed as a result of this proposal and the effect (if any) of these additional STO classes and series on market fragmentation and on the capacity of the Exchange's automated systems.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Expanding the classes and additional series that can be opened in the STO Program, simplifying the delisting process, and allowing $2.50 strike price intervals will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities. In addition, correcting the delisting language, which currently refers to ''expiration months'' instead of weeks will clarify the Exchange's rules and reduce investor confusion.

The STO Program has been well-received by market participants, and in particular by retail investors, and has seen increasing trading volume. The Exchange believes that the current proposed revisions to the STO Program will permit the Exchange to meet customer demand for weekly expiration options by providing a reasonable expansion to the program, and will further allow the Exchange to harmonize STO Program rules with the OLPP as well as internally to the benefit of investors, market participants, and the marketplace.

With regard to the impact of this proposal on system capacity, the Exchange believes that it and OPRA have the necessary systems capacity to handle any potential additional traffic associated with this current amendment

than the lowest strike price with open interest in the put and/or the call series for a given expiration month, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security. In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may list additional series, in excess of the 30 allowed under this Supplementary Material .02, that are between 10% and 30% above or below the price of the underlying security.'' Supplementary Material .02(d) to Rule 504. *See* Securities Exchange Act Release No. 68318 (November 29, 2012), 77 FR 72426 (December 5, 2012) (SR–ISE–2012–90) (notice of filing and immediate effectiveness of proposed rule change to delist series and open up to five consecutive weekly expirations of STOs).

[14] The Exchange notes that the delisting language in Supplementary Material .02(d) to Rule 504 incorrectly refers to expiration months rather than weeks. With this filing the Exchange also proposes to clarify that the exchange will delist series for given expiration weeks in accordance with the criteria discussed in this rule.

[15] *See, e.g.,* Rule 504(d).

[16] These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

[17] The current STO Program, which is similar across all options markets that have weeklies programs, is in its current formulation one of the more challenging industry-wide listings program to administer. Recognizing the importance of the Program, the Exchange is seeking to improve the Program for non-index STOs by making it more uniform and logical.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. As explained above, this proposal will afford significant benefits to market participants, and the market in general, in terms of significantly greater flexibility and increases in efficient trading and hedging options. It will also allow the Exchange to compete on equal footing with STO Programs adopted by other options exchanges, and in particular PHLX, which has recently been granted approval to adopt substantially similar rules to those proposed here.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. The proposed rule change is a competitive response to a recently approved filing by the PHLX,[20] which the Exchange believes is necessary to permit fair competition among the options exchanges with respect to STO Programs. The Exchange believes that the proposed rule change will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that it would be at a competitive disadvantage if it were not allowed to adopt the proposed rule changes contemporaneously with those recently approved for PHLX. The Exchange also stated that the proposal will promote fair competition among exchanges by allowing the Exchange to offer a more efficient STO Program that is harmonized internally and externally with the OLPP, and to meet customer demand for a greater number of STO classes and strike price intervals, in the same manner as other exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[23]

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–ISE–2013–69 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2013–69. 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–ISE–2013–69 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

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[20] *See* supra note 3.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71038; File No. SR–NYSEArca–2013–137]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the Merk Gold Trust Pursuant to NYSE Arca Equities Rule 8.201

December 11, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 27, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, which filing was amended and replaced in part by Amendment No. 1 thereto on December 11, 2013,[4] as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Merk Gold Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Trust under NYSE Arca Equities Rule 8.201.[5] Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [6] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the APMEX Physical-1 oz. Gold Redeemable Trust [7], as well as the ETFS Gold Trust [8] and the Sprott Physical Gold Trust.[9] In addition, the Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.[10] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.[11]

The sponsor of the Trust is Merk Investments LLC (''Sponsor''), a Delaware limited liability company.[12] The trustee for the Trust is The Bank of New York Mellon (''Trustee'').[13] The custodian is JPMorgan Chase Bank, N.A. (the ''Custodian'').[14]

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] According to the Exchange, Amendment No. 1 seeks to clarify certain statements in the filing with respect to: (i) The Custodian's information barriers between itself and its broker dealer affiliate; (ii) the use of unallocated gold accounts by other gold trusts; and (iii) the Trustee's role in valuing the Trust's physical gold holdings.

[5] *See* the registration statement for the Trust on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a), filed with the Commission on April 8, 2013 (No. 333–180868) (the ''Registration Statement''). The descriptions of the Trust, the Shares and the gold market contained herein are based, in part, on the Registration Statement.

[6] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[7] Securities Exchange Act Release No 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca–2012–18) (''APMEX Release'').

[8] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[9] Securities Exchange Act Release No. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR–NYSEArca–2009–113).

[10] *See* Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[11] *See* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[12] The Sponsor generally oversees the performance of the Trustee and the Trust's principal service providers, but does not exercise day-to-day oversight of the Trustee or such service providers.

The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: the Trustee's monthly fee and out-of-pocket expenses; the fee of the Custodian (as described below); the marketing support fees and expenses; expenses reimbursable under the custody agreement; the precious metals dealer's fees and expenses reimbursable under its agreement with the Sponsor; Exchange listing fees; Commission registration fees; printing and mailing costs; maintenance expenses for the Trust's Web site; audit fees and up to $100,000 per annum in legal expenses. The Sponsor also will pay the costs of the Trust's organization and the initial sale of the Shares, including applicable Commission registration fees. The Sponsor will undertake other activities for the Trust, as described in the Registration Statement.

[13] The Trustee will be responsible for the day-to-day administration of the Trust. The Trustee's responsibilities will include: (1) Valuing the Trust's physical gold and unallocated gold and calculating the net asset value (''NAV'') per Share of the Trust, (2) supplying inventory information to the Sponsor for the Trust's Web site; (3) receiving and processing orders from ''Authorized Participants'' (as described below) for the creation and redemption of ''Baskets'' (as described below); (4) coordinating the processing of orders from Authorized Participants with the Custodian and The Depository Trust Company (''DTC''), including coordinating with the Custodian the receipt of unallocated gold transferred to the Trust in connection with each issuance of Baskets; (5) cooperating with the Sponsor, the precious metals dealer and the Custodian in connection with the delivery of ''physical gold'' (as defined below) to ''Delivery Applicants'', as described below, in exchange for their Shares; (6) issuing and allocating Shares to the Sponsor in lieu of paying the fee to compensate the Sponsor (''Sponsor Fee'') in cash; (7) issuing and allocating Shares to the Sponsor to reimburse cash payments owed by the Trust, but undertaken by the Sponsor; (8) selling gold pursuant to the Sponsor's direction or otherwise as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor; (9) holding the Trust's cash and other financial assets, if any; (10) when appropriate, making distributions of cash or other property to investors; and (11) receiving and reviewing reports on the custody of and transactions in physical and unallocated gold from the Custodian and taking such other actions in connection with the custody of physical or unallocated gold as the Sponsor instructs.

[14] The Custodian will be responsible for the safekeeping of the Trust's allocated gold (as described below) and supplying inventory information to the Trustee and the Sponsor. The Custodian also will be responsible for facilitating the transfer of allocated gold and unallocated gold in and out of the Trust and facilitating the shipment of London Bars to Delivery Applicants. The Custodian will deposit into the Trust's unallocated gold account (''Unallocated Account'') unallocated gold (as described below) received from an Authorized Participant in exchange for Baskets. The Custodian will promptly convert the deposit to allocated gold to be held in London Bars, as described below, unless the Sponsor instructs the Custodian to convert a portion of the unallocated gold received into physical gold for delivery to a Delivery Applicant. The Custodian has represented that it has policies and procedures in place to enable it to comply with its regulatory obligations

Continued

The Trust Shares

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's assets will consist principally of gold bullion held on the Trust's behalf in financial institutions for safekeeping. The Trust's gold bullion will consist of (i) London Bars [15] (''London Bars'') as allocated gold in the Trust Allocated Account [16] and (ii) no more than 430 Fine Ounces [17] of unallocated gold held with the Custodian in the Trust Unallocated Account.[18] The Trust may hold other types of physical gold [19] for short periods, but only, if at all, in connection with the delivery of other types of physical gold to Delivery Applicants (as defined below). Thus, under these limited circumstances, the Trust may also hold (i) gold bars (other than London Bars) or gold coins, in each case without numismatic value and having a minimum fineness (or purity) of 99.5% or (ii) American Gold Eagle gold coins, with a minimum fineness of 91.67% (''American Gold Eagle Coins''), solely for delivery to an investor who would like to take delivery of physical gold in exchange for its Shares (such investor, a ''Delivery Applicant'').[20] The Trust will not normally hold cash or any other assets, but may hold a very limited amount of cash in connection with the delivery of physical gold to Delivery Applicants as described below.

According to the Registration Statement, the Trust is not an investment company registered under the Investment Company Act of 1940, as amended [21] (''1940 Act''), and is not required to register with the Commission thereunder. The Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act [22] (''CEA''), as administered by the Commodity Futures Trading Commission (''CFTC''). The Trust is not a commodity pool for purposes of the CEA and neither the Sponsor nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.[23]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[24]

The Trust will not hold or employ derivatives.

Trust Objective

According to the Registration Statement, the objective of the Trust is to provide investors with an opportunity to invest in gold through Shares, and be able to take delivery of physical gold in exchange for their Shares. The Trust's secondary objective is for the Shares to reflect the performance of the price of gold less the expenses of the Trust's operations. The Trust is not actively managed. It does not engage in any activities designed to obtain a profit from, or to compensate investors for losses caused by, changes in the price of gold.

According to the Registration Statement, the Shares will provide investors with the opportunity to access the gold market though a traditional brokerage account. Further, according to the Registration Statement, the shares are intended to constitute a cost-efficient mechanism for investors to make an investment in gold. Although the shares are not the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market.

in relation to appropriate information barriers and controls to safeguard client confidentiality, including, but not limited to, information barriers and controls between itself and its broker dealer affiliate so that its broker dealer affiliate will not have access to information concerning the composition and/or changes to the Trust's holdings that are not available on the Trust's Web site.

[15] According to the Registration Statement, a London Bar is a gold bar meeting the London Good Delivery Standards and is also known as a London Good Delivery Bar. According to the Registration Statement, the London Good Delivery Standards are the specifications for weight, dimensions, fineness (or purity), identifying marks and appearance of gold bars set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the London Bullion Market Association (''LBMA''). According to the Registration Statement, a London Bar varies in size between 350 Fine Ounces and 430 Fine Ounces. As used herein, London Bars are one form of ''physical gold'' held by the Trust. See note 19.

[16] According to the Registration Statement, allocated gold is stored in a vault under a custody arrangement, and the individual bars are the property of the owner. London Bars will be held by the Trust as allocated gold in the Trust Allocated Account.

[17] Ounce is defined in the Registration Statement to mean one troy ounce, equal to 31.103 grams (1.0971428 ounces avoirdupois). Fine Ounce is defined in the Registration Statement as an Ounce of 100% pure gold.

[18] According to the Registration Statement, unallocated gold (sometimes referred to as ''paper gold'') is a claim on a non-specific pool of gold held by a financial institution. Gold is said to be held in unallocated form when the person in whose name such gold is held is entitled to receive delivery of gold in the amount standing to the credit of that person's account, but that person has no ownership interest in any particular gold that the custodian for financial assets maintaining the account owns or holds. Unallocated gold facilitates transactions with Authorized Participants and to convert gold into different specifications to meet delivery requests from Delivery Applicants of physical gold. Upon receipt of a deposit of unallocated gold from an Authorized Participant, the Custodian will allocate such deposit to allocated gold consisting of London Bars held in the Trust Allocated Account. Because London Bars vary in size between 350–430 Fine Ounces, the Custodian may not have access to London Bars precisely matching the Fine Ounces of unallocated gold deposited by an Authorized Participant. However, the Custodian will transfer a deposit of unallocated gold into allocated gold in the Trust Allocated Account so that no more than 430 Fine Ounces remain in the Trust Unallocated Account.

[19] According to the Registration Statement, the term ''physical gold'' means the physical gold bullion the Trust may hold, consisting of (i) London Bars, (ii) gold bars (other than London Bars) or gold coins, in each case without numismatic value and having a minimum fineness (or purity) of 99.5% or (iii) American Gold Eagle Coins. Unallocated gold is not considered ''physical gold.''

[20] According to the Registration Statement, the Trust permits individual investors, known as Delivery Applicants, to deliver Shares to the Trust in an amount less than a Basket, in exchange for physical gold. Upon receipt of a Delivery Application, as defined below, from a Delivery Applicant and an appropriate number of Shares, the Trust will arrange for delivery of physical gold, in accordance with the procedures described herein, to the Delivery Applicant. In order to effect a transfer of physical gold (other than London Bars) to a Delivery Applicant, the Trust will instruct the Custodian to transfer an amount of unallocated gold from the Trust Unallocated Account equal to the Fine Ounce content of the requested physical gold to the unallocated account of a precious metals dealer. Such precious metals dealer will then acquire physical gold in such specifications as the Delivery Applicant may request and arrange for delivery of such physical gold to the Delivery Applicant. Delivery of London Bars to Delivery Applicants will be effected directly by the Custodian. Once physical gold has been released by the Custodian or the precious metals dealer to a delivery service, as described below, for delivery to a Delivery Applicant, the physical gold cannot be returned and is no longer the responsibility of the Trust, the Trustee, the Custodian the precious metals dealer or the Sponsor; until such release to a delivery service, the physical gold will remain the property of the Trust

[21] 15 U.S.C. 80a–1.

[22] 17 U.S.C. 1.

[23] The Trust, like certain other gold trusts, transacts with Authorized Participants through unallocated gold accounts. *See,* e.g., Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (approving listing on the Exchange of the ETFS Gold Trust) and SPDR Gold Trust's Annual Report on Form 10–K for the year ended September 30, 2013. Unallocated gold, as described above, together with allocated gold held in the Trust Allocated Account and, under very limited circumstances, any physical gold pending delivery to a Delivery Applicant, cumulatively represents the Trust's ownership of gold; the difference between allocated and unallocated gold accounts is that particular London Bars are designated as held in the Trust Allocated Account whereas the Trust Unallocated Account does not entitle the Trust to a particular London Bar. The Trust may hold no more than 430 Fine Ounces of unallocated gold in the Trust Unallocated Account. The Trust Unallocated Account is not itself an instrument or form of derivative contract, or other commodity futures contract, but instead represents actual gold credited to the account of, and held by, the Trust. As such, the Trust Unallocated Account is not a ''commodity'' and merely represents the manner in which the Trust's gold is custodied, similar to a deposit in a bank account being represented by a credit to a depositor's account.

[24] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

Operation of the Trust

The Trust will hold its London Bars in allocated form in the Trust Allocated Account with the Custodian. The allocated gold will be held in a segregated fashion in the name of the Trust, not commingled with other depositor funds or assets. The Trust will have full title to the individually identified London Bars held in the Trust Allocated Account with the Custodian holding it on the Trust's behalf. Each investor will own a pro-rata share of the Trust, and as such will hold a pro-rata ownership interest in the Trust assets, corresponding to the number of Shares held by such investor. Trust holdings in the Trust Allocated Account will be identified in a weight list of bars published on the Trust's Web site showing the unique bar number, gross weight, the assay or fineness of each bar and its fine weight. Credits or debits to the holding [sic] will be effected by physical movements of bars to or from the Trust's physical holding [sic]. The Trust's holdings will be subject to periodic audits.

All physical gold and unallocated gold held by the Trust will be valued based upon the Benchmark Price [25] for any day certain or, if the Benchmark Price for that day is not available, the most recently announced Benchmark Price prior to the evaluation time. However, if the Sponsor determines that the Benchmark Price is inappropriate as a basis for evaluation, it shall identify an alternative basis to be employed by the Trustee.

The Gold Market

According to the Registration Statement, global gold trade consists of the over-the-counter (''OTC'') market, the futures and options markets and the London interbank market. The OTC market accounts for the largest percentage of global gold trading volume. It trades on a 24-hour per business day continuous basis and provides a relatively flexible market in terms of quotes, size, price, destinations for delivery and other factors. The standard trade size ranges between 5,000 and 10,000 ounces.

OTC market makers include the nine market-making members of the LBMA, and the main centers are London, New York, and Zurich. Market participants include jewelry manufacturers, mining companies, central banks, investors and speculators. Liquidity in the OTC market varies during the day, with the most liquid time periods generally occurring in business day mornings, when trading hours in European time zones overlap with trading hours in the United States.

The London Bullion Market is the largest wholesale OTC market for gold and is operated by the LBMA, which acts as the principal point of contact between the market and its regulators. Gold must meet the requirements defined by the LBMA.

Futures and Options Exchanges

The major exchanges trading gold futures and options include the COMEX (an affiliate of the Chicago Mercantile Exchange, Inc. (''CME'')), the Multi Commodity Exchange of India, the Tokyo Commodities Exchange and the Shanghai Futures Exchange. Gold futures and options are traded on these exchanges in standardized transaction sizes and delivery dates. Only a small portion of the gold futures market turnover is typically physically delivered.

The COMEX is the largest gold futures and options exchange. In 2012, it represented approximately 79% of global futures and options trading volume. The Multi Commodity Exchange of India is the second largest futures exchange in terms of gold futures trading volume, accounting for around 7.0% of the world total. The Tokyo Commodities Exchange accounted for about 6.8% of total gold futures trading volume in 2012. The Shanghai Futures Exchange accounted for 6.6% of total gold futures trading volume in 2012.[26]

Gold spot trades on over-the-counter markets throughout the world.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem Baskets equal to a block of 50,000 Shares,[27] and only to Authorized Participants.[28] Orders to create and redeem Baskets may be placed only by Authorized Participants. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of unallocated gold represented by the Baskets being created or redeemed, the amount of which will be based on the combined Fine Ounces represented by the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Creation Procedures—Authorized Participants

Only Authorized Participants will deliver unallocated gold to the Trust in exchange for Shares. Such deliveries will take place through unallocated accounts and the Trust will not accept the delivery of physical gold. According to the Registration Statement, unallocated gold is delivered to the Trust through credits and debits between Authorized Participants' unallocated accounts and the Trust Unallocated Account. When an Authorized Participant creates a Basket, unallocated gold will be transferred from an Authorized Participant to the Custodian. The transfer will appear as a debit to the Authorized Participant's unallocated account and a credit to the Trust Unallocated Account. On the same business day, the Custodian will convert the deposit of unallocated gold to allocated gold, to be held in the Trust Allocated Account, and store such allocated gold for safekeeping. The Custodian must convert unallocated gold deposits to allocated gold in the Trust Allocated Account such that no more than 430 Fine Ounces of unallocated gold remain in the Trust Unallocated Account at the end of each business day.

[25] Benchmark Price means, as of any day, (i) such day's London PM Fix; or (ii) if such day's London PM Fix is not available then such day's London AM Fix; or (iii) if such day's London AM Fix is not available then another publicly available price the Sponsor may determine fairly represents the commercial value of gold held by the Trust.

[26] Source: The CPM Gold Yearbook 2013, Page 198–199. For additional information regarding the gold bullion market, gold futures exchanges, and regulation of the global gold market, see Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order approving Exchange listing and trading of the ETFS Gold Trust). Additional information regarding the market for American Gold Eagle Coins is contained in the APMEX Release (*see,* note 3 [sic], *supra.*).

[27] The Sponsor will also receive a fee that will accrue daily based on the prior business day's net asset value and will be payable in Shares corresponding to the net asset value of the Shares at the time of payment on a monthly basis in arrears. According to the Registration Statement, paying the Sponsor's fee in Shares of the Trust, rather than cash, eliminates the need for the Trust to sell gold to raise cash to pay the Sponsor's fee.

[28] An Authorized Participant must: (1) Be a registered broker-dealer or other securities market participant, such as a bank or other financial institution which, but for an exclusion from registration, would be required to register as a broker-dealer to engage in securities transactions, (2) be a participant in DTC, and (3) have an agreement with the Custodian establishing an Unallocated Account in London or have an existing Unallocated Account with another LBMA-member custodian identified by the Authorized Participant to the Custodian and the Trustee. Gold held in Authorized Participants' Unallocated Accounts with the Custodian is typically not segregated from the Custodian's assets. As a result, an Authorized Participant establishing an Unallocated Account with the Custodian will have no proprietary interest in any specific bars of gold held by the Custodian. Credits to such an Unallocated Account are therefore at risk of the Custodian's or other bullion clearing bank's insolvency.

On any business day,[29] an Authorized Participant may place an order with the Trustee to create one or more Baskets. Purchase orders must be placed by 3:59:59 p.m. Eastern time. The day on which the Trustee receives a valid purchase order is the purchase order date.

Determination of Required Deposits

The amount of the required deposit for a Basket will be determined by dividing the number of Fine Ounces of gold held by the Trust by the number of Baskets outstanding, as adjusted for the number of Fine Ounces of gold constituting estimated accrued but unpaid fees and expenses of the Trust. The number of Baskets outstanding is determined by dividing the number of Shares outstanding by 50,000 (or other number of Shares in a Basket for such business day). Fractions of a Fine Ounce of gold smaller than 0.001 of a Fine Ounce which are included in the unallocated gold deposit amount will be disregarded in the foregoing calculation.

Delivery of Required Deposits

An Authorized Participant who places a purchase order is responsible for crediting its unallocated gold account, if held at the Custodian, with the required deposit amount and, if the Authorized Participant does not maintain its unallocated gold account with the Custodian, causing the required deposit to be transferred to the Custodian, by 11:00 a.m. (London time) on the third business day following the purchase order date. Upon receipt of the deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer by 11:00 a.m. (London time) on the third business day following the purchase order date the deposit amount to the Trust Unallocated Account, and on the same business day, convert the deposit amount from the Trust Unallocated Account to the Trust Allocated Account such that no more than 430 Fine Ounces of unallocated gold remains [sic] in the Trust Unallocated Account. Upon confirmation of the conversion of the deposit amount to the Trust Allocated Account, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account.

No Shares will be issued unless and until the Custodian has informed the Trustee that it has allocated to the Trust Allocated Account the corresponding allocated gold amount. If the Custodian notifies the Trustee and the Sponsor that it is unable to convert the deposit from the Trust Unallocated Account to the Trust Allocated Account in connection with a particular purchase order or generally, the Trustee will reject the particular purchase order as well as any other subsequent purchase orders on the same day.

Redemption Procedures—Authorized Participants

The procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed no later than 3:59:59 p.m. on each business day the NYSE Arca is open for regular trading. A redemption order so received will be effective on the date it is received in satisfactory form by the Trustee.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust no later than the third business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

The redemption distribution from the Trust will be effected by (i) conversion of allocated gold in the Trust Allocated Account to unallocated gold in the Trust Unallocated Account and (ii) a debit from the Trust Unallocated Account and credit to the redeeming Authorized Participant's unallocated account representing the amount of the gold held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order. Fractions of a Fine Ounce of gold included in the redemption distribution smaller than 0.001 of a Fine Ounce are disregarded for such calculation. Redemption distributions will be subject to the deduction of any applicable tax, fee or other governmental charge that may be due as well as any charges or fees in connection with the transfer of gold and the issuance and delivery of shares, and any expense associated with the delivery of gold other than by credit to an Authorized Participant's unallocated account with the Custodian.

The redemption distribution due from the Trust will be delivered to the Authorized Participant on the third business day following the redemption order date if, by 9:00 a.m. Eastern time on such third business day, the Trustee's DTC account has been credited with the Baskets to be redeemed.

Suspension or Rejection of Redemption Orders

The Trustee may, in its discretion, and will when directed by the Sponsor, suspend the right of redemption, or postpone the redemption settlement date or reject a particular redemption order, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted or (2) for any period during which an emergency exists as a result of which delivery, disposal or evaluation of gold is not reasonably practicable.[30] The Sponsor has represented that it will promptly notify the Exchange of any such suspension of redemption orders.

Taking Delivery of Physical Gold—Delivery Applicants

A Delivery Applicant wishing to deliver Shares of the Trust in exchange for physical gold must submit to the Sponsor a Delivery Application and payment for (1) the applicable processing fees, and (2) the applicable delivery fees to cover the cost of preparing and transporting physical gold from the Custodian or the precious metals dealer[31] from which they were obtained to the location specified by the Delivery Applicant in the Delivery Application. The Sponsor will screen and pre-approve the Delivery Application.[32] The Share Submission Day[33] will typically be the third

[29] For purposes of processing both purchase and redemption orders, a "business day" means any day other than a day: (1) When the NYSE Arca is closed for regular trading; or (2), if the order or other transaction requires the receipt or delivery, or the confirmation of receipt or delivery, of gold in the United Kingdom or in some other jurisdiction on a particular day, (A) when banks are authorized to close in the United Kingdom or in such other jurisdiction or when the London gold market is closed or (B) when banks in the United Kingdom or in such other jurisdiction are, or the London gold market is, not open for a full business day and the transaction requires the execution or completion of procedures which cannot be executed or completed by the close of the business day.

[30] The Exchange may suspend trading in the Shares in the event the Sponsor suspends the right of redemptions.

[31] The Sponsor will not be affiliated with any precious metals dealer.

[32] Prior to pre-approving a Delivery Application, the Sponsor will coordinate with a precious metals dealer to evaluate if the physical gold (other than London Bars) is available in the type and quantity of physical gold requested by the Delivery Applicant, and that the delivery method and location can be agreed upon with the Delivery Applicant.

[33] According to the Registration Statement, the Share Submission Day is defined as the day on which a Delivery Applicant submits shares to the Trustee.

business day following approval of the Delivery Application. The number of Shares to be delivered must (i) correspond to at least one Fine Ounce of physical gold and (ii) have a minimum dollar value in an amount that is specified by the Sponsor from time to time on the Trust's Web site. Taking delivery of physical gold is subject to guidelines intended to minimize the amount of cash that will be distributed with physical gold. The Delivery Application is not binding until Shares are delivered to the Trustee.[34]

To minimize the cash portion of delivery by Delivery Applicants of physical gold for their Shares, the Sponsor will only approve Delivery Applications where the number of Shares to be submitted leads to a cash portion that is as low as practical in the assessment of the Sponsor. After the liquidation of unallocated gold to satisfy the cash portion of delivery, but before the actual delivery to the Delivery Applicant, the Trust will hold such cash temporarily.

Upon pre-approval of the Delivery Application by the Sponsor, a Delivery Applicant will be required to instruct its broker-dealer to submit the Delivery Application and transfer Shares to the Trustee; such submission and transfer by the broker-dealer will be a binding and irrevocable request to take delivery of physical gold in exchange for Shares based on instructions in the Delivery Application (''Share Submission'').

Once the Trustee has received a Delivery Applicant's Share Submission, if the Delivery Applicant seeks physical gold other than London Bars, it will instruct the Custodian to (i) convert allocated gold not exceeding the Fine Ounces represented by the Shares surrendered as determined by the Sponsor from the Trust Allocated Account into unallocated gold in the Trust Unallocated Account, (ii) debit such amount of unallocated gold from the Trust Unallocated Account and credit a corresponding amount to the unallocated gold account of a precious metals dealer and (iii) instruct such precious metals dealer to acquire physical gold in the specifications requested by the Delivery Applicant and deliver such physical gold to the Delivery Applicant. Deliveries of London Bars will be effected by the Custodian.

Processing Fees

The exchange of Shares for the delivery of physical gold is subject to the following Processing Fees. The Processing Fees must be submitted with the Delivery Application. The Processing Fees include fees to compensate the Sponsor (''Exchange Fee''), and a delivery fee (''Delivery Fee'') associated with the transport of physical gold to Delivery Applicants.[35] The Delivery Fee is only applicable if delivery is made outside of the lower 48 States.

The Exchange Fee will compensate the Sponsor for services provided as part of the delivery process, including the cost to the Sponsor and the Trustee to process the Share Submission; and the cost associated with OTC transactions to convert gold held by the Trust into physical gold of different specifications, if applicable. The Exchange Fee is a percentage of the value of the gold represented by the Shares submitted on the Share Submission day based on the most recent quarter's end spot price of gold, as set forth in the Registration Statement, subject to minimum fees as follows:

Type of physical gold	Percentage	Minimum charge
1 ounce Coins: American Gold Eagle	7	$7,000
1 ounce Coins: other qualifying	6	6,000
1 ounce Bars	3.5	3,500
10 ounce Bars	2.5	2,500
London Bars	2.5	None

The Sponsor may waive or reduce applicable Processing Fees from time to time. Any waiver or reduction in applicable Processing Fees will be published on the Trust's Web site and available to any eligible Delivery Applicant. Although waivers or reductions in Processing Fees are not currently available, in the future, waivers or reductions may apply during certain limited time periods, for Delivery Applicants seeking particular types of physical gold (i.e., coins or bars), or for Delivery Applicants completing multiple Delivery Applications over proscribed time periods.

Delivery Method

The Trustee will instruct the Custodian or the Sponsor shall instruct the precious metals dealer, as applicable, to deliver physical gold to a Delivery Applicant based on instructions in the Delivery Application. Once physical gold has been released by the Custodian or the precious metals dealer to a delivery service, as described below, for delivery to a Delivery Applicant, the physical gold cannot be returned and is no longer the responsibility of the Trust, the Trustee, the Custodian, the precious metals dealer or the Sponsor.

The Custodian will ship London Bars and the precious metals dealer will ship all other forms of physical gold to a Delivery Applicant fully insured using accepted business practices for precious metals delivery that may include, amongst others, use of a conventional shipping carrier or an armored transportation service.

Valuation of Gold and Computation of Net Asset Value

On each business day that the NYSE Arca is open for regular trading, as promptly as practicable after 4:00 p.m., Eastern time, the Trustee will value the physical gold and unallocated gold held by the Trust and will determine the NAV of the Trust, as described below.

The NAV of the Trust will be the aggregate value of physical gold and

[34] Delivery Applicants may fail to submit Shares, or fail to submit Shares in the amount required on the Share Submission Day; accordingly, the Delivery Application is not binding until Shares are delivered to the Trustee. As noted above, the delivery of Shares in exchange for physical gold will take place at the NAV on the Share Submission Day such that any estimates provided in advance of the number of Shares required to be submitted must be non-binding since an additional Share or Shares may be required to be submitted if the NAV differs from the time the calculator is used so that neither the Delivery Applicant nor remaining shareholders are disadvantaged if the NAV changes between the time of the estimate and delivery.

[35] The Exchange Fee will vary depending on the type of physical gold a Delivery Applicant would like to take delivery of and reflect costs arising from: reviewing Delivery Applications, coordinating with Delivery Applicants and the Trust's other service providers, the conversion of London Bars into physical gold to be delivered, and the related expenses of the Trustee and the Sponsor. The Exchange Fee for London Bars will be set at 2.5%. A delivery fee (as described in the Registration Statement) will cover the cost of the physical transfer to the Delivery Applicant.

unallocated gold of the Trust (other than amounts credited to the Trust's reserve account, if any) and cash, if any, less liabilities of the Trust, which include estimated accrued but unpaid fees and expenses. All physical gold and unallocated gold will be valued based on its Fine Ounce content, calculated by multiplying the weight of gold by its purity; the same methodology is applied independent of the type of physical gold and unallocated gold held by the Trust. Similarly, the value of up to 430 Fine Ounces of unallocated gold the Trust may hold is calculated by multiplying the number of Fine Ounces with the price of gold determined by the Trustee, as described below.

In determining the NAV of the Trust, the Trustee will value the physical gold and unallocated gold held by the Trust on the basis of the price of a Fine Ounce of gold as set by the afternoon session of the twice daily fix of the price of a Fine Ounce of gold which starts at 3:00 p.m. London, England time and is performed by the five members of the London gold fix. If no London PM Fix is made on a particular evaluation day, the gold price from that day's London AM Fix will be used in the determination of the NAV of the Trust or, if such day's London AM Fix is not available, then another publicly available price which the Sponsor may determine fairly represents the commercial value of gold held by the Trust will be used.

According to the Registration Statement, physical gold in the Trust will be valued at the price of gold independent of location and type of physical gold. The price of gold commonly quoted refers to the price of a London Bar in London. Any physical gold that is not a London Bar located in London may obtain a bid price when offered for sale that deviates from the price of gold. Nonetheless, the Trustee will value all physical gold at the price of gold. Conversely, in the unlikely event that such a conversion yields a profit, the Sponsor, not the Trust, will keep such profit. As a result, the value of physical gold in the Trust will be limited to the price of gold multiplied by the Fine Ounce content of the physical gold. Similarly, when investors exchange their Shares for physical gold other than London Bars, the Shares also will be valued at the price of gold for purposes of calculating their share in the Trust. The Sponsor may recover this conversion cost as part of the Exchange Fee.

Once the value of gold has been determined, the Trustee will subtract all estimated accrued but unpaid fees (other than the fees accruing for such day on which the valuation takes place computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of physical gold and unallocated gold and any other assets of the Trust, including cash, if any. The resulting figure will be the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which will include the net number of any Shares created or redeemed on such evaluation day).

Prior to commencement of trading on the Exchange, the Exchange will obtain a representation from the Sponsor that the NAV will be calculated daily and will be made available to all market participants at the same time.

Termination of the Trust

The Trustee will notify investors at least 30 days before the date for termination of the Trust Agreement and the Trust if any of the following occurs:

- The Trustee is notified that the Shares are delisted from the NYSE Arca and are not approved for listing on another national securities exchange within five business days of their delisting;
- Investors acting in respect of at least 75% of the outstanding Shares notify the Trustee that they elect to terminate the Trust;
- 60 days have elapsed since the Trustee notified the Sponsor of the Trustee's election to resign or since the Sponsor removed the Trustee, and a successor trustee has not been appointed and accepted its appointment;
- Any sole Custodian then acting resigns or is removed and no successor custodian has been employed within 60 days of such resignation or removal;
- The Commission determines that the Trust is an investment company under the 1940 Act, and the Trustee has actual knowledge of such Commission determination;
- The CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act, and the Trustee has actual knowledge of that determination;
- The aggregate market capitalization of the Trust, based on the closing price for the Shares, is less than $350 million (as adjusted for inflation by reference to the U.S. Consumer Price Index) at any time more than 18 months after the Trust's formation, and the Trustee receives, within six months after the last trading date on which such capitalization (as so based) was less than $350 million, notice from the Sponsor of its decision to terminate the Trust;
- The Trust fails to qualify for treatment, or ceases to be treated, as a ''grantor trust'' for federal tax purposes, and the Trustee receives notice from the Sponsor that the Sponsor determines that, because of that tax treatment or change in tax treatment, termination of the Trust is advisable; or
- 60 days have elapsed since DTC or another depository has ceased to act as depository with respect to the Shares, and the Sponsor has not identified another depository that is willing to act in such capacity.

Availability of Information

The Web site for the Trust (*www.merkgold.com*), which the Trust will launch upon the closing of the initial public offering, will contain the following information, on a per Share basis, for the Trust:

(a) The midpoint of the bid-ask price at the close of trading in relation to the NAV as of the time the NAV is calculated (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and

(b) Data displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders.

The Trust Web site also will provide the last sale price of the Shares as traded in the US market, as well as a breakdown of the holdings of the Trust by the form in which gold is held. The value of the Trust's holdings will be reported on the Trust's Web site daily. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Investors may obtain gold pricing information based on the spot price for a Fine Ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's Web site will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site.

Each day the NYSE Arca is open for trading, the Sponsor will publish on the Trust's internet Web site a calculator to estimate the smallest whole number of Shares greater than the net assets of the Trust corresponding to the Fine Ounces of physical gold requested (''Share Submission Quantity'') and the ''Cash Proceeds'' (i.e., the difference between the value of a Delivery Applicant's Shares and the value of physical gold to be delivered to the Delivery Applicant) for an exchange of one American Gold Eagle Coin, a London Bar or a bar of physical gold of another specification. The actual Cash Proceeds will be the net proceeds received from the sale of the excess Fine Ounces included in the Share Submission Quantity. The Share Submission Quantity may be rejected if the Trust incurs extraordinary expenses between the submission of the Delivery Application and the Share Submission Day.

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange. In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[36]

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a Fine Ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers.

Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at *www.thebulliondesk.com.*

The Trust's daily NAV will be posted on the Trust's Web site as soon as practicable. The Exchange will provide on its Web site (*www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust and the Shares will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

The Exchange will require that a minimum of 100,000 Shares will be outstanding at the start of trading. The minimum number of Shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the Sprott Physical Gold Trust.[37] The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[38] The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with

[36] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds. The Sponsor anticipates that the IIV will be calculated by a market vendor who provides IIVs for several other products. Currently, the gold price expected to be used by the market vendor for calculating the IIV is the mid point of the bid and ask price of the 24-hour Reuters composite spot rate in gold.

[37] *See* note 7 [sic], *supra.*

[38] *See* NYSE Arca Equities Rule 7.12.

respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[39] The Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG membership of CME and NYMEX.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[40] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG membership of CME and NYMEX.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a Fine Ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's Web site will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. In addition, the London AM Fix and London PM Fix are publicly available at no charge at *www.thebulliondesk.com.* The Trust's Web site will also provide the Trust's prospectus, as well as the two most recent reports to stockholders, when available. The Exchange will provide on its Web site a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition

[39] A list of ISG members is available at *www.isgportal.org.*

[40] 15 U.S.C. 78f(b)(5).

among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing and gold futures information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would permit listing and trading on the Exchange of an additional and unique issue of Commodity-Based Trust Shares based on gold, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2013–137 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2013–137. 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–NYSEArca–2013–137 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29893 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71033; File No. SR–ISE–2013–68]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Short Term Option Series Program

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 6, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the 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 Supplementary Material .02 to Rule 504 and Supplementary Material .01 to Rule 2009 to allow the Exchange to list five Short Term Option Series at one time, and to specify that new series of Short Term Option Series may be listed up to, and including on, the expiration date. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Supplementary Material .02 to Rule 504 and Supplementary Material .01 to Rule 2009 consistent with a recently approved filing by the Chicago Board Options Exchange, Inc. (''CBOE'').[3]

Currently the Exchange's Rules allow ISE to list options in the Short Term Option (''STO'' or ''weekly'') Program ''on each of the next five consecutive Fridays that are business days.''[4] The filing which gave the Exchange authority to list five STO expirations specifically states that ''the total number of consecutive expirations will be five, including any existing monthly or quarterly expirations.''[5] The Exchange is now proposing to amend its rules so that the next five STOs may be listed at one time, not including the monthly or quarterly options. The Exchange is also proposing to codify an existing practice by adding language stating that strikes may be listed up until and on the day of expiration.

As proposed, the Exchange will have the ability to list a total of five STO expirations and that count of five would not include monthly or quarterly option expirations. The Exchange notes that this proposal would restrict the five listed STOs to those closest to the STO opening date. For example, if a class of options has five STOs listed with expiration dates in July, the other two listed expiration dates may not be in December. The Exchange believes that allowing otherwise would undermine the purpose of the STO Program.

As examples of how this would work in practice, consider a situation in which a quarterly option expires week 1 and a monthly option expires week 3 from now, the proposal would allow the following expirations: week 1 quarterly option, week 2 weekly option, week 3 monthly option, week 4 weekly option, week 5 weekly option, week 6 weekly option, and week 7 weekly option.[6] As another example, if a quarterly option expires week 3 and a monthly option expires week 5, the following expirations would be allowed: week 1 weekly option, week 2 weekly option, week 3 quarterly option, week 4 weekly option, week 5 monthly option, week 6 weekly option, week 7 weekly option.

Next, the Exchange is proposing to add language to Supplementary Material .02(d) to Rule 504 and Supplementary Material .01(d) to Rule 2009 to state that additional STO series may be added up to, and including on, the expiration date of the series.[7] Currently, Exchange rules state that the Exchange may open up to 20 initial series, and up to 10 additional series, for each option class that participates in the STO Program.[8] The Exchange's rules, however, are silent on when series may be added. In practice, however, the Exchange, along with the other exchanges, list additional series until the expiration day.[9] The Exchange believes that codifying this practice will clarify authority that is not currently explicitly stated in its rules to add series up until the day of expiration. Given the short lifespan of STOs, the Exchange believes that the ability to list new series of options intraday is appropriate.

The Exchange notes that the STO Program has been very well-received by market participants, in particular by retail investors. The Exchange believes that the current proposed revision to the STO Program will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series. In addition, the proposed changes will codify an existing practice in the Exchange's rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[10] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes that expanding the STO Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions. The Exchange also believes that expanding the STO Program will provide the investing public and other market participants with additional opportunities to hedge their investments, thus allowing these investors to better manage their risk exposure.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle any potential additional traffic associated with this current amendment to the STO Program. The Exchange believes that its members will not have a capacity issue as a result of this proposal. The Exchange also represents that it does not believe this expansion will cause fragmentation of liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the proposal is pro-competitive. The proposed rule change is a competitive response to a recently approved filing by the CBOE,[13] which the Exchange believes is necessary to permit fair competition among the options exchanges with respect to STO Programs. Moreover, the Exchange believes this proposed rule change will benefit investors by providing

[3] *See* Securities Exchange Act Release No. 70685 (October 15, 2013) 78 FR 62858 (October 22, 2013) (SR–CBOE–2013–096) (notice of filing; approval citation pending publication by the Commission).

[4] *See* Supplementary Material .02 to Rule 504 and Supplementary Material .01 to Rule 2009.

[5] *See* Securities Exchange Act Release No. 68318 (November 29, 2013 [sic]), 77 FR 72426 (December 5, 2012) (SR–ISE–2012–90).

[6] The proposal would not allow, for example, for nothing to be listed week 7 but week 8 a weekly option.

[7] The Exchange is also proposing to add language stating that the proposed provisions in Supplementary Material .02 to Rule 504 and Supplementary Material .01 to Rule 2009 will not contradict current provisions in ISE Rules. More specifically, the proposed provisions would not contradict Rules 504(f) and 2009(c)(2) respectively. The Exchange believes this addition will eliminate any confusion about when additional series may be added in the STO Program in comparison to other Exchange listing programs.

[8] *See* Supplementary Material .02(c) and (d) to Rule 504, and Supplementary Material .01(c) and (d) to Rule 2009.

[9] The Exchange notes that the Options Clearing Corporation (''OCC'') has the ability to accommodate series in the STO Program added intraday.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] *See* supra note 3.

additional methods to trade options on liquid securities, and by providing greater ability to mitigate risk in managing large portfolios. Specifically, the Exchange believes that investors would benefit from the introduction and availability of additional series for investment, and as an additional tool for hedging risk in highly liquid securities. For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will promote fair competition among the exchanges by allowing the Exchange to list additional STO expirations in the same manner as the CBOE, and by clarifying that, like the CBOE, the Exchange may list new STO series up to, and including on, the expiration date. The Exchange also stated that it would be at a competitive disadvantage if it were not allowed to adopt the proposed rule changes contemporaneously with other exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–ISE–2013–68 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2013–68. 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–ISE–2013–68 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29889 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Makism3D Corp.; Order of Suspension of Trading

December 13, 2013.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Makism3D Corp. (''Makism3D'') because of concerns regarding the accuracy and adequacy of information in the marketplace and potentially manipulative transactions in Makism3D's common stock. Makism3D is a Nevada corporation based in Cambridge, United Kingdom. It is quoted on OTCBB and OTC Link under the symbol MDDD.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on December 13, 2013 through 11:59 p.m. EST on December 27, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–30068 Filed 12–13–13; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of 30 day reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 16, 2014. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Abstract: The information collected on SBA Form 480, ''Size Status Declaration'' is a certification of small business size status. This information collection is used to determine whether SBDC financial assistance is provided only to small business concerns as defined in the Small Business Investment Act and SBA size regulations. Without this certification, businesses that exceed SBA's size standards could benefit from program resources meant for small businesses.

SUPPLEMENTARY INFORMATION:

Title: Size Status Declaration.

Frequency: On Occasion.

SBA Form Number: 480.

Description of Respondents: Investment Companies.

Responses: 2,500.

Annual Burden: 417.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–29874 Filed 12–16–13; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget,
Attn: Desk Officer for SSA,
Fax: 202–395–6974,
Email address:
OIRA_Submission@omb.eop.gov.

(SSA)

Social Security Administration, OLCA,
Attn: Reports Clearance Director,
3100 West High Rise,
6401 Security Blvd.,
Baltimore, MD 21235,
Fax: 410–966–2830,
Email address:
OR.Reports.Clearance@ssa.gov.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 18, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Advanced Notice of Termination of Child's Benefits & Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105.* SSA collects information on Forms SSA–1372–BK and SSA–1372–BK–FC to determine whether children of an insured worker meet the eligibility requirements for student benefits. The data we collect allows SSA to entitlement to initial and continuning student benefits. The respondents are student claimants for Social Security benefits, their respective schools, and, in some cases, their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1372–BK				
Individuals/Households	99,850	1	8	13,313
State/Local/Tribal Government	99,850	1	3	4,993
Totals	199,700			18,306
SSA–1372–BK–FC				
Individuals/Households	150	1	8	20
State/Local/TribalGovernment	150	1	3	8

Type of respondent	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Totals	300			28
Grand Total	200,000			18,334

2. *State Mental Institution Policy Review Booklet—20 CFR 404.2035, 404.2065, 416.635, & 416.665—0960–0110.* SSA uses Form SSA–9584–BK: (1) To determine if the policies and practices of State mental institutions acting as representative payees for SSA beneficiaries conform to SSA's regulations in the use of benefits; (2) to confirm that institutions are performing other duties and responsibilities required of a representative payees; and (3) as the basis for conducting onsite reviews of the institutions and preparing subsequent reports of findings. The respondents are State mental institutions serving as representative payees for Social Security beneficiaries and Supplemental Security Income (SSI) recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–9584–BK	78	1	60	78

3. *Modified Benefit Formula Questionnaire—0960–0395.* SSA collects information on Form SSA–150 to determine which formula to use in computing the Social Security benefit for someone who receives a pension from employment not covered by Social Security. The Windfall Elimination Provision (WEP) requires use of a benefit formula replacing a smaller percentage of a worker's pre-retirement earnings. However, the resulting amount cannot show a difference in the benefit computed using the modified and regular formulas greater than one-half the amount of the pension received in the first month an individual is entitled to both the pension and the Social Security benefit. The SSA–150 collects the information needed to make all the necessary benefit computations. SSA requires the respondents to furnish the information on Form SSA–150 so we can calculate their benefits using the data they supply. SSA calculates the benefits of applicants who do not respond to this questionnaire using the full WEP reduction. SSA employees collect this information once from the applicant at the time they file their claim. The respondents are applicants for old age and disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–150	90,000	1	8	12,000

4. *Employee Identification Statement—20 CFR 404.702—0960–0473.* When two or more individuals report earnings under the same Social Security number (SSN), SSA collects information on Form SSA–4156 to credit the earnings to the correct individual and SSN. We send the SSA–4156 to the employer to: (1) identify the employees involved; (2) resolve the discrepancy, and (3) credit the earnings to the correct SSN. The respondents are employers involved in erroneous wage reporting for an employee.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4156	4,750	1	10	792

5. *Modified Benefit Formula Questionnaire—Employer—20 CFR 401 & 402—0960–0477.* Sections 215(a)(7) and 215(d)(3) of the Social Security Act requires SSA to use WEP, a modified benefit formula, to compute Social Security retirement or disability benefits for persons first eligible (after 1985) for both a Social Security benefit and a pension or annuity, based on employment not covered by Social Security. SSA determines if the WEP is applicable and when to apply it to a person's benefit. SSA uses Form SSA–58 to verify the claimant's allegations on

Form SSA–150 (OMB No. 0960–0395, Modified Benefits Formula Questionnaire). SSA sends the SSA–58 to an employer for pension-related information, if the claimant is unable to provide it. The respondents are employers of people who were eligible after 1985 for both Social Security benefits and a pension based on work not covered by SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–58	30,000	1	20	10,000

6. *Employee Work Activity Questionnaire—20 CFR 404.1574, 404.1592—0960–0483.* Social Security disability beneficiaries and SSI recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments,but are unable to continue working, they submit the SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA also uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of Social Security disability beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–9584–BK	78	1	60	78

7. *Work History Report—20 CFR 404.1515, 404.1560, 404.1565, 416.960, and 416.3965—0960–0578.* Under certain circumstances, SSA asks individuals apply for disability about work they have performed in the past. Applicants use Form SSA–3369, Work History Report, to provide detailed information about jobs held prior to becoming unable to work. State Disability Determination Services evaluate the information, together with medical evidence, to determine eligibility for disability payments. Respondents are disability applicants and third parties assisting those applicants.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3369 (Paper form)	1,553,900	1	60	1,553,900
Electronic Disability Collect System—3369	38,049	1	60	38,049
Totals	1,591,949			1,591,949

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 16, 2014. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Consent Based Social Security Number Verification Process—20 CFR 400.100—0960–0760. The Consent Based Social Security Number Verification (CBSV) process is a fee-based automated SSN verification service available to private businesses and other requesting parties. To use the system, private businesses and requesting parties must register with SSA and obtain valid consent from SSN number holders prior to verification. We collect the information to verify if the submitted name and SSN match the information in SSA records. After completing a registration process and paying the fee, the requesting party can use the CBSV process to submit a file containing the names of number holders who have given valid consent, along with each number holder's accompanying SSN and date of birth (if available) to obtain real-time results using a web service application or SSA's Business Services Online (BSO) application. SSA matches the information against the SSA master file of SSNs, using SSN, name, date of birth, and gender code (if available). The requesting party retrieves the results file from SSA, which indicates only a match or no match for each SSN submitted.

Under the CBSV process, the requesting party does not submit the consent forms of the number holders to SSA. SSA requires each requesting party to retain a valid consent form for each SSN verification request. The requesting party retains the consent forms in either electronic or paper format.

To ensure the integrity of the CBSV process, SSA has added a strong audit component that requires audits (called ''compliance reviews'') at the discretion of the agency with all audit costs paid

by the requesting party. Independent certified public accounts (CPAs) conduct these reviews to ensure compliance with all the terms and conditions of the party's agreement with SSA, including a review of the consent forms. CPAs conduct the reviews at the requesting party's place of business to ensure the integrity of the process. In addition, SSA reserves the right to perform unannounced onsite inspections of the entire process, including review of the technical systems that maintain the data and transaction records. The respondents to the CBSV collection are the participating companies, members of the public who consent to the SSN verification, and CPAs who provide compliance review services.

Note: This is a correction notice: SSA published the incorrect burden information for this collection at 78 FR 59411, on 9/26/13. We are correcting this error here.

Type of Request: Revision of an OMB-approved information collection.

TIME BURDEN—PARTICIPATING COMPANIES

Requirement	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total estimated annual burden (hours)
Registration process for new participating companies.	* 14	1	14	120	28
Creation of file with SSN holder identification data; maintaining required documentation/forms.	90	** 251	22,590	60	22,590
Using the system to upload request file, check status, and download results file.	90	251	22,590	5	1,883
Storing Consent Forms	90	251	22,590	60	22,590
Activities related to compliance review	90	251	22,590	60	22,590
Total			90,374		69,681

* One-time registration process/approximately 14 new participating companies per year.
** Please note there are 251 Federal business days per year on which a requesting party could submit a file.

PARTICIPATING COMPANIES WHO OPT FOR EXTERNAL TESTING ENVIRONMENT (ETE)

Requirement	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total estimated annual burden (hours)
ETE Registration Process (includes reviewing and completing ETE User Agreement)	20	1	1	180	60
Web Service Transactions	20	1	50	1	17
Reporting Issues Encountered on Web service testing (e.g., reports on application's reliability)	20	1	50	1	17
Reporting changes in users' status (e.g., termination or changes in users' employment status; changes in duties of authorized users)	20	1	1	60	20
Cancellation of Agreement	20	1	1	30	10
Dispute Resolution	20	1	1	120	40
Total	20				144

PEOPLE WHOSE SSNS SSA WILL VERIFY

Requirement	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Total estimated annual burden (hours)
Reading and signing authorization for SSA to release SSN verification	2,500,000	1	2,500,000	3	125,000
Responding to CPA re-contact	5,750	1	5,750	5	479
Total	2,505,750		2,165,872		125,479

There is one CPA respondent conducting compliance reviews and preparing written reports of findings. The average burden per response is 4,800 minutes for a total burden of 7,200 hours annually.

Cost Burden

The public burden cost is dependent upon the number of companies and transactions. SSA based the cost estimates below upon 90 participating companies submitting a total 2.5 million transactions per year.

One-Time per Company Registration Fee—$5,000.

Estimated per SSN Transaction Fee—$1.10.[i]

[i] The annual costs associated with the transaction to each company are dependent upon the number of SSN transactions submitted to SSA by the company on a yearly basis. For example, if a company anticipates submitting 1 million requests to SSA for the year, its total transaction cost for the year would be $1.10 × 1,000,000, or $1,100,000.

Continued

Estimated per Company Cost to Store Consent Forms—$300.

Dated: December 12, 2013.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2013–29907 Filed 12–16–13; 8:45 am]

BILLING CODE 4191–02–P

Periodically, SSA will calculate our costs to provide CBSV services and adjust the fee charged as needed. SSA notifies companies in writing and via **Federal Register** Notice of any changes and companies have the opportunity to cancel the agreement or continue service using the new transaction fee.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Cancellation of Environmental Impact Statement for the Norfolk International Airport, Norfolk, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of preparation of environmental impact statement.

SUMMARY: The Federal Aviation Administration (FAA) announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for the proposed construction of new Runway 5R/23L and associated development at Norfolk International Airport, Norfolk, Virginia. The FAA's discontinued preparation of the EIS is based upon the length of time that has elapsed since the issuance of the Notice of Intent (NOI) in 2001 for the project and the need to consider results from additional planning efforts completed by the Norfolk Airport Authority (NAA), the owner and operator of the airport. The additional planning effort by NAA has modified the project purpose and need and refined various project elements, including the need to relocate the Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) facility. As a result of the additional planning studies, refinements to the project scope, and the time elapsed; the FAA has decided to discontinue the EIS as proposed in the NOI from 2001.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Environmental Program Manager, Airports Division AEA–610, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, New York 11434; Telephone (718) 553–2511.

SUPPLEMENTARY INFORMATION: On June 28, 2001, the FAA, published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and hold a Public Scoping Meeting at Norfolk International Airport (Volume 66, Number 125, FR 34508–34509). The EIS and Public Scoping Meeting were to address the proposed construction of new Runway 5R/23L and associated development at the airport, including new taxiway construction, taxiway relocation, runway safety area construction, new airfield lighting, improvements to existing lighting, relocation of the VORTAC facility, installation of a Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSR) for the new Runway 23L, and a Category II Instrument Landing MALSR for new Runway 5R.

In 2001, the FAA based its decision to prepare the EIS on the procedures described in FAA Order 5050.4A, *Airport Environmental Handbook,* and FAA Order 1050.1D, *Policies and Procedures for Considering Environmental Impacts.* FAA also based its decision to prepare a federal EIS primarily on NAA's proposal to construct a new Runway 5R/23L in parallel to the existing Runway 5/23, which would be re-designated as Runway 5L/23R. The new runway was proposed to be 8,000 feet long and 150 feet wide and would have a runway centerline separation from the existing runway of 845 feet.

Subsequently, NAA completed supplemental planning efforts that necessitated making changes to the proposed project's purpose and need. Therefore, the proposed project's purpose and need has recently been revised and various project components, including the relocation of the VORTAC, are no longer required. The NAA submitted an Airport Layout Plan revision to the FAA that depicted the refined project elements. The Airport Layout Plan was conditionally approved, subject to environmental review by the FAA on October 5, 2011. The FAA will determine the appropriate National Environmental Policy Act (NEPA) documentation necessary to assess the environmental effects of the proposed improvements pursuant to FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions,* and FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.*

Issued in Jamaica, New York, on December 5, 2013.

Debbie Roth,

Manager, Airports Division, Eastern Region, AEA–600.

[FR Doc. 2013–29981 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In May 2013, there were four applications approved. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: County of Sonoma, Santa Rosa, California.

APPLICATION NUMBER: 13–05–C–00–STS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $425,000.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: June 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Acquire protective equipment for aircraft rescue and firefighting personnel. Acquire Americans with Disabilities Act passenger boarding ramp. Install common use flight information system.

DECISION DATE: May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Neil Kumar, San Francisco Airports District Office, (650) 827–7627.

PUBLIC AGENCY: City of Minot, North Dakota.

APPLICATION NUMBER: 13–08–C–00–MOT.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $11,706,547.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2023.

CLASSES OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: (1) Non-scheduled/on-demand air carriers filing FAA Form 1800–31; and (2) small certificated air carriers filing DOT Form T–100.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Minot International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Construction and design of taxiway D.

Passenger terminal apron—design and construction.

Relocate snow removal equipment building—design and construction.

Passenger terminal building—design and construction.

Terminal access road—design and construction.

Terminal area study.

Preparation of PFC application 8.

Acquire snow removal equipment (sweeper).

DECISION DATE: May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Mark Holzer, Bismarck Airports District Office, (701) 323–7390.

PUBLIC AGENCY: Greater Orlando Aviation Authority, Orlando, Florida.

APPLICATION NUMBER: 13–15–C–00–MCO.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $4.50.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $189,994,500.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2026.

ESTIMATED CHARGE EXPIRATION DATE: December 1, 2028.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $4.50 PFC LEVEL: North terminal passenger capacity improvements 9 design and construction).

DETERMINATION. Partially approved. The reconfiguration and relocation of airline operations space and other tenant spaces does not meet the requirements of 14 CFR 158.15(b).

BRIEF DESCRIPTION OF PROJECT PARTIALLY APPROVED FOR COLLECTION AND USE AT A $3.00 PFC LEVEL: Baggage handling system capacity improvements (design and construction)—phase 2.

DETERMINATION. Partially approved. The expansion of the emergency generator building and replacement of emergency generators for the baggage handling system do not meet the requirements of 14 CFR 158.15(b).

DECISION DATE: May 17, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

PUBLIC AGENCY: City of Billings Aviation and Transit Department, Billings, Montana.

APPLICATION NUMBER: 13–08–C–00–BIL.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $2,033,000.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2013.

ESTIMATED CHARGE EXPIRATION DATE: May 1, 2015.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Snow removal equipment—ramp blade replacement.

Reimbursement of construction costs—east end taxilane expansion.

Runway 10L/28R rehabilitation.

Snow removal equipment.

DECISION DATE: May 23, 2013.

FOR FURTHER INFORMATION CONTACT: Jason Garwood, Helena Airports District Office, (406) 449–5078.

AMENDMENT TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
09–02–C–01–MMH, Mammoth Lakes, CA	05/07/13	$399,917	$665,010	11/01/25	11/01/15
04–07–C–02–PHX, Phoenix, AZ	05/10/13	222,250,000	246,977,086	08/01/08	08/01/08
07–08–C–01–PHX, Phoenix, AZ	05/10/13	202,200,000	187,649,602	08/01/10	08/01/10
09–09–C–01–PHX, Phoenix, AZ	05/10/13	1,858,836,000	1,940,493,949	11/01/28	08/01/30
11–04–C–01–CMI, Savoy, IL	05/14/13	1,359,105	1,445,255	08/01/14	09/01/14
06–06–C–01–MSO, Missoula, MT	05/14/13	3,334,760	3,255,904	02/01/09	01/01/09
11–07–C–01–SUN, Hailey, ID	05/17/13	505,918	310,775	03/01/14	07/01/12
02–06–C–02–MSP, Minneapolis, MN	05/20/13	793,254,352	774,213,674	12/01/15	04/01/14
05–07–U–02–MSP, Minneapolis, MN	05/20/13	NA	NA	12/01/15	04/01/14
* 13–03–C–01–LNS, Lititz, PA	05/23/13	35,917	35,917	05/01/15	05/01/15

Notes: The amendment denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Lititz, PA, this change is effective on July 1, 2013.

Dated: Issued in Washington, DC, on December 6, 2013.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2013–29926 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2013, there were six applications approved. This notice also includes information on five applications, approved in March 2013, inadvertently left off the March 2013 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals

and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 12–08–C–00–EWR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $121,393,042.

Earliest Charge Effective Date: August 1, 2014.

Estimated Charge Expiration Date: October 1, 2017.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled/on-demand air carriers operating at Newark Liberty International Airport (EWR).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at EWR.

Brief Description of Project Approved for Collection at EWR and Use at La Guardia Airport (LGA) at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area planning, environmental, and engineering.

Brief Description of Project Partially Approved for Collection at EWR for Future Use at EWR at a $4.50 PFC Level: EWR delay reduction phase II—construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Projects Partially Approved for Collection at EWR and Use at EWR at a $4.50 PFC Level:

EWR runway 4R/22L rehabilitation.
EWR taxiway P rehabilitation including high-speed taxiways.
EWR runway 4L/22R rehabilitation.
EWR runway 11 runway safety area and relocation of Brewster Road.
EWR electrical distribution and substation improvements.

Determination: Partially approved. Certain components in each project were determined to be ineligible for PFC funding.

Brief Description of Project Partially Approved for Collection at EWR for Future Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Project Approved for Collection at EWR for Future Use at John F. Kennedy International Airport (JFK) at a $4.50 PFC Level: JFK runway 4L/22R rehabilitation.

Brief Description of Project Approved for Collection at EWR and Use at JFK at a $3.00 PFC Level: JFK taxiway P rehabilitation planning and engineering.

Brief Description of Project Approved for Collection at EWR and Use at EWR at a $3.00 PFC Level: EWR delay reduction phase II—planning and engineering.

Brief Description of Project Approved for Collection at EWR and Use at EWR, JFK, LGA, and Stewart International Airport (SWF) at a $3.00 PFC Level: PFC planning and program administration.

Decision Date: March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Urlass, New York Airports District Office, (516) 227–3803.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 12–08–C–00–JFK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $296,109,860.

Earliest Charge Effective Date: June 1, 2014.

Estimated Charge Expiration Date: September 1, 2017.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled/on-demand air carriers operating at JFK.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at JFK.

Brief Description of Project Approved for Collection at JFK and Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area planning, environmental, and engineering.

Brief Description of Project Partially Approved for Collection at JFK for Future Use at EWR at a $4.50 PFC level: EWR delay reduction phase II—construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Projects Partially Approved for Collection at JFK and Use at EWR at a $4.50 PFC Level:

EWR runway 4R/22L rehabilitation.
EWR taxiway P rehabilitation including high-speed taxiways.
EWR runway 4L/22R rehabilitation.
EWR runway 11 runway safety area and relocation of Brewster Road.
EWR electrical distribution and substation improvements.

Determination: Partially approved. Certain components in each project were determined to be ineligible for PFC funding.

Brief Description of Project Partially Approved for Collection at JFK for Future Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Project Approved for Collection at JFK for Future Use at JFK at a $4.50 PFC Level: JFK runway 4L/22R rehabilitation.

Brief Description of Project Approved for Collection at JFK and Use at JFK at a $3.00 PFC Level: JFK taxiway P rehabilitation planning and engineering.

Brief Description of Project Approved for Collection at JFK and Use at EWR at a $3.00 PFC Level: EWR delay reduction phase II—planning and engineering.

Brief Description of Project Approved for Collection at JFK and Use at EWR, JFK, LGA, and SWF at a $3.00 PFC Level: PFC planning and program administration.

Decision Date: March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Urlass, New York Airports District Office, (516) 227–3803.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 12–08–C–00–LGA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $150,655,394.

Earliest Charge Effective Date: June 1, 2014.

Estimated Charge Expiration Date: September 1, 2017.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers operating at LGA.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at LGA.

Brief Description of Project Approved for Collection at LGA and Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area planning, environmental, and engineering.

Brief Description of Project Partially Approved for Collection at LGA for Future Use at EWR at a $4.50 PFC Level: EWR delay reduction phase II—construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Projects Partially Approved for Collection at LGA and Use at EWR at a $4.50 PFC Level:

EWR runway 4R/22L rehabilitation.
EWR taxiway P rehabilitation including high-speed taxiways.
EWR runway 4L/22R rehabilitation.
EWR runway 11 runway safety area and relocation of Brewster Road.
EWR electrical distribution and substation improvements.

Determination: Partially approved. Certain components in each project were determined to be ineligible for PFC funding.

Brief Description of Project Partially Approved for Collection at LGA for Future Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Project Approved for Collection at LGA for Future Use at JFK at a $4.50 PFC Level: JFK runway 4L/22R rehabilitation.

Brief Description of Project Approved for Collection at LGA and Use at JFK at a $3.00 PFC Level: JFK taxiway P rehabilitation planning and engineering.

Brief Description of Project Approved for Collection at LGA and Use at EWR at a $3.00 PFC Level: EWR delay reduction phase II—planning and engineering.

Brief Description of Project Approved for Collection at LGA and Use at EWR, JFK, LGA, and SWF at a $3.00 PFC Level: PFC planning and program administration.

Decision Date: March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Urlass, New York Airports District Office, (516) 227–3803.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 12–05–C–00–SWF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $3,372,027.

Earliest Charge Effective Date: February 1, 2014.

Estimated Charge Expiration Date: February 1, 2018.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on-demand air carriers operating at SWF.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at SWF.

Brief Description of Project Approved for Collection at SWF and Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area planning, environmental, and engineering.

Brief Description of Project Partially Approved for Collection at SWF for Future Use at EWR at a $4.50 PFC Level: EWR delay reduction phase II—construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Projects Partially Approved for Collection at SWF and Use at EWR at a $4.50 PFC Level:

EWR runway 4R/22L rehabilitation.
EWR taxiway P rehabilitation including high-speed taxiways.
EWR runway 4L/22R rehabilitation.
EWR runway 11 runway safety area and relocation of Brewster Road.
EWR electrical distribution and substation improvements.

Determination: Partially approved. Certain components in each project were determined to be ineligible for PFC funding.

Brief Description of Project Partially Approved for Collection at SWF for Future Use at LGA at a $4.50 PFC Level: LGA runways 4 and 31 runway safety area construction.

Determination: Partially approved. Certain project components were determined to be ineligible for PFC funding.

Brief Description of Project Approved for Collection at SWF for Future Use at JFK at a $4.50 PFC Level: JFK runway 4L/22R rehabilitation.

Brief Description of Project Approved for Collection at SWF and Use at JFK at a $3.00 PFC Level: JFK taxiway P rehabilitation planning and engineering.

Brief Description of Project Approved for Collection at SWF and Use at EWR at a $3.00 PFC Level: EWR delay reduction phase II—planning and engineering.

Brief Description of Project Approved for Collection at SWF and Use at EWR, JFK, LGA, and SWF at a $3.00 PFC Level: PFC planning and program administration.

Decision Date: March 8, 2013.

FOR FURTHER INFORMATION CONTACT: Steve Urlass, New York Airports District Office, (516) 227–3803.

Public Agency: Jackson Hole Airport Board, Jackson Hole, Wyoming.

Application Number: 13–13–C–00–JAC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $14,221,770.

Earliest Charge Effective Date: July 1, 2026.

Estimated Charge Expiration Date: September 1, 2041.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Terminal baggage claim expansion and renovation.
Construct deicing (glycol) containment facility.
Install runway centerline lights.
Acquire snow removal equipment.
Improve runway safety area.
Develop wildlife management plan.
PFC administrative costs.

Decision Date: March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

Public Agency: Ports of Douglas County and Chelan County, East Wenatchee, Washington.

Application Number: 13–11–C–00–EAT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $556,704.

Earliest Charge Effective Date: August 1, 2014.

Estimated Charge Expiration Date: August 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate aircraft rescue and firefighting station.
Terminal building security improvements.
Modify terminal building (phase VI).

Brief Description of Project Approved for Use: Aircraft rescue and firefighting truck purchase.

Decision Date: April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: Westmoreland County Airport Authority, Latrobe, Pennsylvania.

Application Number: 13–02–C–00–LBE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $829,690.

Earliest Charge Effective Date: July 1, 2013.

Estimated Charge Expiration Date: January 1, 2014.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Master plan update.
Part 150 noise study.
Purchase snow removal equipment.
Install security/perimeter fencing.
Perimeter fence and gates.
Acquire aircraft rescue and firefighting safety equipment.
Rehabilitate terminal apron.
Environmental assessment.
Install automated weather observing system phase III.
Acquire snow removal equipment.
Extend access taxiway.
Expand maintenance building.
Improve terminal heating, ventilation, and air conditioning.
Construct taxiways.
Security enhancements.
Construct T-hangar taxiway.
Improve runway 5/23 runway safety area phase I.
Remove obstructions.
Acquire snow removal equipment.
Security enhancements.
Improve runway 5/23 runway safety area phase II.
Acquire air traffic control tower equipment.
Improve runway 5/23 runway safety area phase III.
Improve airport drainage.
Acquire snow removal equipment.
Acquire land.
Construct T-hangar taxiway phase II.
Acquire passenger loading bridge.
Improve air traffic control tower.
Acquire deicing equipment.
Rehabilitate access road phase I.
Improve runway 5/23 runway safety area phase IV.
Improve terminal utilities.
Acquire snow removal equipment.
Upgrade medium intensity approach light system and runway alignment indicator lights.
Rehabilitate air traffic control tower.
Acquire aircraft rescue and firefighting vehicle.
Rehabilitate access road phase II.
Wildlife assessment.
Rehabilitate access road phase III.
Rehabilitate runway 5/23 phase I.
Expand aircraft rescue and firefighting building.
Upgrade medium intensity approach light system and runway alignment indicator lights phase II.
Rehabilitate parallel taxiway phase II.
Expand aircraft rescue and firefighting building phase II.
Rehabilitate access road phase IV.
Expand terminal parking phase V.
Rehabilitate passenger loading bridge.
Rehabilitate runway 5/23 phase II.
Upgrade medium intensity approach light system and runway alignment indicator lights phase III.
Wildlife hazard management plan.

Decision Date: April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Mobile Airport Authority, Mobile, Alabama.

Application Number: 13–06–C–00–MOB.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,705,879.

Earliest Charge Effective Date: June 1, 2013.

Estimated Charge Expiration Date: October 1, 2017.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31 and operating at Mobile Regional Airport (MOB).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at MOB.

Brief Description of Projects Approved for Collection and Use:

Wildlife hazard assessment and management plan.
Noise mitigation program.
East airfield storm water detention area.
Replace airfield beacon.
Baggage conveyor chutes.
Terminal rehabilitation phase II.
Terminal road rehabilitation phase II.
Taxiway R rehabilitation.
Runway 18/36 and partial taxiway R rehabilitation.
12-foot culvert rehabilitation under runway 14/32 (design).
Master plan update.
Aircraft rescue and firefighting building rehabilitation.
Aircraft rescue and firefighting quick response vehicle.
Replace airfield signage (design).
Security lighting upgrade phase II.
Airfield drainage phase III (construction).
Security system rehabilitation (design).
Baggage information display system/flight information display system rehabilitation (design).
Rehabilitate 12-foot culvert under runway 14/32 (construction).
Replace airfield signage (construction).
Update security system construction.
Part 139 interactive employee training equipment and workstations.
Airfield lighting vault improvements.
Terminal rehabilitation phase III.

Brief Description of Project Approved for Collection: Expand apron.

Brief Description of Disapproved Project: Security towing vehicle.

Determination: Disapproved. This project does not meet the requirements of § 158.15(b).

Decision Date: April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Jonathan Linquist, Jackson Airports District Office, (601) 664–9893.

Public Agency: Charleston County Aviation Authority, Charleston, South Carolina.

Application Number: 13–03–C–00–CHS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $173,506,475.

Earliest Charge Effective Date: May 1, 2015.

Estimated Charge Expiration Date: November 1, 2040.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31 that operate at Charleston International Airport (CHS).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at CHS.

Brief Description of Project Approved for Collection and Use: PFC application development and implementation.

Brief Description of Project Partially Approved for Collection and Use: Terminal redevelopment and improvement.

Determination: Partially approved. Several areas of the terminal were determined to be revenue-producing and, thus, ineligible for PFC funding.

Decision Date: April 18, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Rau, Atlanta Airports District Office, (404) 305–7004.

Public Agency: City of El Paso, Texas.
Application Number: 13–06–C–00–ELP.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $19,085,123.
Earliest Charge Effective Date: June 1, 2013.
Estimated Charge Expiration Date: December 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at El Paso International Airport.

Brief Description of Projects Approved for Collection and Use:

Baggage claim units.
Baggage makeup area.
PFC implementation and administrative costs.

Brief Description of Projects Partially Approved for Collection and Use:
Passenger loading bridges.

Determination: Partially approved. One of the loading bridges proposed for replacement was determined to still be within its useful life and to still be operating appropriately. Therefore, the replacement loading bridge for this gate was determined to be ineligible under § 158.15(b).

Airport access control system.

Determination: Partially approved. The public agency identified 16 separate components in this project but the FAA determined that only two of the components were eligible for PFC funding.

Central plant upgrade.

Determination: Partially approved. Two of the proposed components, replacement of terminal lighting and installation of terminal window solar film, both intended to provide efficiency improvements, did not meet the requirements of § 158.15(b).

Decision Date: April 23, 2013.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, Texas Airports Development Office, (817) 222–5650.

Public Agency: County of Albany and City of Laramie, Laramie, Wyoming.

Application Number: 13–03–C–00–LAR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $185,425.

Earliest Charge Effective Date: June 1, 2013.

Estimated Charge Expiration Date: June 1, 2017.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Laramie regional Airport.

Brief Description of Projects Approved for Collection and Use:

Update airport master plan.
Rehabilitate apron.
Rehabilitate runway 12/30 (maintenance).
Construct access road.
Rehabilitate runway 12/30.
Acquire snow removal equipment.
PFC administration.

Decision Date: April 24, 2013.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
09–04–C–01–HNL, Honolulu, HI	04/03/13	$105,909,130	$127,112,161	02/01/14	02/01/14
09–04–C–01–OGG, Kahului, HI	04/03/13	24,663,770	29,601,463	02/01/14	02/01/14
09–04–C–01–KOA, Kailua Kona, HI	04/03/13	7,254,050	8,706,313	02/01/14	02/01/14
09–04–C–01–LIH, Lihue, HI	04/03/13	7,254,050	8,706,313	02/01/14	02/01/14
08–07–C–02–MOD, Modesto, CA	04/05/13	337,634	304,183	04/01/12	04/01/12
10–10–C–01–EAT, Wenatchee, WA	04/05/13	881,750	381,750	08/01/14	08/01/14
08–05–C–03–AVP, Avoca, PA	04/09/13	5,790,104	1,518,104	08/01/17	12/01/16

Issued in Washington, DC, on December 6, 2013.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2013–29934 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2013, there were seven applications approved. This notice also includes information on one application, approved in April 2013, inadvertently left off the April 2013 notice. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Tweed-New Haven Airport Authority, New Haven, Connecticut.

Application Number: 13–06–C–00–HVN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,240,855.

Earliest Charge Effective Date: December 1, 2013.

Estimated Charge Expiration Date: July 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators nonscheduled/on demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Tweed-New Haven Regional Airport.

Brief Description of Project Approved for Collection and Use: Property acquisition.

Decision Date: April 17, 2013.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England region Airports Division, (781) 238–7614.

Public Agency: County of Mercer, West Trenton, New Jersey.

Application Number: 13–03–C–00–TTN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $2,913,645.

Earliest Charge Effective Date: March 1, 2014.

Estimated Charge Expiration Date: July 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Trenton Mercer Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire snow removal equipment.

Rehabilitate taxiways A, C and J.

Improve runways 6/24 and 16/34 runway safety areas (engineered materials arresting system).

Rehabilitate taxiways H, B, and F.

Airfield marking.

Acquire and install wildlife fence.

Airport security fencing.

Replace aircraft rescue and firefighting vehicles 343 and 344.

Terminal building modifications.

PFC program administration.

Decision Date: July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Counties of Lackawanna and Luzerne, Avoca, Pennsylvania.

Application Number: 13–10–C–00–AVP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $10,000.

Earliest Charge Effective Date: July 1, 2029.

Estimated Charge Expiration Date: July 1, 2031.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquire quick response aircraft rescue and firefighting vehicle.

Acquire aircraft rescue and firefighting equipment.

Decision Date: July 12, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: City of Garden City, Kansas.

Application Number: 13–01–C–00–GCK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $770,628.

Earliest Charge Effective Date: October 1, 2013.

Estimated Charge Expiration Date: October 1, 2022.

Class of Air Carriers Not Required to Collect PFC's: Nonscheduled/on demand air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Garden City Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Security enhancements.

Rehabilitate runway.

Snow removal equipment—broom.

Design and rehabilitate taxiway and runway lighting.

Rehabilitate taxiway—phase I.

Install runway vertical/visual guidance system.

Rehabilitate taxiway.

Aircraft rescue and firefighting vehicle.

Aircraft rescue and firefighting building.

Rehabilitate taxiway—phase II.

Rehabilitate taxiway—phase III.

Rehabilitate taxiway—phase IV.

Rehabilitate taxiway—phase V.

Airport master plan.

Wildlife fence—phase 1.

Decision Date: July 15, 2013.

FOR FURTHER INFORMATION CONTACT: Sheila Bridges, Central Region Airports Division, (816) 329–2638.

Public Agency: City of Pocatello, Idaho.

Application Number: 13–07–C–00–PIH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $210,835.

Earliest Charge Effective Date: August 1, 2015.

Estimated Charge Expiration Date: March 1, 2018.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Snow removal equipment acquisition (broom).

Terminal jet bridge modification (design).

Pavement condition index maintenance update.

Taxilane construction/conversion.

Terminal jet bridge and gate modification (construction).

General aviation ramp rehabilitation (phase I).

Taxiway E relocation.

Runway 03 precision approach path indicator installation.

General aviation apron rehabilitation (phase II).

Snow removal equipment acquisition (tractor).

PFC administration.

Decision Date: July 16, 2013.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of San Joaquin, Stockton, California.

Application Number: 13–06–C–00–SCK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $792,000.

Earliest Charge Effective Date: September 1, 2013.

Estimated Charge Expiration Date: June 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Stockton Metropolitan Airport.

Brief Description of Project Approved for Collection and Use:

Terminal building renovations.

Americans with Disabilities Act access improvements.

Rehabilitation of runway 11L/29R lighting system.

Decision Date: July 18, 2013.

FOR FURTHER INFORMATION CONTACT: Neil Kumar, San Francisco Airports District Office, (650) 827–7627.

Public Agency: Texas A&M University, College Station, Texas.

Application Number: 13–06–C–00–CLL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,233,207.

Earliest Charge Effective Date: December 1, 2013.

Estimated Charge Expiration Date: May 1, 2018.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Construct apron.

Rehabilitate taxiway H.

Improve airport drainage.

Rehabilitate runway 10/28.

Acquire aircraft rescue and firefighting vehicle.

Construct taxiway G.

Master plan update study.

Rehabilitate apron.

PFC application and administration costs.

Decision Date: July 25, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Cooks, Texas Airports Development Office, (817) 222–5600.

Public Agency: City of Durango and County of La Plata, Durango, Colorado.

Application Number: 13–08–C–00–DRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $10,400,800.

Earliest Charge Effective Date: September 1, 2013.

Estimated Charge Expiration Date: April 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate vehicle service road.

Update terminal area master plan.

Commercial ramp utility relocation.

Terminal building expansion design.

Terminal building expansion.

Rehabilitate taxiway A.

Rehabilitate taxiway A1 to A6 (design).

Decision Date: July 30, 2013.

FOR FURTHER INFORMATION CONTACT: Jesse Lyman, Denver Airports District Office, (303) 342–1262.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amendment approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
13–04–C–01–HGR, Hagerstown, MD	07/08/13	$12,298	$12,303	04/01/13	04/01/13
06–10–C–02–SLC, Salt Lake City, UT	07/10/13	72,172,545	71,783,176	07/01/09	10/01/08
05–08–C–03–COS, Colorado Springs, CO	07/12/13	7,756,638	7,404,661	10/01/05	09/01/05
05–09–C–02–COS, Colorado Springs, CO	07/12/13	6,255,000	6,116,216	01/01/08	10/01/07
06–04–C–03–UNV, State College, PA	07/19/13	1,283,662	1,282,967	02/01/09	02/01/09
07–05–C–01–PIH, Pocatello, ID	07/23/13	405,300	419,295	06/01/11	02/01/10
99–01–C–06–ACY, Atlantic City, NJ	07/23/13	8,380,852	8,224,054	02/01/06	02/01/06
03–02–C–05–ACY, Atlantic City, NJ	07/24/13	1,363,575	1,347,095	06/01/07	11/01/06
06–04–U–01–ACY, Atlantic City, NJ	07/24/13	NA	NA	06/01/07	11/01/06
08–06–C–01–ACY, Atlantic City, NJ	07/24/13	5,515,092	5,490,092	04/01/11	04/01/11
07–06–C–02–GCC, Gillette, WY	07/24/13	91,395	116,169	11/01/10	01/01/11
10–06–C–01–BIL, Billings, MT	07/25/13	2,856,620	2,223,924	09/01/11	01/01/11

Issued in Washington, DC on December 6, 2013.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2013–29927 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2013, there were five applications approved. Additionally, five approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Aberdeen, South Dakota.

Application Number: 13–03–C–00–ABR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $542,552.

Earliest Charge Effective Date: November 1, 2013.

Estimated Charge Expiration Date: June 1, 2019.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

PFC audit costs, 2001 through 2011.

Master plan and airport layout plan.

Regulator for runway 17/35.

Install new gate.

Develop plans and specifications for snow removal equipment building.

Airport layout plan update/revisions.

Acquire snow removal equipment (snow chute).

Acquire snow removal equipment (two 8-foot blades).

Acquire snow removal equipment (tow-behind broom).

Acquire snow removal equipment (motor grader).

Security vehicle.

Construction of snow removal equipment building.

Construction of snow removal equipment building (engineering/design).

Construction of snow removal equipment building (geothermal heat system).

Hangar taxi lane improvements.

Hangar taxi lane improvements (engineering/design).

Master plan update.

Acquire snow removal equipment (two skid steers).

Reconstruction of taxiway D and installation of taxiway lighting.

Engineering for taxiway D reconstruction and lighting.

Decision Date: June 5, 2013.

FOR FURTHER INFORMATION CONTACT: David Anderson, Bismarck Airports District Office, (701) 323–7385.

Public Agency: County of Nez Perce and City of Lewiston, Lewiston, Idaho.

Application Number: 13–04–C–00–LWS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,073,616.

Earliest Charge Effective Date: November 1, 2013.

Estimated Charge Expiration Date: March 1, 2019.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers using aircraft with a seating capacity of less than 20 passengers operating at Lewiston—Nez Perce County Regional Airport (LWS).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at LWS.

Brief Description of Project Approved for Collection and Use:

Security enhancements.
Taxiways B, C, and D reconstruction.
Master plan update.
Rehabilitate terminal apron.
Passenger loading bridge.
Wildlife hazard management program.
Southside partial parallel taxiway construction.
Runway 8/26 rehabilitation and blast pad installation.
Airport master plan update.
Apron reconstruction.
Snow removal equipment acquisition.
Aircraft rescue and firefighting building construction.
Aircraft rescue and firefighting equipment acquisition.
Runway 12/30 rehabilitation.
Runway 12/30 lighting installation.
Taxiway D and midfield apron construction.
Taxiway lighting installation.

Decision Date: June 7, 2013.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: County of Milwaukee, Milwaukee, Wisconsin.

Application Number: 13–17–C–00–MKE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $32,553,528.

Charge Effective Date: February 1, 2024.

Charge Expiration Date: November 1, 2026.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31 and operating at General Mitchell International Airport (MKE).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at MKE.

Brief Description of Projects Approved for Collection and Use:

Taxiway B reconstruction.
Perimeter fencing.
Perimeter road bridge over Howell Avenue—design and construction.
Cargo deicer collection—construction.
Perimeter road extension (128th to College Avenue).
Baggage claim area expansion—construction.
Purchase new passenger loading bridges and related improvements—design and construction.
Redundant main electrical service feed—construction.
Expansion of fleet portion of combined maintenance facility—construction.
Terminal roadway signage—construction.
Taxiways R, R3, and Q reconstruction—design.
Master plan update completion/airport geographic information system.

Brief Description of Project Partially Approved for Collection and Use:

Runway 7R deicer pad—design and construction.

Determination: Partially approved. The deicing control center was determined to be an operational costs and, as such, did not meet the requirements of § 158.15(b).

Decision Date: June 13, 2013.

FOR FURTHER INFORMATION CONTACT: Sandy Depottey, Minneapolis Airports District Office, (612) 253–4642.

Public Agency: Lee County Port Authority, Fort Myers, Florida.

Application Number: 13–08–C–00–RSW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $20,554,824.

Earliest Charge Effective Date: October 1, 2018.

Estimated Charge Expiration Date: January 1, 2020.

Class of Air Carriers Not Required to Collect PFC's: All air taxi/commercial operators filing FAA Form 1800–31 and operating at Southwest Florida International Airport (RSW).

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at RSW.

Brief Description of Project Approved for Collection and Use at a $4.50 PFC Level: Air traffic control tower/terminal approach control building design and construction.

Brief Description of Project Approved For Collection and Use at a $3.00 PFC Level: PFC implementation and administrative costs.

Decision Date: June 18, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331.

Public Agency: Counties of Lackawanna and Luzerne, Avoca, Pennsylvania.

Application Number: 13–09–C–00–AVP.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,452,563.

Earliest Charge Effective Date: November 1, 2020.

Estimated Charge Expiration Date: July 1, 2029.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate landside roadway.
Replace runway 4/22 lighting and transformers.
Replace runway surface sensor systems.
Rehabilitate taxiway B design and construct.
Replace aircraft rescue and firefighting equipment.
Upgrade electronic exit lane systems.
Acquire equipment—replace plow vehicles and spreaders.
Acquire security equipment—security system card readers and security surveillance cameras.
Replace security vehicles and equipment.
Extend and rehabilitate apron (airline).
Demolish old passenger terminal building for new apron.
Replace airfield generator.
Install precision approach path indicators, runway 10.

Brief Description of Projects Approved for Collection:

Install airfield perimeter wildlife fence.
Acquire aircraft rescue and firefighting vehicle—1500 gallon.
Rehabilitate taxiway D and shoulders—design and construct.
Expand terminal baggage area—design and construct.
Construct east side access road.

Brief Description of Disapproved Projects: Design and construct taxiway B extension.

Determination: Project does not meet the requirements of § 158.30(c). Design and construct terminal customs area renovations.

Determination: Project does not meet the requirements of § 158.15(c). Safety management systems implementation.

Determination: Project does not meet the requirements of § 158.15(b). Rehabilitate general aviation and terminal aprons—sealcoating.

Determination: Project determined to be routine maintenance and as such does not meet the requirements of § 158.15(b).

Expand fuel farm.

Determination: Project does not meet the requirements of § 158.15(b).

Rehabilitate public access roads.

Determination: Project does not meet the requirements of § 158.15(b).

Decision Date: June 20, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved Net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
94–01–C–05–FLL, Fort Lauderdale, FL	06/12/13	$46,592,957	$40,036,449	09/01/98	09/01/98
98–02–C–04–FLL, Fort Lauderdale, FL	06/12/13	181,471,378	181,471,378	09/01/05	09/01/05
11–12–C–01–BUR, Burbank, CA	06/13/13	3,917,000	3,937,000	08/01/19	10/01/19
03–15–C–02–CHO, Charlottesville, VA	06/18/13	850,000	514,872	02/01/07	02/01/07
11–08–C–01–AVP, Avoca, PA	06/20/13	2,842,784	5,036,660	10/01/24	11/01/20

Issued in Washington, DC, on December 6, 2013.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2013–29925 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0058]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for extension of currently approved information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under **SUPPLEMENTARY INFORMATION.** The **Federal Register** notice with a 60-day public comment period soliciting comments on this information collection was published on October 2, 2013. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 16, 2014.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the U.S. DOT's performance; (2) the accuracy of the estimated burden; (3) ways for the U.S. DOT to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2013–0058.

FOR FURTHER INFORMATION CONTACT: Mr. David Bartz, (512) 536–5906, Office of Program Administration, Federal Highway Administration, Department of Transportation, 300 East 8th Street, Suite 826, Austin, Texas 78701. Office hours are from 7:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Preparation and Execution of the Project Agreement and Modifications.

OMB Control Number: 2125–0529.

Background: Formal agreements between State Transportation Departments and the FHWA are required for Federal-aid highway projects. These agreements, referred to as ''project agreements'' are written contracts between the State and the Federal government that define the extent of work to be undertaken and commitments made concerning a highway project. Section 1305 of the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178) amended 23 U.S.C. 106(a) and combined authorization of work and execution of the project agreement for a Federal-aid project into a single action. States continue to have the flexibility to use whatever format is suitable to provide the statutory information required, and burden estimates for this information collection are not changed.

Respondents: There are 56 respondents, including 50 State Transportation Departments, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of Guam, the Virgin Islands and American Samoa.

Frequency: On an on-going basis as project agreements are written.

Estimated Average Annual Burden per Response: There is an average of 400 annual agreements per respondent. Each agreement requires 1 hour to complete.

Estimated Total Annual Burden Hours: 22,400 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 11, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–29979 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2013–0392]

Proposed Enhancements to the Motor Carrier Safety Measurement System (SMS) Public Web Site

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of comment period.

SUMMARY: FMCSA extends the comment period for its November 5, 2013, notice requesting public comments on proposed enhancements to the display of information on the Agency's Safety Measurement System (SMS) public Web site. On December 6, 2013, Advocates

for Highway and Auto Safety (Advocates) formally requested that the Agency extend the comment period by 30 days. The Agency extends the deadline for comment from January 6 to January 21, 2014.

DATES: Comments must be received on or before January 21, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2013–0392 by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., e.t, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means.

FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0392'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change the proposed enhancements based on your comments. FMCSA may issue final enhancements at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0392'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 [73 FR 3316].

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Courtney Stevenson, Federal Motor Carrier Safety Administration, Compliance Division, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone 202–366–5241, Email: *courtney.stevenson@dot.govmailto:*

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2013 (78 FR 66420), FMCSA published a notice in the **Federal Register** requesting comments on proposed enhancements to the display of information on the Agency's SMS public Web site. FMCSA first announced the implementation of the SMS in April 2010 and announced further improvements to the SMS in March 2012 and August 2012. Consistent with its prior announcements, the Agency announced proposed changes to the design of the SMS public Web site that are the direct result of feedback from stakeholders regarding the information displayed. The Agency provided a 60-day comment period for the notice with a deadline of January 6, 2014, for the submission of comments.

On December 6, 2013, Advocates requested a 60-day extension of the comment period for the November 5, notice. Advocates stated that ''review of the topic requires considerable experience with the use of the Compliance, Safety and Accountability (CSA) Web site and the SMS data in order to evaluate the display of information, assess the changes and formulate a clear understanding the changes may have on public access and comprehension of the [Web site] information.''

The FMCSA has determined that a 15-day extension of the comment period is appropriate while a longer extension, as requested by Advocates, is unnecessary given the original 60-day comment period and the three educational webinars the Agency conducted on November 18, 21, and 22. The series of webinars were announced in the November 5, 2013, notice.

In consideration of the above, FMCSA extends the deadline for submission of public comments from January 6 to January 21, 2014.

Issued on: December 11, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29958 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0047]

Hours of Service of Drivers: Application for Exemption; David Muresan

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that David Muresan has applied for an exemption from the Agency's hours of service (HOS) rules. Mr. Muresan is a long-haul truck driver who teams with a second driver in operating a sleeper berth-equipped vehicle. Mr. Muresan believes

that the Agency's HOS rules do not properly consider the unique nature of team operations. Mr. Muresan proposes that he and his co-driver be permitted to operate under HOS rules that he has designed. He believes that his commercial motor vehicle (CMV) operations under the substitute HOS rules are likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: Comments must be received on or before January 16, 2014.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2013–0047 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, DOT Hq Building, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday except Federal holidays.
- *Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* section below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* section below.
- *Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov* at any time and in the box labeled ''SEARCH for'' enter FMCSA–2013–0047 and click on the tab labeled ''SEARCH.''
- *Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's online privacy policy at *www.dot.gov/privacy* or the complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316).
- *Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines by clicking on the word ''Help'' at the top of the Portal home page. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards. Telephone: 202–366–4325. Email: *MCPSD@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31315 and 31136(e) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency is required to publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. FMCSA must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemption (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** with the reasons for denying or granting the application, and if granted, the name of the person or class of persons receiving the exemption, and the regulatory provisions from which the exemption is granted [49 CFR 381.315(b) and (c)]. The notice must specify the effective period of the exemption, and its terms or conditions. The exemption may be renewed [49 CFR 381.300(b)].

Hours of Service (HOS) Rules

Part 395 of title 49 of the Code of Federal Regulations, ''Hours of Service of Drivers,'' prescribes various HOS limits. Mr. Muresan is asking for exemption from the HOS rules governing property-carrying CMVs. One of the primary HOS rules is the ''14-hour rule'' found at 49 CFR 395.3(a)(2).

In response to new research on fatigue, FMCSA in 2003 lengthened from 8 hours to 10 hours the minimum off-duty period between shifts required for drivers of property-carrying CMVs (68 FR 22456; April 28, 2003). However, drivers of property-carrying CMVs equipped with a sleeper berth have the option of obtaining ''the equivalent of 10 consecutive hours off duty,'' defined as follows: 49 CFR Once the maximum of 60 (or 70) hours of on-duty time is reached in any period of 7 (or 8) consecutive days, the driver can reset this ''on-duty clock'' to zero by obtaining a period of at least 34-consecutive hours off duty that includes two periods from 1:00 a.m. to 5:00 a.m. home terminal time. A driver at the maximum of 60 hours in 7 days (or 70 hours in 8 days) can also go off duty until the passage of time reduces the number of on-duty hours he or she has accumulated in the most recent 7 (or 8) days.

Section 392.3 of the FMCSRs provides the following:

Application for Exemption

Mr. Muresan and another driver operate as a team on ''long-haul'' operations. Team drivers typically operate a property-carrying CMV equipped with a sleeper berth, and alternate between driving the vehicle and occupying the sleeper berth. Compared to a solo driver, a team can substantially reduce the time required to complete a long trip.

A copy of Mr. Muresan' s application for exemption is in Docket FMCSA–2013–0047. He asks to be exempt, along with his co-driver, from the HOS rules of part 395, including section 395.2, ''Definitions.'' That section defines numerous terms, such as ''on duty,'' which are critical to effective compliance with and enforcement of the HOS rules. Mr. Muresan employs terms in his exemption application that he does not define (and which the HOS rules do not employ), including ''rest'' and ''sleep.''

Mr. Muresan believes that the Agency's HOS rules do not properly consider the unique nature of team operations. Mr. Muresan proposes that he be permitted to operate under HOS rules that he has designed. He believes that his HOS rules would better accommodate team operations without compromising safety. For instance, under his proposal, he would be exempt from the 14-hour rule without limitation, so that it would be legal for him to drive a CMV at any time without regard to the 14-hour window. Mr. Muresan states that CMV operations under his proposed HOS rules would be likely to achieve a level of safety equivalent to or greater than the level of safety as would be obtained in the absence of the exemption.

Mr. Muresan proposes ''Exemption Rules'' and promises to observe them. Under the exemption, he (and his co-driver, if operating as a team) would limit his driving time to 11 hours in a 24-hour period. If the exemption is granted, he would ''. . . drive between 3 to 11 hours followed by 2 to 10 hours of rest/sleep'' and would be required to ''. . . sleep at least 8 hours during 24 hours of service.'' Mr. Muresan also proposes the following:

''. . . the driver who is at rest/sleep has full authority to accept or not to drive again and has authority to decide if he is restored enough to drive again. The driver on duty cannot force the driver at rest/sleep to drive again if he/she does not want.''

Mr. Muresan explains that the periods of 2 to 10 hours of rest/sleep ''allow a driver to go to sleep when [he or she] is tired.'' He also explains that the authority granted the driver who is ''resting/sleeping'' to decide when to drive again:

''. . . [a]llows the driver to drive again when [he or she] is restored and not hours after that. I mention that a driver cannot sleep 10 hours and after 6 hours is awaked and may soon become bored and will be sleepy about when will be the time to drive again.''

Mr. Muresan also requests that the exemption permit him to employ paper records of duty status (RODS), or logs, even if his employer has equipped the CMV with the capability to record the RODS electronically.

Mr. Muresan requests that the exemption cover a two-year period, the maximum period of time for which FMCSA can grant an exemption. Applicants may apply for renewal of their exemption every two years.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on Mr. Muresan's application for an exemption from the HOS requirements of 49 CFR part 395. The Agency will consider all comments received by the close of business on January 16, 2014. Comments will be available for examination in the docket as explained in the **ADDRESSES** section of this notice under the heading ''Docket.'' The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: December 9, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29959 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA–2013–0172]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 59 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 59 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following 11 applicants had no experience operating a CMV:

Christina L. Anhock
Thomas R. Anthony
Brian Ashbaugh
Eric Betsuie
Eric P. Carr
Adrian L. Johnson
Bradford Kadubic
Dennis A. Mercer II
Elijah Miller
Jorge Monge
Marcus Robinson

The following 9 applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

Zoraida Bazan
Troy D. Blanton
Donald E. Cessna, Sr.
Douglas H. Huntsman
Mark A. Lane
James McClellan
Louis Pierson
Juan Ramirez
Phillip Starker

The following 5 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Aaron Gage
Daniel D. Henriquez
Dennis Hughey
Edward Rangel
Jeffrey M. Thorpe

The following 9 applicants were denied for miscellaneous/multiple reasons:

Travis Bennett
John D. Bowman
Don Gray
Bruce Gumtow
Gary S. Judds
Timothy M. Leonard
Thomas A. Martin, III
Rodney McMorran
Tyler R. Peebles

The following applicant, Mark P. Huemann, was denied because his vision was not stable for the entire 3-year period.

The following 12 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Joseph A. Basista
Thomas J. Bruce, Jr.
Barry Foster
Donald M. Gieseke
Marco J. Gonzalez
Rogelio Leyva
Martin R. Manner
Lee A. Mauk
John McKinney

John Rinehart
Scott J. Thompson, Jr.
Christopher M. Walters

The following 10 applicants were denied because they will not be driving interstate, interstate commerce, or not required to carry a DOT medical card:

John H. Bass
Alton L. Carlisle
Timothy F. Dunn
Wesley S. Gnade
Jerry E. Guilford
Glenn F. Hipp
Shane Nelson
Nelson P. Sanschagrin
Robert Schultz
Robert Tackitt

Finally, the following 2 applicants perform transportation for the federal government, state, or any political subdivision of the state.

Marty G. Eastman
Eric D. Kidd

Issued on: December 3, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29952 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0166]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 26 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective December 17, 2013. The exemptions expire on December 17, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 22, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 62935). That notice listed 26 applicants' case histories. The 26 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 26 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 26 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, macular degeneration, retinal detachment, prosthetic eye, Harada's disease, central scotoma, and strabismus. In most cases, their eye conditions were not recently developed. Eighteen of the applicants were either born with their vision impairments or have had them since childhood.

The eight individuals that sustained their vision conditions as adults have had it for a period of 4 to 29 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 26 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven

CMVs with their limited vision for careers ranging from 3 to 48 years. In the past 3 years, two of the drivers were involved in crashes and two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 22, 2013 notice (78 FR 62935).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 26 applicants, two of the drivers were involved in crashes and two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 26 applicants listed in the notice of October 22, 2013 (78 FR 62935).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 26 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received two comments in this proceeding. The comments are considered and discussed below.

Debbie Aten is in favor of granting all of the drivers exemptions.

Chad Bradford is in favor of granting all of the drivers exemptions.

Conclusion

Based upon its evaluation of the 26 exemption applications, FMCSA exempts Herbert R. Benner (ME), Junior Chavarria (NM), Albert M. DiVella (NV), Terry D. Elliot (TN), Bernard T. Gillette (PA), James B. Grega (PA), Steven M. Hoover (IL), Gregory R. Johnson (SC), Lewis J. Johnson (PA), Carol Kelly (IN), Jeremy W. Knott (NC), Chase L. Larson (WA), Ronald E. Loper (LA), James M. McCleary (OH), Michael E. Miles (IL), Jeremy L. Miller (OR), Ronald L. Newlin (IL), Carlos A. Osollo (NM), Steven J. Scesnewicz (IL), Henry D. Smith (NC), Dennis R. Stockert (MN), Kolby W. Strickland (WA), Eric Taniguchi (HI), Stephen G. Vermilya (PA), Cesar Villa (NM), and Dennis E. White (PA) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 3, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29978 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0187]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 17, 2013. The exemptions expire on December 17, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 23, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 16 individuals and requested comments from the public (78 FR 63298). The public comment period closed on November 22, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 16 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 16 applicants have had ITDM over a range of 1 to 40 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 23, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA

considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Richard J. Batzel (MN), Peter J. Benz (FL), Michael L. Collins (WA), Steven M. Dent (IA), Leburn L. Gardner (MO), Isadore Johnson, Jr. (NY), Brian K. Lester (MT), Richard E. Li (MA), Brent L. McDaniels (MI), Travis F. Moon (GA), Steven D. Nowakowski (MD), Stephen Plesz (CT), Stanley A. Sabin (KY), Stephen A. Stewart (MO), Thomas L. Stoudnour (PA), and Merle L. Weyer (SD) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 4, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29953 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0188]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 29 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 17, 2013. The exemptions expire on December 17, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 23, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 29 individuals and requested comments from the public (78 FR 63280). The public comment period closed on November 22, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 29 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 29 applicants have had ITDM over a range of 1 to 39 years. These

applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 23, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 29 exemption applications, FMCSA exempts Toni Benfield (SC), Delbert L. Bennett, Jr. (ID), Daniel A. Bryan (PA), Stephen A. Cronin (FL), Paul J. Dent (IA), Lee E. Emery (ME), Marshall H. Evans (IL), Joseph M. Fiorelli (PA), David W. Foster (TN), Francis M. Garlach, III (PA), Darren L. Graham (TX), James M. Harvey (OH), Jerry D. Joseph (OH), Neal S. Kassebaum (TN), Kevin E. Kneff (MO), Ronald Mooney (OR), Martin J. Mostyn (OH), Floyd P. Murray, Jr. (UT), Cameron J. Ohl (NC), Mark A. Pille (IA), Glen E. Pozernick (ID), Jody R. Prause (MI), Andrew Quaglia (NY), Gilbert Rios (OH), Joseph T. Schafer, Jr. (PA), Gary A. Sjokvist (ND), Richard D. Stalter (AR), Charles W. Sterling (WA), and Carl F. Wagner, Jr. (IN) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 3, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29951 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0185]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 37 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 17, 2013. The exemptions expire on December 17, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 23, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from

37 individuals and requested comments from the public (78 FR 63285). The public comment period closed on November 22, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 37 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 37 applicants have had ITDM over a range of 1 to 45 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 23, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 37 exemption applications, FMCSA exempts Charles A. Adams, Jr. (CT), Thomas W. Allee (WI), J.D. Ashcraft, Jr. (AL), Robert J. Berger III (PA). Michael E. Bingham (WA), Danny W. Bradley (DE), Richard A. Clark (GA), Winfred G. Clemenson (WA), Romero Coleman (WI), Thomas J. Crawford (NY), Williams N. Drake (NY), John S. Duvall (PA), Robert B. Engel (IN), Carolyn C. Gardner (CT), Brian L. Gregory (IL), Alfonso Grijalva (CA), Jason E. Jacobus (KY), Ervin A. Klocko, Jr. (OH), Stephen C. Koktavy (AZ), Richard J. Long (MN), Margaret Lopez (NY), John D. May (KS), Michael C. McDowell (TX), Charles B. McKay (FL), Norman C. Mertz (PA), Gary D. Peters (NE), Mark R. Phillips (WI), Francis J. Shultz (PA), Gary L. Snelling (AL), Joseph L. Stevenson (IL), Matthew S. Thompson (PA), Robin S. Travis (CO), William R. Van Gog (WA), Charles S. Watson (IL), David H. Wilkins (PA), Mark A. Yurian (MT), David M. Zanicky (PA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 3, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29957 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0189]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective December 17, 2013. The exemptions expire on December 17, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On October 23, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 15 individuals and requested comments from the public (78 FR 63295). The public comment period closed on November 22, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 15 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 15 applicants have had ITDM over a range of 1 to 20 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the October 23, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts Steven R. Auger (NH), James L. Barnes (GA), Travis D. Clarkston (IN), Steven M. Ference (CT), Allen D. Goddard (MO), Jerry M. Hicks (WV), Bobby H. Johnson (GA), Michael P. Mahan (NY), Kenneth B. Maynard, Jr.

(NH), Will Norsworthy (AL), Walter A. Przewrocki, Jr. (PA), Keith E. Pulliam (MO), Richard A. Treadwell, Sr. (ME), James R. Troutman (PA), and William E. Wyant III (IA) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 4, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–29950 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2013–0038]

Notice of Proposed Buy America Waiver for the Pad and Rubber Boot of a Concrete Block for a Low Vibration Track System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed Buy America waiver and request for comment.

SUMMARY: The New York Metropolitan Transportation Authority (MTA), New York City Transit (NYCT), MTA Capital Construction Company, has requested a Buy America waiver for the pad and rubber boot of a concrete block for its Low Vibration Track (LVT) system on the basis of non-availability. MTA intends to install an LVT system as part of its Second Avenue Subway Project. This notice is to inform the public of the waiver request and to seek public comment to inform FTA's decision whether to grant the request.

DATES: Comments must be received by January 16, 2014. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FTA–2013–0038:

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Transit Administration'' and include docket number FTA–2013–0038. Due to the security procedures in effect since October 2011, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary J. Lee, FTA Attorney-Advisor, at (202) 366–0985 or *mary.j.lee@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide notice and seek comment on whether the Federal Transit Administration (FTA) should grant a non-availability waiver for the procurement of the pad and rubber boot of the concrete block used in its LVT system for Phase 1 of the Second Avenue Subway Project.

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) the manufacturing processes for the product take place in the United States; and (2) the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality,'' then FTA may issue a waiver (non-availability waiver). 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

On June 20, 2013, FTA issued a letter to MTA regarding FTA's determination that the concrete blocks purchased for MTA's LVT system were not Buy America compliant because they contained foreign manufactured components—the pad and the rubber boot of each concrete block. However, FTA indicated that it would be willing to entertain a non-availability waiver if MTA met the required conditions under 49 CFR 661.7(c) and provided the following information: (1) the history of the procurement, including the technical specifications for the concrete blocks; (2) the technical feasibility of using other replacement parts manufactured in the United States; and (3) MTA's market research demonstrating the extent to which manufacturers in the United States are capable and willing to produce the pad and the rubber boot.

On September 11, 2013, MTA formally requested a Buy America waiver for the pad and rubber boot. In its request, MTA reiterated that it specified an LVT system to address operational noise and vibration issues, which had been identified as significant adverse impacts in the Final Environmental Impact Statement and Record of Decision for the Second Avenue Subway Project. The LVT system is, among other things, also designed to meet the National Fire Protection Association requirements and the vertical and horizontal gap tolerances between the platform and the train floor required to comply with the Americans with Disabilities Act. In addition, according to MTA, the LVT system has a proven performance history and an expected useful life in excess of 60 years, and would meet the performance requirements of MTA–NYCT's standard specifications. Along with these reasons, MTA stated that it had, in good faith, concluded that the concrete blocks were components of the LVT system and believed itself to be Buy America compliant.

According to MTA, it is unable to find a U.S.-manufactured pad and rubber boot. However, upon learning that it likely would have to find a U.S.-manufactured pad and rubber boot, MTA began conducting market research

to encourage U.S. manufacturing of the pads and rubber boots. MTA has learned that there may be a U.S. manufacturer in the near future, but any other concrete blocks used in its LVT system would need to undergo testing according to MTA–NYCT's Specification 92 for Low-Profile Low Vibration Booted Blocks. MTA states that this testing would delay the Project for over one year. Therefore, MTA requests a waiver that would be limited to Phase 1 of its Second Avenue Subway Project and understands that it would need to continue its good faith efforts to find a U.S.-manufactured pad and rubber boot.

The purpose of this notice is to publish the request and seek public comment from all interested parties in accordance with 49 U.S.C. 5323(j)(3)(A). Comments will help FTA understand completely the facts surrounding the request, including the effects of a potential waiver and the merits of the request. FTA also is working with the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), to seek U.S. manufacturers for these components and expects MTA and others to cooperate in this endeavor. A full copy of the request has been placed in docket number FTA–2013–0038.

Dated: December 11, 2013.

Dorval R. Carter, Jr.,

Chief Counsel.

[FR Doc. 2013–30000 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0146]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel JAGUAR; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0146. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JAGUAR is:

Intended Commercial Use Of Vessel: ''For bare boat/lease recreational use.''

Geographic Region: Alabama, Florida, Georgia.

The complete application is given in DOT docket MARAD–2013–0146 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30003 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0141]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel VICTORIA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0141. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VICTORIA is:

Intended Commercial Use Of Vessel: ''Carrying up to 12 passengers for day trips, sunset cruises, weekend and/or full week cruises'' *Geographic Region:* ''Florida'' The complete application is given in DOT docket MARAD–2013–0141 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–29996 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0140]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ZEPHYRUS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0140. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ZEPHYRUS is:

Intended Commercial Use Of Vessel: ''Passenger vessel.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2013–0140 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.
Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–29992 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0138]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TUESDAY'S CHILD; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TUESDAY'S CHILD is:

Intended Commercial Use of Vessel: ''Sail charters.''

Geographic Region: ''Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas'' The complete application is given in DOT docket MARAD–2013–0138 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30019 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SALISH SEA–KR; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0147. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SALISH SEA–KR is: *Intended Commercial Use Of Vessel:* ''Passenger Vessel, charters'' *Geographic Region:* ''Washington State'' The complete application is given in DOT docket MARAD–2013–0147 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30005 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0143]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KNIGHT HAWK; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0143. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KNIGHT HAWK is:

Intended Commercial Use Of Vessel: Carrying passengers for hire.

Geographic Region: ''California, Oregon, Washington.''

The complete application is given in DOT docket MARAD–2013–0143 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30001 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0142]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COSMO; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0142. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel COSMO is:

Intended Commercial Use Of Vessel: ''Day sail charters and lessons.''

Geographic Region: ''New York.''

The complete application is given in DOT docket MARAD–2013–0142 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30006 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0139]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CHA–SON; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by

MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CHA–SON is:

Intended Commercial Use of Vessel: ''Ocean charter fishing on the nearshore Oregon coast.''

Geographic Region: ''Oregon.''

The complete application is given in DOT docket MARAD–2013–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30017 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0144]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel VALKYRIE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0144. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel VALKYRIE is:

Intended Commercial Use Of Vessel: ''Passengers for catamaran sailing overnight, day, and sunset cruisers. In shore and off shore.''

Geographic Region: ''Florida, New York, New Jersey, Connecticut, Rhode Island, Massachusetts.''

The complete application is given in DOT docket MARAD–2013–0144 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–30002 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013–0145]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MAGICK EXPRESS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 16, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2013–0145. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAGICK EXPRESS is:

Intended Commercial Use Of Vessel: ''Passenger for hire charter for sight-seeing and sailing, primarily in the San Francisco Bay area.''

Geographic Region: ''California, Oregon, Washington, Hawaii.''

The complete application is given in DOT docket MARAD–2013–0145 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: December 3, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–29989 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0074; Notice 2]

BMW of North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of Petition.

SUMMARY: BMW North America, LLC,[1] a subsidiary of BMW AG (collectively referred to as BMW),[2] has determined that certain model year (MY) 2012 BMW X3 SAV multipurpose passenger vehicles (MPV) manufactured between April 1, 2011 and March 14, 2012, do not fully comply with paragraph S4.3.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* BMW has filed an appropriate report dated March 28, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Ms. Amina Fisher, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–1018, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. *BMW's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, BMW has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on October 16, 2012 in the **Federal Register** (77 FR 63415). One comment was received from Anne K. Mayer which supported granting BMW's petition. To view the petition, the comment and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0074.''

II. *Vehicles Involved:* Affected are approximately 1,409 MY 2012 BMW X3 SAV MPVs manufactured between April 1, 2011 through March 14, 2012.

III. *Rule Text:* Section S4.3.3 of FMVSS No. 110 specifically states:

S4.3.3 *Additional labeling information for vehicles other than passenger cars.* Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the certification label required by part 567.4 or part 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

GVWR: 2,441 kilograms (5381 pounds).
GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.0 rims at 248 kPa (36 psi) cold single.
GAWR: Rear—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.00 rims, at 248 kPa (36 psi) cold single.

[1] BMW North America, LLC is a U.S. company that manufactures and imports motor vehicles.

[2] BMW AG is a German company that manufactures motor vehicles.

IV. *Summary of BMW's Analyses:* BMW explained that the noncompliance is that the certification label required by 49 CFR part 567 does not list rim information for the tires installed on the vehicles as original equipment as required by paragraph S4.3.3 of FMVSS No. 110.

BMW states that while the certification label required by 49 CFR part 567 does not contain tire and rim information for tires and rims that were installed as original equipment, the information pertains to tires and rims that are appropriate for use on the vehicles. BMW also argues that the noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. If a driver only checks the certification label (which indicates either 17-inch tires or 18-inch tires) or if the driver checks the certification label and the FMVSS No. 110 tire and loading information Vehicle Placard (which shows the size of the tires originally installed on the vehicle), and is unsure as to the proper inflation pressure and the size of the tires installed on the vehicle, there are a number of information sources and services available which can be used to inform the driver of the correct tire size and tire pressure.

a. A driver could check the specific tires installed on the vehicle. The information that is stamped onto the sidewall of those tires corresponds to the information contained on the FMVSS No. 110 tire and loading information Vehicle Placard. A driver would be able to determine that the tires installed on the vehicle correspond to the tires indicated on the FMVSS No. 110 tire and loading information Vehicle Placard. Therefore, a driver would be able to add the correct amount of air pressure to the tires in order to achieve the proper inflation level.

b. If the driver were to use the tire size shown on the certification label in order to look up the associated tire pressure in the owner's manual and then pressurize the tires to that pressure the Tire Pressure Monitoring System would not need to initiate.

c. The driver will also be able to refer to the vehicle's Owner's Manual which contains information pertaining to the various tire sizes and tire pressures for the affected vehicles.

d. BMW also offers Roadside Assistance and BMW Assist™ (only included with Premium Package and as a stand-alone option) which are available 24 hours/day with representatives that are available to provide drivers with all of the available tires sizes and specifications for the affected vehicles.

BMW has received no customer complaints and are unaware of any accidents or injuries regarding this noncompliance of the affected vehicles.

BMW has additionally informed NHTSA that it has corrected future production and that all other required markings are present and correct.

BMW also explains that NHTSA has previously granted similar petitions.

In summation, BMW believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

V. *NHTSA Analysis and Reasoning:* The affected vehicles, 1,409 2012 BMW X3/SAVs (MPVs), comply with FMVSS No. 110, paragraph S4.3(c) and (d), identifying the recommended cold inflation pressures for the front, rear and spare tires and the tire size designations, respectively. The vehicles do not comply with paragraph S4.3.3, which requires additional information for vehicles other than passenger cars: the tires and rims must be identified on the 49 CFR part 567 certification label. BMW's certification label listed the tire and rim size for the front and rear axles as 245/50R18, which is different from the tires installed on affected vehicles, 245/45R19. Note: Information for these vehicles states they were sold with either 18-inch or 19-inch diameter tires.

BMW's FMVSS No. 110 vehicle placard listed size 245/45R19 for the front and rear tires with recommended inflation pressures 220 kPa/32 psi and 260 kPa/38 psi, respectively). The load ratings from the Tire and Rim Association Handbook at those pressures are 675 kg/1,488 lb (front) and 750 kg/1673 lb (rear). Paragraph S4.2.2.2 specifies that the load rating for a passenger car tire used on an MPV be divided by 1.1. The sum of the front axle tire ratings are 1,227 kg/2,705 lb and the rear axle tires are 1,364 kg/3,007 lb. Tire size 245/50R18 at 220 kPa/32 psi (front) and 240 kPa/35 psi (rear—the maximum pressure listed) are rated at 745 kg/1,642 lb (front) and 775 kg/1,709 lb (rear). The resulting sums are 1,355 kg/2,987 lb (front) and 1,409 kg/3,106 lb (rear). In both cases, the sums of the tire load ratings exceed BMW's GAWRs of 1,110 kg/2447 lb (front) and 1,290 kg/2,844 lb (rear).

Two additional factors were considered: the difference between the maximum inflation pressures of the two tire sizes and the effect of those pressures on the vehicle's tire pressure monitoring system, required by FMVSS No. 138.

The non-installed tires listed on the certification label have a maximum inflation pressure which is lower than the inflation pressure listed on the vehicle placard. If a consumer purchased replacement tires based on the 18-inch size listed on the certification label, he would also need to purchase rims of the same diameter. Even if the 18-inch diameter tires and rims were installed, each tire's maximum inflation pressure is still specified on the sidewall and listed in other documents available to tire dealers.

Regarding the TPMS, there is no adverse effect for either size front tires at 220 kPa/32 psi. The higher recommended inflation pressure of the installed 19-inch diameter rear tires corresponds to a required warning at 25 percent below the recommended pressure, i.e., at 195 kPa/28 psi. If the 19-inch diameter tires are replaced with 18-inch tires, the warning would be required at 180 kPa/26 psi, which is equal to a 19 percent under-inflation condition for those tires, exceeding the FMVSS No. 138 requirement.

VI. *NHTSA Decision:* Thus, NHTSA has determined that BMW has met its burden of persuasion that the FMVSS No. 110 noncompliance of the tire size labeling on the subject vehicles' certification label is inconsequential to motor vehicle safety. Accordingly, BMW's petition is hereby granted, and BMW is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the 1,409 vehicles that BMW no longer controlled at the time it determined that a noncompliance existed. However, the granting of this petition does not relieve distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Issued on: December 11, 2013.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2013–29990 Filed 12–16–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Docket ID: TREAS–DO–2013–0006]

Request for Information on Strategies To Accelerate the Testing and Adoption of Pay for Success (PFS) Financing Models

AGENCY: Office of Domestic Finance, Department of the Treasury.

ACTION: Request for information; reopening of comment period.

SUMMARY: The Department of the Treasury is reopening the comment period on its request for information on Strategies to Accelerate the Testing and Adoption of Pay for Success (PFS) Financing Models. The President's FY 2014 budget included a request for a $300 million one-time mandatory appropriation for a new Incentive Fund to help state and local governments implement PFS programs. In order to inform the Administration's development of this legislative initiative, the request for information (RFI) seeks information on options for financing models and the most promising programmatic areas [1] that could be served by the Incentive Fund. Treasury is reopening the comment period until December 20, 2013 to provide additional opportunity to comment.

DATES: Responses must be received by December 20, 2013.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID and the term ''PFS Incentive Fund RFI'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under a tab titled ''Are you new to the site?''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Cara Camacho, Attention: Pay for Success Incentive Fund RFI, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Room 1325, Washington, DC 20220.
- *Privacy Note:* The Department's policy for comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Cara Camacho by email: *cara.camacho@treasury.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2013, the Department of the Treasury published in the **Federal Register** the RFI on Strategies to Accelerate the Testing and Adoption of Pay for Success (PFS) Financing Models (78 FR 60998). The RFI offered states, tribal governments, localities, community based and other non-profit organizations, private sector donors, researchers, and other interested individuals and entities the opportunity to provide information on effective approaches for improving outcomes for social services and other program areas by employing financing mechanisms that pay for results. This notice reopens the comment period for the RFI until December 20, 2013 in order to provide an additional opportunity to comment.

Donet Graves,

Deputy Assistant Secretary for Small Business, Community Development and Housing Policy.

[FR Doc. 2013–29935 Filed 12–16–13; 8:45 am]

BILLING CODE 4810–25–P

[1] THE BUDGET FOR FISCAL YEAR 2014—See page 978 of the President's FY 2014 Budget Appendix (see *http://www.whitehouse.gov/omb/budget/Appendix*).

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0024]

Proposed Information Collection (Insurance Deduction Authorization (For Deduction From Benefit Payments)); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to authorize deduction from a beneficiary's compensation check.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 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 (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0024'' in any correspondence. During the comment period, comments may be viewed online through 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: Insurance Deduction Authorization (For Deduction from Benefit Payments), VA Form 29–888.

OMB Control Number: 2900–0024.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–888 is completed by the insured or their representative to authorize deduction from their compensation check to pay premiums, loans and/or liens on his or her insurance contract.

Affected Public: Individuals or households.

Estimated Annual Burden: 622 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,732.

Dated: December 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–29818 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0655]

Agency Information Collection (Residency Verification Report—Veterans and Survivors) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), 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 January 16, 2014.

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 *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0655'' 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. 2900–0655.''

SUPPLEMENTARY INFORMATION:

Title: Residency Verification Report—Veterans and Survivors, VA Form Letter 21–914.

OMB Control Number: 2900–0655.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form Letter 21–914 is use to verify whether Filipino veterans of the Special Philippine Scouts, Commonwealth Army of the Philippines, organized guerilla groups receiving service-connected compensation benefits and survivors receiving service connected death benefits at the full–dollar rate, actually resides in the United States as United States citizens or as aliens lawfully admitted for permanent residence. The information is needed to determine whether the claimant continues to meet the United States residency requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 31, 2013, at page 46424.

Affected Public: Individuals or households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,250.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–29848 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0038]

Proposed Information Collection (Information From Remarried Widow/er) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a child's eligibility for death pension once a surviving spouse remarries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 18, 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 (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0038'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, 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: Information from Remarried Widow/er, VA Form 21–4103.

OMB Control Number: 2900–0038.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4103 is used to collected data necessary to determine whether a child or children of a deceased veteran who served during a wartime period are eligible to receive death pension benefits when the surviving spouse's entitlement to death pension is permanently discontinued when he or she remarries.

Affected Public: Individuals or households.

Estimated Annual Burden: 334 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000.

Dated: December 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–29819 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0706]

Agency Information Collection (Application for Reimbursement of National Test Fee) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), 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 January 16, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0706'' 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. 2900–0706.''

SUPPLEMENTARY INFORMATION:

Title: Application for Reimbursement of National Test Fee, VA Form 22–0810.

OMB Control Number: 2900–0706.

Type of Review: Revision of a currently approved collection.

Abstract: Servicemembers, veterans, and eligible dependents complete VA Form 22–0810 to request reimbursement of national test fees. VA will use the data collected to determine the claimant's eligibility for reimbursement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 31, 2013, at page 46423.

Affected Public: Individuals or households.

Estimated Annual Burden: 90 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 360.

Dated: December 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance, Department of Veterans Affairs.

[FR Doc. 2013–29843 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0759]

Agency Information Collection (VA National Rehabilitation Special Events, Event Registration Applications) Activities Under OMB Review

AGENCY: Office of National Programs and Special Events, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Office of National Programs and Special Events, 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 January 16, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0759'' 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. 2900–0759''.

SUPPLEMENTARY INFORMATION:

Titles:

a. National Disabled Veterans Winter Sports Clinic Application, VA Form 0924a, c, d and VA Form 2900–0925 (SF).

b. Cross Country Ski Instructor Personnel Application, VA Form 0924n.

c. Downhill Skill Instructor Personnel Application, VA Form 0924s.

d. Volunteer Application, VA Form 0924t.

e. National Veterans Wheelchair Games Event Application, VA Form 0925b.

f. Voluntary Service Application, VA Form 0925d.

g. National Veteran Golden Age Games Application, VA Form 0926 a, b, d, e, g, h.

h. Voluntary Application, VA Form 0926j.

i. National Veterans TEE Tournament Event Application, VA Form 0927a, c, e.

j. Voluntary Service Application, VA Form 0927f.

k. National Veterans Summer sports Clinic Event Application, VA Form 0928a, c.

l. Volunteer Application, VA Form 0928h.

m. Surfing Personnel Application, VA Form 0928i.

n. Venue Personnel Application, VA Form 0928j.

o. National Veteran Creative Arts Festival Event Application, VA0929a, b, c, d, e, f, g, h.

Type of Review: Revision of an already approved collection.

Abstract: Veterans who are enrolled for VA health care may apply to participate in therapeutic rehabilitation programs such as the National Veterans Wheelchair Games, National Veterans

Golden Age Games, National Veterans Creative Arts Festival, National Veterans TEE Tournament, National Disabled Veterans Winter Sports Clinic and the National Veterans Summer Sports Clinic. The data collected will be used to plan, distribute and utilize resources and to allocate clinical and administrative support to patient treatment services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 11, 2013, at pages 55777–55778.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 0924a, c, d and VA Form 2900–0925 (SF)—133.3 hours.
b. VA Form 0924n—2.8 hours.
c. VA Form 0924s—2.8 hours.
d. VA Form 0924t—1.25 hours.
e. VA Form 0925b—119 hours.
f. VA Form 0925d—167 hours.
g. VA Form 0926a, b, d, e, g, h—333 hours.
h. VA Form 0926j—67 hours.
i. VA Form 0927a, c, e—65 hours.
j. VA Form 0927f—8 hours.
k. VA Form 0928a, c—14 hours.
l. VA Form 0928h—2.58 hours.
m. VA Form 0928i—.50 hours.
n. VA Form 0928j—1.33 hours.
o. VA0929a, b, c, d, e, f, g, h—116.6 hours.

Estimated Average Burden per Respondent:

a. VA Form 0924a, c, d and VA Form 2900–0925 (SF)—20 minutes.
b. VA Form 0924n—5 minutes.
c. VA Form 0924s—5 minutes.
d. VA Form 0924t—5 minutes.
e. VA Form 0925b—10 minutes.
f. VA Form 0925d—5 minutes.
g. VA Form 0926a, b, d, e, g, h—20 minutes.
h. VA Form 0926j—5 minutes.
i. VA Form 0927a, c, e—13 minutes.
j. VA Form 0927f—5 minutes.
k. VA Form 0928a, c—7 minutes.
l. VA Form 0928h—5 minutes.
m. VA Form 0928i—5 minutes.
n. VA Form 0928j—5 minutes.
o. VA0929a, b, c, d, e, f, g, h—35 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 0924a, c, d and VA Form 2900–0925 (SF)—400.
b. VA Form 0924n—25.
c. VA Form 0924s—200.
d. VA Form 0924t—15.
e. VA Form 0925b—715.
f. VA Form 0925d—2,000.
g. VA Form 0926a, b, d, e, g, h—1,000.
h. VA Form 0926j—800.
i. VA Form 0927a, c, e—300.
j. VA Form 0927f—100.
k. VA Form 0928a, c—120.
l. VA Form 0928h—31.
m. VA Form 0928i—6.
n. VA Form 0928j—16.
o. VA0929a, b, c, d, e, f, g, h—200.

Dated: December 11, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2013–29831 Filed 12–16–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Reasonable Charges for Medical Care or Services; V3.14, 2014 Calendar Year Update and National Average Administrative Prescription Drug Charge Update

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This Department of Veterans Affairs (VA) notice informs the public of the updated data for calculating the ''Reasonable Charges'' collected or recovered by VA for medical care or services and the updated ''National Average Administrative Costs'' for purposes of calculating VA's charges for prescription drugs that were not administered during treatment but provided or furnished by VA to a veteran for: (1) A nonservice-connected disability for which the veteran is entitled to care or the payment of expenses for care under a health plan contract; (2) a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a nonservice-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance. The charge tables and supplemental tables that are applicable to this notice can be viewed on the Veterans Health Administration Chief Business Office's Internet Web site *http://www1.va.gov/CBO/apps/rates/index.asp.* These changes are effective January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Romona Greene, Chief Business Office 10NB, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2521. This is not a toll free number.

SUPPLEMENTARY INFORMATION: VA has published regulations at 38 CFR 17.101 addressing ''Reasonable Charges'' for medical care or services provided or furnished by VA to a veteran for: (1) A nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses for care) under a health plan contract; (2) a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or (3) a nonservice-connected disability incurred as a result of a motor vehicle accident in a state that requires automobile accident reparations insurance.

The regulation at 38 CFR 17.101 includes methodologies for establishing billed amounts for the following types of charges: acute inpatient facility charges; skilled nursing facility and sub-acute inpatient facility charges; partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by Healthcare Common Procedure Coding System (HCPCS) Level II codes. In cases where VA has not established charges for medical care or services provided or furnished at VA expense (by either VA or non-VA providers) under other provisions or regulations, the method for determining VA's charges is set forth at 38 CFR 17.101(a)(8).

The regulation provides that the actual charge amounts at individual VA facilities based on these methodologies and the data sources used for calculating those actual charge amounts will either be published as a notice in the **Federal Register** or will be posted on the Internet site of the Veterans Health Administration Chief Business Office at *http://www1.va.gov/CBO/apps/rates/index.asp.* Certain charges are hereby updated as described below, effective January 1, 2014.

Based on the methodologies set forth in 38 CFR 17.101, this document provides an update to charges for 2014 HCPCS Level II and Current Procedural Technology (CPT) codes. Charges are also being updated based on more

recent versions of data sources for the following charge types: Partial hospitalization facility charges; outpatient facility charges; physician and other professional charges, including professional charges for anesthesia services and dental services; pathology and laboratory charges; observation care facility charges; ambulance and other emergency transportation charges; and charges for durable medical equipment, drugs, injectables, and other medical services, items, and supplies identified by HCPCS Level II codes. These updated charges are effective January 1, 2014. As of the date of this notice, the actual charge amounts at individual VA facilities based on the methodologies in the regulation will be posted at *http://www1.va.gov/CBO/apps/rates/index.asp,* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.14 Data Tables (Outpatient and Professional).''

The list of data sources used for calculating the actual charge amounts will be posted at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.14 Data Sources (Outpatient and Professional) (PDF).''

Acute inpatient facility charges and skilled nursing facility/sub-acute inpatient facility charges remain the same as set forth in the notice published in the **Federal Register** on September 26, 2013 (78 FR 59427). The effective date of those charges was October 1, 2013. The data tables containing those actual charges are posted at *http://www1.va.gov/CBO/apps/rates/index.asp,* under the heading ''Reasonable Charges Data Tables'' and identified as ''V3.13 Data Tables (Inpatient).'' The data sources used to calculate these charges are posted at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''Reasonable Charges Data Sources'' and identified as ''Reasonable Charges V3.13 Data Sources (Inpatient) (PDF).''

We have also updated the list of VA medical facility locations. The list of VA medical facility locations, including the first three digits of their zip codes as well as provider based/non-provider based designations, will be posted on the Internet site of the Veterans Health Administration Chief Business Office, currently at *http://www1.va.gov/CBO/apps/rate/index.asp* under the heading ''VA Medical Facility Locations,'' and identified as ''VA Medical Facility Locations V3.14 (Jan14).''

As provided in 38 CFR 17.101(m), when VA provides or furnishes prescription drugs not administered during treatment, ''charges billed separately for such prescription drugs will consist of the amount that equals the total of the actual cost to VA for the drugs and the national average of VA administrative costs associated with dispensing the drugs for each prescription.''

Section 17.101(m) includes the methodology for calculating the national average administrative cost for prescription drug charges not administered during treatment. The administrative cost is determined annually using VA's managerial cost accounting system. Under this accounting system, the national average administrative cost is determined by adding the total VA national drug general overhead costs (such as costs of buildings and maintenance, utilities, billing, and collections) to the total VA national drug dispensing costs (such as costs of the labor of the pharmacy department, packaging, and mailing) with the sum divided by the actual number of VA prescriptions filled nationally. The labor cost also includes cost for the professional activity of reviewing and dispensing a prescription.

Based on the accounting system, VA will determine the amount of the national average administrative cost annually for the prior fiscal year (October through September) and then apply the charge at the start of the next calendar year. The national average administrative drug cost for the calendar year (CY) 2014 is $13.07. This change is effective on January 1, 2014, and will be posted at *http://www1.va.gov/CBO/payerinfo.asp* and identified as ''CY 2014 Average Administrative Cost for Prescriptions.''

Consistent with the regulations, the national average administrative cost, the updated data tables, and supplementary tables containing the changes described in this notice will be posted online, as indicated in this notice. This notice will be posted at *http://www1.va.gov/CBO/apps/rates/index.asp* under the heading ''**Federal Registers**, Rules, and Notices'' and identified as, ''V3.14 **Federal Register** Notice 01/01/14 (Outpatient and Professional), and National Administrative Cost (PDF).'' The national average administrative cost, updated data tables, and the supplementary tables containing the changes described will be effective until changed by a subsequent **Federal Register** notice.

Approved: December 9, 2013.

Jose D. Riojas,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–29997 Filed 12–16–13; 8:45 am]

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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Business Combination Involving BATS Global Markets, Inc. and Direct Edge Holdings LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71046; File No. SR–EDGA–2013–34]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Business Combination Involving BATS Global Markets, Inc. and Direct Edge Holdings LLC

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2013, EDGA Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 9, 2013, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposed rule change (the ''Proposed Rule Change'') in connection with the proposed business combination (the ''Combination''), as described in more detail below, involving its indirect parent company, Direct Edge Holdings LLC (''DE Holdings''), and BATS Global Markets, Inc., the parent company of BATS Exchange, Inc. (''BATS'') and BATS Y-Exchange, Inc. (''BYX'') (collectively, ''BATS Exchanges''), each a national securities exchange registered with the Commission.

Upon completion of the Combination (the ''Closing''), DE Holdings and BATS Global Markets, Inc. each become intermediate holding companies, held under a single new holding company. The new holding company, currently named ''BATS Global Markets Holdings, Inc.,'' will at that time change its name to ''BATS Global Markets, Inc.'' In addition, the current parent company of the BATS Exchanges, BATS Global Markets, Inc., will at that time change its name to ''BATS Global Markets Holdings, Inc.''

For ease of reference, this Proposed Rule Change will refer to the current parent company of the BATS Exchanges as ''Current BGM'' when referring to the entity prior to the Closing, and as ''BGM Holdings'' when referring to that entity after the Closing. The entity that will become the new top-level holding company that will, after Closing, own BGM Holdings and DE Holdings, will be referred to as ''New BGM.''

To effectuate the Combination, the Exchange seeks to obtain the Commission's approval of (i) the proposed Resolutions of the DE Holdings Board of Managers regarding the Combination (the ''Resolutions'') making certain determinations regarding New BGM and the impact of the Combination on the Exchange; (ii) the proposed Amended and Restated Certificate of Incorporation of New BGM[3] (the ''New BGM Charter''); (iii) the proposed Amended and Restated Bylaws of New BGM (the ''New BGM Bylaws''); (iv) the replacement of the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC[4] (''Fourth DE Holdings LLC Agreement'') in its entirety with the proposed Seventh Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (the ''New DE Holdings LLC Agreement''); (v) the proposed amendments to the Direct Edge, Inc. (''DEI'') Certificate of Incorporation (the ''DEI Certificate of Incorporation''); (vi) the proposed amendments to the Bylaws of Direct Edge, Inc. (the ''DEI Bylaws''); (vii) the proposed amendments to the Certificate of Incorporation of the Exchange (the ''Exchange Certificate of Incorporation''); (viii) the proposed amendments to the Bylaws of the Exchange (the ''Exchange Bylaws''); (ix) the proposed amendments to Exchange Rule 2.3 to reflect the affiliation between the Exchange and two additional registered national securities exchanges; (x) the proposed amendments to Exchange Rule 2.10 to reflect the new affiliated entities of the Exchange; (xi) the proposed amendments to Exchange Rule 2.12 to reflect the affiliation between the Exchange and the routing broker for BATS and BYX; and (xii) the indirect acquisition by an affiliate of the Exchange of a Member[5] of the Exchange and the resulting affiliation between the Exchange and the Member of the Exchange, as required under Exchange Rule 2.10.

The text of the proposed rule change is available at the Exchange's Web site at *www.directedge.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange and the Exchange's current and proposed future direct and indirect parent companies, changes to Exchange Rules,[6] and related actions that are necessary in connection

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

[2] 17 CFR 240.19b–4.

[3] The title of the New BGM Charter is the ''Amended and Restated Certificate of Incorporation of BATS Global Markets Holdings, Inc.'' The name, however, will change to BATS Global Markets Inc. at Closing. Therefore, to avoid confusion we will refer to it as the ''Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.''

[4] With their applications to register as national securities exchanges, the Exchange and EDGX Exchange, Inc. (''EDGX'') filed with, and received approval for, the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement. *See* Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010). Since that time, DE Holdings amended the Agreement twice, creating the Fifth Amended and Restated Limited Liability Company Operating Agreement (''Fifth DE Holdings LLC Agreement'') and the Sixth Amended and Restated Limited Liability Company Operating Agreement (''Sixth DE Holdings LLC Agreement''). As required by Article 15, Section 15.2 of such Agreements, DE Holdings submitted its proposed amendments to the Boards of Directors of the Exchange and EDGX, which determined that the proposed amendments were not required to be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder. 15 U.S.C. 78s(b). DE Holdings currently operates pursuant to the Sixth DE Holdings LLC Agreement.

[5] The term ''Member'' is defined in Exchange Rule 1.5(n) as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' To avoid confusion, the Exchange will refer to members of any other national securities exchanges, including members of EDGX or the BATS Exchanges as ''members,'' rather than as ''Members.''

[6] The term ''Exchange Rules'' refers to the rules of the Exchange.

with the Closing of the Combination, as described below.

Other than as described herein and set forth in the attached Exhibits 5A through 5K, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, the Commission's rules thereunder, and the Exchange Rules.

1. Current Corporate Structures

The Exchange and EDGX (collectively, the ''DE Exchanges'') are each Delaware corporations that are national securities exchanges registered [7] with the Commission pursuant to Section 6(a) of the Act.[8] Each DE Exchange is a direct, wholly owned subsidiary of DEI, a Delaware corporation. DEI is a direct, wholly owned subsidiary of DE Holdings, a Delaware limited liability company. In addition, DE Holdings owns 100 percent of the equity interest in Direct Edge ECN LLC d/b/a DE Route, a Delaware limited liability company and the routing broker-dealer for the DE Exchanges (''DE Route'').

As a limited liability company, ownership in DE Holdings is represented by units held by members of DE Holdings (''LLC Members'').[9] Certain of the DE Holdings LLC Members are Members or affiliates of Members of the Exchange. International Securities Exchange Holdings, Inc. (''ISE Holdings'') is the only LLC Member of DE Holdings to beneficially own greater than 20 percent of the equity interest in DE Holdings. Other than ISE Holdings, the only firms beneficially owning ten percent or greater of DE Holdings (but in each case less than 20 percent) are Citadel Securities LLC, The Goldman Sachs Group, Inc., and Knight Capital Holdings LLC, an affiliate of KCG Holdings, Inc. No LLC Member beneficially owns five percent or greater but less than ten percent of DE Holdings. Five other firms each beneficially own less than five percent of DE Holdings.

BATS and BYX are each Delaware corporations that are national securities exchanges registered [10] with the Commission pursuant to Section 6(a) of the Act.[11] Each BATS Exchange is a direct, wholly owned subsidiary of Current BGM, a Delaware corporation. Current BGM also owns 100 percent of the equity interest in BATS Trading, Inc. (''BATS Trading''), a Delaware corporation that is a broker-dealer registered with the Commission that provides routing services outbound from and, in certain instances inbound to, each BATS Exchange.[12] In contemplation of the Combination, several new entities have been formed: New BGM, a Delaware corporation, is currently a wholly owned subsidiary of Current BGM, and is currently a shell company with no material assets or operations. New BGM, in turn, owns 100 percent of the equity interest in each of Blue Merger Sub Inc., a Delaware corporation (''Blue Merger Sub''), and Delta Merger Sub LLC, a Delaware limited liability company (''Delta Merger Sub''). Each of Blue Merger Sub and Delta Merger Sub is currently a shell company with no material assets or operations.

Current BGM is beneficially owned primarily by a consortium of several unaffiliated firms, including members or affiliates of members of the BATS Exchanges. No firm beneficially owns 20 percent or greater of Current BGM, and the only firms beneficially owning ten percent or greater of Current BGM are (i) GETCO Investments LLC, an affiliate of KCG Holdings, Inc., (ii) BGM Holding, L.P., a holding company itself owned by entities affiliated with the Spectrum Equity Investors and TA Associates Management private investment funds, and (iii) Strategic Investments I, Inc., an affiliate of Morgan Stanley.[13] Seven other firms each beneficially own five percent or greater but less than ten percent of Current BGM, while seven other firms as well as various individuals each beneficially own less than five percent of Current BGM.

2. The Combination

On August 23, 2013, an Agreement and Plan of Merger (the ''Merger Agreement'') was entered into among Current BGM, New BGM, DE Holdings, Blue Merger Sub, Delta Merger Sub, and Cole, Schotz, Meisel, Forman & Leonard, P.A., solely in its capacity as representative of the LLC Members. Pursuant to and subject to the terms of the Merger Agreement, at the Closing, among other things:

(i) Blue Merger Sub will be merged with and into Current BGM, whereupon the separate existence of Blue Merger Sub will cease and Current BGM will be the surviving company (the ''BATS Merger'');

(ii) Delta Merger Sub will be merged with and into DE Holdings, whereupon the separate existence of Delta Merger Sub will cease and DE Holdings will be the surviving company (the ''Direct Edge Merger'');

(iii) by virtue of the BATS Merger and without any action required on the part of Current BGM, New BGM, Blue Merger Sub or any holder of Current BGM stock, each outstanding share of Current BGM stock issued and outstanding will be converted into the right to receive shares of New BGM stock and the right to receive from New BGM cash consideration, if any, payable pursuant to the Merger Agreement, and each outstanding share of Blue Merger Sub issued and outstanding will be converted into one share of Current BGM, such that Current BGM will become a wholly owned subsidiary of New BGM; and

(iv) by virtue of the Direct Edge Merger and without any action required on the part of DE Holdings, New BGM, Delta Merger Sub, or any LLC Member, each LLC Member's membership interests in DE Holdings will be converted into the right to receive shares of New BGM stock and the right to receive from New BGM cash consideration, if any, payable pursuant

[7] Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010).

[8] 15 U.S.C. 78f(a).

[9] A ''Member'' is defined in Article I of the Sixth DE Holdings LLC Agreement as ''any Person (i) executing this Agreement as a member of the Company as of the Effective Date, (ii) admitted as a Member of the Company as of the Merger Date upon the effectiveness of the Merger pursuant to Sections 18–301(b)(3) and 18–101(7) of the Act, or (iii) hereafter admitted to the Company as an additional or substitute member of the Company as provided in this Agreement, each in its capacity as a member of the Company, and shall have the same meaning as the term ''member'' under the Act, but does not include any Person who has ceased to be a member of the Company.'' The definition of ''Member'' is the same in the Fourth DE Holdings LLC Agreement. To avoid confusion with the term ''Member'' as defined in Exchange Rule 1.5(n), the Exchange will refer to a ''Member'' of DE Holdings as an ''LLC Member'' in this rule filing.

[10] Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[11] 15 U.S.C. 78f(a).

[12] Current BGM also directly owns Omicron Intermediate Holdings Corp., a Delaware corporation, directly and indirectly (through Omicron Intermediate Holdings Corp.) owns Omicron Holdings Corp., a Delaware corporation, and indirectly owns Omicron Acquisition Corp., a Delaware corporation, BATS Trading Limited, a limited company organized under the laws of England and Wales, and Chi-X Europe Limited, a limited company organized under the laws of England and Wales.

[13] For purposes of this Proposed Rule Change, references to the beneficial ownership of a ''firm'' refers to the aggregate beneficial ownership of the firm and its affiliated entities.

to the Merger Agreement, and each unit of ownership interest of Delta Merger Sub issued and outstanding will be converted into one unit of ownership of DE Holdings, such that DE Holdings will become a wholly owned subsidiary of New BGM.

Upon the Closing, each of Current BGM and New BGM will amend and restate their respective certificates of incorporation to, among other things, change their names such that New BGM will be renamed ''BATS Global Markets, Inc.'' and Current BGM will be renamed ''BATS Global Markets Holdings, Inc.''

3. Post-Closing Corporate Structure

As a result of the Combination, New BGM will own (i) 100 percent of the equity interest in BGM Holdings (the entity previously referred to as ''Current BGM''), and (ii) 100 percent of the LLC membership interests in DE Holdings. BGM Holdings will continue to own 100 percent of the equity interest in each BATS Exchange and BATS Trading. DE Holdings will continue to own 100 percent of the equity interest in DE Route [14] and DEI. DEI will, in turn, continue to own 100 percent of the equity interest in each DE Exchange. Each of the BATS Exchanges and BATS Trading, on the one hand, and the DE Exchanges and DE Route, on the other hand, will continue to operate separately.

New BGM, as the new top-level holding company for the combined businesses, will have widely dispersed ownership, divided among the several firms and individuals that previously held equity interests in each of Current BGM and DE Holdings. Of the firms and individuals that are expected to hold equity interests in New BGM after the Closing, none will beneficially own 20 percent or greater of New BGM and only an affiliate of KCG Holdings, Inc. will beneficially own ten percent or greater. Seven firms will beneficially own five percent or greater but less than ten percent, while 12 other firms as well as various individuals will each beneficially own less than five percent of New BGM.[15]

4. Voting and Ownership Limitations of DE Holdings: Resolutions

The Sixth DE Holdings LLC Agreement [16] states that (i) no person, other than ISE Holdings, either alone or together with its Related Persons,[17] may own, directly or indirectly, of record or beneficially, Units [18] representing in the aggregate a Percentage Interest [19] of more than 40% in DE Holdings, and no person, either alone or together with its Related Persons, who is a Member, may own, directly or indirectly, of record or beneficially, Units representing in the aggregate a Percentage Interest of more than 20% (collectively, the ''DE Holdings Ownership Limitation''),[20] and (ii) subject to certain exceptions, no person, other than ISE Holdings, either alone or together with its Related Persons, may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units representing a Percentage Interest of more than 20% in DE Holdings (the ''DE Holdings Voting Limitation'').[21]

However, the Sixth DE Holdings LLC Agreement provides that each of the DE

[14] As described above, the Combination will result in a change of ownership of both BATS Trading and DE Route, each of which is a member of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange understands that, pursuant to NASD Rule 1017, each of BATS Trading and DE Route is seeking approval for this change of ownership from FINRA.

[15] ISE Holdings, which will beneficially own greater than five percent but less than ten percent of New BGM, will receive common stock of New BGM designated as Class A Non-Voting Common Stock. As set forth in the proposed New BGM Charter and described below, shares of Class A Non-Voting Common Stock are generally non-voting, except with respect to certain actions that would adversely affect the preferences, rights or powers of the holders of Class A Non-Voting Common Stock disproportionately relative to Voting Common Stock or the Class B Non-Voting Common Stock. *See* New BGM Charter, Art. FOURTH, para. (b)(ii). Pursuant to the New BGM Charter and the Investor Rights Agreement expected to be entered into at Closing and attached as Exhibit A to the New BGM Bylaws (the ''Investor Rights Agreement''), ISE Holdings' shares of Class A Non-Voting Common Stock may convert to Voting Common Stock (i) automatically with respect to any shares transferred to persons other than Related Persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement; and (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of New BGM. *See* New BGM Charter, Art. FOURTH, para. (c); Investor Rights Agreement, Section 2.2(j).

[16] DE Holdings is currently operating pursuant to the Sixth DE Holdings LLC Agreement. As a result, the Resolutions discussed herein were adopted pursuant to the Sixth DE Holdings LLC Agreement. Therefore, the Sixth DE Holdings LLC Agreement, rather than the Fourth DE Holdings LLC Agreement, is the operative governing document for this Section 4 of the Proposed Rule Change, notwithstanding the fact that Exhibit 5D is marked to show changes from the Fourth DE Holdings LLC Agreement.

[17] A ''Related Person'' is defined in Article I of the Sixth DE Holdings LLC Agreement as the following: ''with respect to any Person: (A) any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any Exchange Member, any Person that is associated with the Exchange Member (as determined using the definition of 'person associated with a member' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and an Exchange Member, any broker or dealer that is also an Exchange Member with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of [DE Holdings] or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.'' Pursuant to Article I of the Sixth DE Holdings LLC Agreement, ''Affiliate'' has the meaning set forth in Rule 12b–2 under the Act; ''Person'' is defined as any individual, partnership, joint stock company, corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department or agency or political subdivision of any government; and ''Exchange Member'' is defined as (i) any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act and that has been admitted to membership in the national securities exchange operated by a Company-Related SRO, or (ii) any associated person of any registered broker or dealer (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Act) that has been admitted to membership in the national securities exchange operated by a Company-Related SRO. A ''Company-Related SRO'' is defined in Article I as any Exchange Subsidiary of the DE Holdings that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act, and an ''Exchange Subsidiary'' is defined in Article I as the Exchange, EDGX, and any subsidiary of DE Holdings that is registered with the Commission as a national securities exchange. The Exchange notes that these definitions are substantively the same as the definitions contained in the Fourth DE Holdings LLC Agreement.

[18] Units are defined in Article I of the Sixth DE Holdings LLC Agreement as ''units of interest in the ownership and profits and losses of [DE Holdings] and such [LLC Member's] right to receive distributions in its capacity as a [LLC Member].'' This is the same definition of ''Units'' as set forth in the Fourth DE Holdings LLC Agreement.

[19] ''Percentage Interest'' is defined to mean, with respect to an LLC Member, the ratio of the number of Units held by the Member to the total of all of the issued and outstanding Units, expressed as a percentage. For purposes of Article XII and any references to Article XII, Percentage Interest also includes Units owned, directly or indirectly, of record or beneficially, by a Person, either alone or together with its Related Persons. Sixth DE Holdings LLC Agreement, Art. I, Section 1.1. This definition of Percentage Interest is the same definition as set forth in the Fourth DE Holdings LLC Agreement.

[20] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(1) and 12.1(a)(2). The DE Holdings Ownership Limitation is the same as the comparable provisions set forth in the Fourth DE Holdings LLC Agreement. *See* Fourth DE Holdings LLC Agreement, Art. XII, Sections 12.1(a)(1) and 12.1(a)(2).

[21] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(3). The DE Holdings Ownership Limitation is substantively the same as the comparable provision set forth in the Fourth DE Holdings LLC Agreement. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(3).

Holdings Ownership Limitation and the DE Holdings Voting Limitation may be waived (except with respect to Members and their Related Persons) pursuant to an amendment to the Sixth DE Holdings LLC Agreement and a resolution duly adopted by the Board of Managers of DE Holdings if, in connection with taking such action, the Board of Managers states in such resolution that it is its determination that the waiver:

- Will not impair the ability of either DE Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder;
- is otherwise in the best interests of DE Holdings, its LLC Members, and each DE Exchange;
- will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; [22]

Such an amendment shall not be effective until it is filed with and approved by the Commission.[23]

In granting such a waiver, the DE Holdings Board of Managers has the discretion to impose on the person and its Related Persons such conditions and restrictions that it deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of each DE Exchange.[24]

In addition, notwithstanding the above, the Sixth DE Holdings LLC Agreement provides [25] that in any case where a person, either alone or with its Related Persons, would own or vote more than the DE Holdings Ownership Limitation or DE Holdings Voting Limitation, respectively, upon consummation of any proposed Transfer [26] of Units, such a transaction will not become effective until the DE Holdings Board of Managers determines, by resolution, that such person and its Related Persons are not subject to any ''statutory disqualification,'' as defined in Section 3(a)(39) of the Act.[27]

As described above, upon Closing of the proposed Combination, New BGM will become the sole owner of DE Holdings. Additionally as discussed in more detail below, the Exchange is also seeking the Commission's approval for DE Holdings [sic] proposal to, contemporaneously with the Closing, replace the Sixth DE Holdings LLC Agreement with the New DE Holdings LLC Agreement. Unlike the Sixth DE Holdings LLC Agreement, the New DE Holdings LLC Agreement will not contain the DE Holdings Ownership Limitation or the DE Holdings Voting Limitation. While the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation will not be contained in the New DE Holdings LLC Agreement, the New DE Holdings LLC Agreement specifies that DE Holdings' only LLC Member will be New BGM,[28] and the New BGM Charter will contain substantively identical ownership and voting limitation provisions, which will also become effective contemporaneously with the Closing.[29]

As a result, New BGM's acquisition of ownership and voting rights in DE Holdings upon Closing would not cause New BGM to contravene the DE Holdings Ownership Limitation or DE Holdings Voting Limitation, because the Sixth DE Holdings LLC Agreement will be contemporaneously amended to eliminate the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation, and the New BGM Charter will be contemporaneously amended with respect to New BGM's stockholders.

Nevertheless, because the Combination will result in a change of ownership of DE Holdings (in that New BGM will become the sole owner of DE Holdings), the Exchange and the Board of Managers of DE Holdings each believe that it is appropriate for the Board of Managers of DE Holdings to adopt the Resolutions, attached as Exhibit 5A, making certain determinations with respect to New BGM and the Combination similar to those that would be necessary to waive the DE Holdings Ownership Limitation and DE Holdings Voting Limitation.[30]

Specifically, the Board of Managers of DE Holdings determined that:

- The acquisition of the proposed ownership by New BGM in DE Holdings will not impair the ability of the DE Exchanges to carry out their functions and responsibilities under the Act and the rules and regulations promulgated thereunder, is in the best interests of DE Holdings and its LLC Members and the DE Exchanges, and will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;
- the acquisition or exercise of the proposed voting rights by New BGM in DE Holdings will not impair the ability of each DE Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of DE Holdings, its LLC Members and the DE Exchanges, and that it will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;
- neither New BGM, nor any of its Related Persons, is subject to ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Act; [31] and
- neither New BGM, nor any of its Related Persons (excluding BATS Trading, which is an Exchange Member) [32] is an Exchange Member.[33]

The Board of Managers of DE Holdings also has determined that it has given due regard to the preservation of the independence of the self-regulatory function of each DE Exchange and to its obligations to investors and the general public, and determined that the actions to be taken pursuant to the Resolutions do not interfere with the effectuation of decisions by the board of each DE Exchange relating to its regulatory functions (including disciplinary

[22] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(b). Article XII, Section 12.1(b) of the Sixth DE Holdings LLC Agreement and of the Fourth DE Holdings LLC Agreement are substantively the same. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(b).

[23] *Id.*

[24] *Id.*

[25] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(c). Section 12.1(c) are the same for both the Fourth and the Sixth DE Holdings LLC Agreements. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(c).

[26] ''Transfer'' is defined in the Sixth DE Holdings LLC Agreement, Article I, Section 1.1 to mean, (i) when used as a verb, to sell, transfer, assign, encumber or otherwise dispose of, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and (ii) when used as a noun, a direct or indirect, voluntary or involuntary, sale, transfer, assignment, encumbrance or other disposition by operation of law or otherwise. The same definition of ''Transfer'' is set forth in Article I, Section 1.1 of the Fourth DE Holdings LLC Agreement.

[27] 15 U.S.C. 78c(a)(39).

[28] *See* New DE Holdings LLC Agreement, Art. II, Section 2.01.

[29] *See* New BGM Charter, Art. FIFTH, para. (b)(i).

[30] The waiver process for the DE Holdings Ownership Limitation and DE Holdings Voting Limitation is substantively the same in the Fourth DE Holdings LLC Agreement and in the Sixth DE Holdings LLC Agreement. *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(b) and Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(b).

[31] 15 U.S.C. 78c(a)(39).

[32] As noted above, BATS Trading is a routing broker-dealer and an Exchange Member that is affiliated with the BATS Exchanges, and a direct subsidiary of Current BGM. The same structure will continue to be in place following the Closing and BATS Trading will remain a direct subsidiary of BGM Holdings.

[33] In addition, the Resolutions contain a determination that the execution and delivery of the Merger Agreement by New BGM constituted notice of New BGM's intention to acquire ownership and voting rights in excess of the DE Holdings Ownership Limitation and DE Holdings Voting Limitation, respectively, in writing and not less than 45 days before the Closing. *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(d), which is the same provision as set forth in Art. XII, Section 12.1(d) of the Fourth DE Holdings LLC Agreement.

matters) or would not otherwise interfere with each DE Exchange's ability to carry out its responsibilities under the Act.

The Exchange has reviewed such Resolutions and requests that the Commission approve such Resolutions. The Exchange believes that the Commission should approve the Resolutions, as the Combination will not impair the ability of either DE Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder. The DE Exchanges will continue to operate and regulate their markets and Members as they have done prior to the Combination. Thus, each DE Exchange will continue to enforce the Act, the Commission's rules thereunder, and each Exchange's own rules, in the manner it does today. Further, the Commission will continue to have plenary regulatory authority over the DE Exchanges, as is currently the case with these entities.

The Exchange also notes that the Resolutions reflect the determination by the DE Holdings Board of Managers that the Combination and New BGM's resulting ownership and voting rights in DE Holdings are otherwise in the best interests of DE Holdings, its LLC Members, and the DE Exchanges.

In addition, the Exchange notes that notwithstanding the Resolutions and the Combination, the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation will remain in place with respect to potential future transactions involving the ultimate parent company of the DE Exchanges, New BGM. As described in more detail below, the Exchange is also proposing the adoption of the New BGM Charter and the New BGM Bylaws, which are modeled in large part on the Current BGM Charter and the Current BGM Bylaws (and include provisions substantially identical to the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation), creating an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange, and protect the independence of the Exchange's self-regulatory activities.

The Exchange therefore requests that the Commission approve the Resolutions, attached as Exhibit 5A.

5. Adoption of New BGM Charter and New BGM Bylaws

New BGM was incorporated on August 22, 2013, under the name BATS Global Markets Holdings, Inc., by filing a certificate of incorporation with the Secretary of State of Delaware. Upon incorporation, New BGM also adopted bylaws. New BGM is currently a shell company, with no material assets or operations. Therefore, neither its certificate of incorporation nor bylaws currently need or contain any provisions that would be appropriate for an entity that has direct or indirect ownership in a registered national securities exchange.

However, in connection with the Combination, upon Closing, New BGM will become (i) the indirect owner (through BGM Holdings) of each of the BATS Exchanges and BATS Trading, (ii) the indirect owner (through DE Holdings and DEI) of each of the DE Exchanges, and (iii) the indirect owner (through DE Holdings) of DE Route. As a result, the Exchange is proposing that in connection with New BGM's acquisition of indirect ownership in the Exchange, New BGM would amend and restate each of its certificate of incorporation and bylaws to adopt provisions designed to protect and maintain the integrity of the self-regulatory functions of the Exchange and to facilitate the ability of the Exchange and the Commission to carry out their regulatory and oversight obligations under the Act. Each of the New BGM Charter and the New BGM Bylaws is modeled on, and substantially similar to, the Current BGM Charter and Current BGM Bylaws, respectively, except with respect to the differences described below. The Exchange is filing with the Commission the New BGM Charter and New BGM Bylaws because, after the Combination, New BGM will be the ultimate parent company of the Exchange, and, as such, the New BGM Charter and New BGM Bylaws will be considered rules of the Exchange under Section 19(b)(1) of the Act.[34]

a. New BGM Charter

The New BGM Charter is proposed to be adopted as the Amended and Restated Certificate of Incorporation of BATS Global Markets Holdings, Inc. However, the New BGM Charter will effect an amendment to the name of the corporation upon Closing such that it will be renamed ''BATS Global Markets, Inc.'' [35] The change of name is intended to reflect the fact that New BGM is succeeding to the business of Current BGM in all respects, notwithstanding the technical change of corporate entity that will result from the structure of the Combination.

The New BGM Charter, which is attached as Exhibit 5B, is substantially similar to the Current BGM Charter, which the Commission has previously found to be consistent with the Act.[36] The Current BGM Charter provides that (i) no person, either alone or together with its Related Persons,[37] may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of its capital stock (the ''BGM Ownership Limitation'') and (ii) subject to certain exceptions, no person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any of various

[34] 15 U.S.C. 78s(b)(1).

[35] *See* New BGM Charter, Art. FIRST.

[36] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[37] The Current BGM Charter generally defines a ''Related Person'' as, with respect to any person, (i) any ''affiliate'' of such person (as defined in Rule 12b–2 under the Act), (ii) any other person with which such first person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of Current BGM (provided no person is deemed a Related Person pursuant to clause (ii) solely as a result of such person's being or becoming a party to the Investor Rights Agreement entered into by and among Current BGM and the stockholders named therein on January 1, 2008), (iii) in the case of a person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Act) or director of such person and, in the case of a person that is a partnership or limited liability company, any general partner, managing member or manager of such person, as applicable; (iv) in the case of any person that is a registered broker or dealer that has been admitted to membership in either of the BATS Exchanges (for purposes of this definition of ''Related Person,'' each such national securities exchange shall be referred to generally as an ''Exchange'' and any member of such Exchange, an ''Exchange Member''), any person that is associated with the Exchange Member (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Act); (v) in the case of a person that is a natural person and Exchange Member, any broker or dealer that is also an Exchange Member with which such person is associated; (vi) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse who has the same home as such person or who is a director or officer of Current BGM or any of its parents or subsidiaries; (vii) in the case of a person that is an executive office (as defined under Rule 3b–7 under the Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (viii) in the case of a person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable. *See* Current BGM Charter, Art. FIFTH, para. (a)(ii).

arrangements, vote or cause the voting of shares representing more than 20 percent of the voting power of its then issued and outstanding capital stock (the ''BGM Voting Limitation'').[38] The New BGM Charter also will contain provisions imposing the BGM Ownership Limitation and the BGM Voting Limitation on any owners or prospective owners of New BGM.[39] In addition, similar to the Current BGM Charter, the New BGM Charter prohibits a member of any of New BGM's registered national securities exchange subsidiaries, either alone or together with such member's Related Persons,[40] from owning, directly or indirectly, of record or beneficially, more than 20 percent of shares of any class of capital stock of New BGM.[41] As in the Current BGM Charter, purported sales, transfers, assignments, pledges or ownership that would result in a violation of the BGM Ownership Limitation will not be recognized by New BGM to the extent of any ownership in excess of the limitation, and New BGM shall have the right to redeem the shares in excess of the applicable ownership limit for their fair market value. In addition, in contrast to the Current BGM Charter, the New BGM Charter would clarify that these same non-recognition and redemption rights apply in the case of a purported conversion of shares resulting in a violation of the BGM Ownership Limitation, as apply to purported sales, transfers, assignments, pledges or ownership that result in such a violation.[42] Similarly, as in the Current BGM Charter, purported voting or voting arrangements in violation of the BGM Voting Limitation will not be honored by New BGM to the extent of any voting in excess of the limitation.[43]

These provisions are designed to prevent any stockholder from exercising undue control over the operation of the BATS Exchanges or the DE Exchanges (together, the ''Exchange Subsidiaries''), each of which New BGM will indirectly own following the Combination, and to assure that each Exchange Subsidiary and the Commission are able to carry out their regulatory obligations under the Act.

Further, consistent with the Current BGM Charter, the New BGM Charter provides that, for so long as New BGM controls, directly or indirectly, a registered national securities exchange, before any amendment to the New BGM Charter may be effective, those changes must be submitted to the board of directors of each such exchange, and if the amendment is required to be filed with, or filed with and approved by, the Commission pursuant to Section 19(b) of the Act,[44] such change shall not be effective until filed with, or filed with and approved by, the Commission.[45] The Exchange believes that these provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The provisions of the New BGM Charter differ from those of the Current BGM Charter in certain limited respects:

• The total number of shares of common stock that New BGM will have authority to issue is 75,000,000, divided between 55,000,000 shares designated as Voting Common Stock, 10,000,000 shares designated as Class A Non-Voting Common Stock, and 10,000,000 shares designated as Class B Non-Voting Common Stock.[46] This represents an increase from the 25,000,000 shares that Current BGM is authorized to issue (divided between 24,500,000 shares designated as Voting Common Stock and 500,000 shares designated as Non-Voting Common Stock). The increase in authorized shares is due to the greater number of stockholders that New BGM will have following the Combination, as compared to Current BGM, as well as to provide an adequate number of authorized shares to allow for potential future issuances. The rights and preferences of the Class A Non-Voting Common Stock and Class B Non-Voting Common Stock are identical in all respects, except for conversion rights. Class A Non-Voting Common Stock converts into Voting Common Stock automatically upon transfer to a person other than a Related Person of such holder, upon termination of the Investor Rights Agreement, and may be converted into Voting Common Stock at any time at the option of the holder.[47] Class B Non-Voting Common Stock, however, may only be converted into Voting Common Stock following a ''Qualified Transfer.''[48] The term ''Qualified Transfer'' means a sale or other transfer of Class B Non-Voting Common Stock by a holder of such shares: (a) In a widely distributed public offering registered pursuant to the Securities Act of 1933;[49] (b) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Class B Non-Voting Common Stock upon such transfer pursuant to Article FOURTH of the New BGM Charter); (c) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of New BGM without regard to any transfer of shares from the transferring holder of shares of Class B Non-Voting Common Stock; or (d) to New BGM. As used above, the term ''Affiliate'' means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and ''control'' (including, with correlative meanings, the terms ''controlled by'' and ''under common control with'') has the meaning set forth in 12 CFR 225.2(e)(1).[50] The Exchange understands that certain persons that will become stockholders

[38] *See* Current BGM Charter, Art. FIFTH, para. (b).

[39] *See* New BGM Charter, Art. FIFTH, paras. (b)(i)(A) and (C).

[40] The New BGM Charter defines ''Related Persons'' consistent with the definition in the Current BGM Charter, except that (i) the definition of ''Exchange'' for purposes of such definition is expanded to refer to any national securities exchange that is a direct or indirect subsidiary of New BGM, and (ii) the reference to the ''Investor Rights Agreement'' has been revised to refer to the Investor Rights Agreement to be entered into upon Closing.

[41] *See* New BGM Charter, Art. FIFTH, para. (b)(i)(B).

[42] *See* New BGM Charter, Art. FIFTH, paras. (d)–(e).

[43] *See* New BGM Charter, Art. FIFTH, para. (d).

[44] 15 U.S.C. 78s(b).

[45] *See* New BGM Charter, Art. TWELFTH.

[46] *See* New BGM Charter, Art. FOURTH, para. (a).

[47] *See* New BGM Charter, Art. FOURTH, para. (c). In addition, Class A Non-Voting Common Stock held by ISE Holdings will convert automatically if ISE Holdings includes any such shares in any public offering of stock of New BGM.

[48] The Exchange notes that, notwithstanding the conversion features, neither Class A Non-Voting Common Stock nor Class B Non-Voting Common Stock may convert into Voting Common Stock if such a conversion would cause the stockholder to own, alone or with its Related Persons, directly or indirectly, of record or beneficially (i) more than 40% of any class of capital stock of New BGM in contravention of the BGM Ownership Limitation (unless a waiver is granted by the board of directors of New BGM and approved by the Commission), or (ii) in the case of an Exchange Member stockholder, more than 20% of any class of capital stock of New BGM. *See* New BGM Charter, Art. FIFTH, para. (b)(i)(A) and (B). In addition, to the extent that any Class A Non-Voting Common Stock or Class B Non-Voting Common Stock is converted into Voting Common Stock, the stockholder owning the converted Voting Common Stock would be subject to the BGM Voting Limitation and not permitted, either alone or together with its Related Persons, at any time, directly, indirectly or pursuant to any of various arrangements, to vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the then issued and outstanding capital stock of New BGM (unless a waiver is granted by the board of directors of New BGM and approved by the Commission). *See* New BGM Charter, Art. FIFTH, para. (b)(i)(C).

[49] 15 U.S.C. 77a.

[50] *See* New BGM Charter, Art. FOURTH, para. (d)(i).

of New BGM as of the Closing may be, or may become, subject to restrictions under the Bank Holding Company Act of 1956 [51] on the extent to which they are permitted to own voting stock of New BGM or certain types of non-voting stock convertible into voting stock of New BGM. The Exchange understands that New BGM's Class B Non-Voting Common Stock is designed to permit a stockholder that may be subject to such restrictions to maintain an economic interest in New BGM, through ownership of Class B Non-Voting Common Stock, in excess of its voting interest and in compliance with such restrictions, for purposes of the Bank Holding Company Act of 1956.

• The term ''Exchange,'' as used in the New BGM Charter, is defined to refer to ''any national securities exchange registered under Section 6 of the Act with the [Commission] that is a direct or indirect subsidiary'' of New BGM.[52] The term ''Exchange'' is used throughout the New BGM Charter to refer to subsidiaries of New BGM that are registered as national securities exchanges. This definition differs from the definition contained in the Current BGM Charter, which defines ''Exchange'' by specific reference to the names of the BATS Exchanges. Because, following the Combination, the DE Exchanges will also become indirect subsidiaries of New BGM, the definition in the New BGM Charter has been expanded so as to capture the DE Exchanges in addition to the BATS Exchanges.

• The New BGM Charter reflects certain non-substantive differences and typographical corrections, including conforming the spelling of ''Bylaws'' throughout the organizational documents of New BGM and its proposed subsidiaries.

b. New BGM Bylaws

As with the New BGM Charter, the New BGM Bylaws, which are set forth in Exhibit 5C, contain provisions substantially similar to those of the Current BGM Bylaws, which the Commission has previously found to be consistent with the Act.[53] This includes provisions that are designed to maintain the independence of the self-regulatory functions of the Exchange Subsidiaries. Consistent with the Current BGM Bylaws, the New BGM Bylaws provide that New BGM and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each Exchange Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of the Exchange Subsidiary, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or the Exchange Subsidiary, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[54] In addition, for so long as New BGM controls, directly or indirectly, such Exchange Subsidiary, New BGM's books and records shall be subject at all times to inspection and copying by the Commission and each Exchange Subsidiary, provided that such books and records are related to the operation or administration of the Exchange Subsidiary.[55] In addition, to the extent they are related to the operation or administration of an Exchange Subsidiary, the books, records, premises, officers, directors, agents, and employees of New BGM shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[56]

The New BGM Bylaws also provide that all books and records of an Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of the Exchange Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of New BGM shall not be made available other than to those officers, directors, employees and agents of New BGM that have a reasonable need to know the contents thereof, and shall be retained in confidence by New BGM, the members of its board of directors, its officers, employees and agents, and not be used for any non-regulatory purposes.[57] The New BGM Bylaws, however, specify that the New BGM Bylaws (including these confidentiality provisions) shall not be interpreted so as to limit or impede the rights of the Commission or an Exchange Subsidiary to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of New BGM to disclose such confidential information to the Commission or an Exchange Subsidiary.[58]

In addition, for so long as New BGM, directly or indirectly, controls an Exchange Subsidiary, the directors, officers, employees, and agents of New BGM are required to give due regard to the preservation of the independence of each Exchange Subsidiary's self-regulatory functions, and to its obligations to investors and the general public, and shall not take any actions which would interfere with the effectuation of decisions by the board of directors of such Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with such Exchange Subsidiary's ability to carry out its responsibilities under the Act.[59] Further, the New BGM Bylaws require that, for so long as New BGM controls, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of the New BGM Bylaws may be effective, those changes must be submitted to the board of directors of each Exchange Subsidiary, and, if such amendment is required to be filed with, or filed with and approved by, the Commission before the changes may be effective under Section 19 of the Act, and the rules promulgated thereunder by the Commission or otherwise, then the proposed changes to the New BGM Bylaws shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.[60] The Exchange believes that these provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The provisions of the New BGM Bylaws differ from those of the Current BGM Bylaws in certain limited respects:

• The New BGM Bylaws provide for two separate corporate officer positions, one known as the Chief Executive

[51] 12 U.S.C. 1841 *et seq.*

[52] *See* New BGM Charter, Art. FIFTH, para. (a)(ii).

[53] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[54] *See* New BGM Bylaws, Art. XIV, Section 14.05.

[55] *See* New BGM Bylaws, Art. XIV, Section 14.03.

[56] *Id.*

[57] *See* New BGM Bylaws, Art. XIV, Section 14.02.

[58] *See id.*

[59] *See* New BGM Bylaws, Art. XIV, Section 14.01.

[60] *See* New BGM Bylaws, Art. XII.

Officer and another known as the President. The Current BGM Bylaws, in contrast, provide for a combined position known as the President and Chief Executive Officer.[61] Under the New BGM Bylaws, the Chief Executive Officer will be the chief executive officer of New BGM and subject to the control of the board of directors of New BGM, has general supervision, direction and control of the business and affairs of New BGM,[62] while the President will be a senior executive officer with certain designated powers, among other things, to serve as the chief executive officer in the absence or disability of the Chief Executive Officer.[63] References to corporate officers throughout the New BGM Bylaws reflect this difference. The difference in corporate officer designations is intended to facilitate the anticipated executive leadership of New BGM following the Combination. It is anticipated that, following the Combination, the current President and Chief Executive Officer of Current BGM will become the Chief Executive Officer of New BGM, while the current Chief Executive Officer of DE Holdings will become the President of New BGM.

• The New BGM Bylaws provide for a board of directors consisting of 15 members, or such other number of members as the Board of Directors determines from time to time. The Current BGM Bylaws provide that the Board of Directors will consist of one or more members, as determined by resolution of the Board of Directors.[64] The size of the New BGM Board is proposed initially to be set at 15 in order to reflect the anticipated initial membership of the Board of Directors of New BGM. The Current BGM Board of Directors currently has 13 members. After the Closing, it is anticipated that the New BGM Board of Directors will consist of the same members as the Current BGM Board, except that the New BGM Board will be expanded by two members, to include representatives of two additional firms that are currently LLC Members of DE Holdings but will, by virtue of the Combination, become stockholders of New BGM.

• Article V, Section 5.02(a) of the Current BGM Bylaws sets forth the process for representatives of Current BGM to attend meetings of, and vote the shares of, any corporation, partnership or other entity (including each BATS Exchange) in which Current BGM may hold stock, partnership, or other equity interests. This provision parenthetically refers to the BATS Exchanges to reflect the fact that Current BGM is the direct owner of each of the BATS Exchanges. However, following the Combination, New BGM will instead be the direct owner of each of BGM Holdings and DE Holdings. The corresponding provision in the New BGM Bylaws therefore contains a similar parenthetical reference to its ownership of BGM Holdings and DE Holdings, rather than the BATS Exchanges.[65] In addition, the New BGM Bylaws include a reference to meetings of ''members'' of any ''limited liability company'' in which New BGM holds equity interests, which terms are not included in the corresponding provision in the Current BGM Bylaws.[66] This is intended to reflect the fact that New BGM will, following the Closing, be the sole member of DE Holdings, a limited liability company, while Current BGM does not hold equity in any limited liability companies.[67] In addition, the Current BGM Bylaws contain provisions that relate to Current BGM's voting of shares in the election of directors, and members of the Member Nominating Committees, of the BATS Exchanges.[68] These provisions will not be applicable to New BGM and are not included in the New BGM Bylaws, as the BATS Exchanges will be directly owned by BGM Holdings, rather than New BGM.[69]

• The term ''Exchange,'' as used in the New BGM Bylaws, is defined to refer to ''any national securities exchange registered with the [Commission] under Section 6 of the 1934 Act that is a direct or indirect subsidiary'' of New BGM.[70] The term ''Exchange'' is used throughout the New BGM Bylaws to refer to subsidiaries of New BGM that are registered as national securities exchanges. The Current BGM Bylaws either refer to each BATS Exchange by name or define ''Exchange'' by specific reference to the BATS Exchanges. Because, following the Combination, the DE Exchanges will also become indirect subsidiaries of New BGM, the definition in the New BGM Bylaws has been expanded so as to capture the DE Exchanges in addition to the BATS Exchanges.

• The New BGM Bylaws reflect certain non-substantive updates to dates of agreements and cross-references, as well as typographical corrections, including conforming the spelling of ''Bylaws'' throughout the organizational documents of New BGM and its proposed subsidiaries.

6. New DE Holdings LLC Agreement

After Closing, DE Holdings will continue to hold direct ownership of DEI and indirect ownership of the DE Exchanges, but it will no longer be the ultimate holding company of the corporate structure with a number of LLC Members. Instead, DE Holdings will be a wholly owned subsidiary of New BGM, and, as a result, New BGM will be the only LLC member of DE Holdings (the ''Sole LLC Member''). Accordingly, the Sixth DE Holdings LLC Agreement would no longer be appropriate.[71] Therefore, DE Holdings proposes to restate the Sixth DE Holdings LLC Agreement in its entirety and rename it as the Seventh Amended and Restated Limited Liability Company Operating Agreement.[72] The New DE Holdings LLC Agreement, which is set forth in Exhibit 5D, is drafted to reflect DE Holdings' new status as an intermediate holding company. As required by Article 15, Section 15.2 of

[61] *Compare* New BGM Bylaws, Art. IV, Section 4.01 and 4.02 *with* Current BGM Bylaws, Art. IV, Section 4.01 and 4.02(c) and (d).

[62] *See* New BGM Bylaws, Art. IV, Section 4.02(c).

[63] *See* New BGM Bylaws, Art. IV, Section 4.02(d).

[64] *Compare* New BGM Bylaws, Art. III, Section 3.01 *with* Current BGM Bylaws, Art. III, Section 3.01.

[65] *See* New BGM Bylaws, Art. V, Section 5.02(a).

[66] *Id.*

[67] *Compare* New BGM Bylaws, Art. V, Section 5.02 *with* Current BGM Bylaws, Art. V, Section 5.02(a).

[68] *See* Current BGM Bylaws, Art. V, Sections 5.02(b) and (c).

[69] The Exchange understands that substantially identical provisions are instead included in the BGM Holdings Bylaws.

[70] *See* New BGM Bylaws, Art. X, Section 10.02.

[71] As noted previously, DE Holdings currently operates pursuant to the Sixth DE Holdings LLC Agreement. The Fourth DE Holdings LLC Agreement was the last version filed with and approved by the Commission. The Exchange and EDGX Boards determined that a rule filing was unnecessary to reflect the changes made to the Fourth DE Holdings LLC Agreement and the Fifth DE Holdings LLC Agreement. Specifically, the Fourth DE Holdings LLC Agreement or Fifth DE Holdings LLC Agreement was amended to reflect that (i) DE Holdings could issue options to purchase equity interests in DE Holdings to officers and employees in conjunction with an approved equity plan; (ii) because the DE Exchanges became national securities exchanges, a facility of ISE Stock Exchange LLC (''ISE Exchange'') ceased operations; (iii) the Commission had approved DEI as a wholly-owned subsidiary of DE Holdings and direct parent company of the DE Exchanges; (iv) certain rights and obligations related to the transaction in which ISE Holdings became an LLC Member of DE Holdings expired on December 23, 2010; (v) service agreements with certain LLC Members had been updated, and (vi) that Units of DE Holdings were held by Knight Capital Holdings LLC and not Knight Trimark, Inc., and Citadel Securities LLC and not Citadel Derivatives Group LLC. Therefore, to ensure regulatory continuity, the Exchange will discuss the changes it proposes to make to the Fourth DE Holdings LLC Agreement, rather than the Sixth DE Holdings LLC Agreement, to create the New DE Holdings LLC Agreement. As necessary, the Exchange notes where the Fourth DE Holdings LLC Agreement and the Sixth LLC Agreement differ as a result of one or more of the above categories of changes.

[72] The Exchange is not proposing any changes to the Certificate of Formation of DE Holdings.

the Sixth DE Holdings LLC Agreement, DE Holdings submitted its proposed amendments to the Sixth DE Holdings LLC Agreement to the Board of Directors of the Exchange.[73] The Board of Directors of the Exchange determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder.[74] Therefore, the Exchange requests the Commission's approval of the New DE Holdings LLC Agreement pursuant to this Proposed Rule Change. The Exchange believes that the proposed changes to the Sixth DE Holdings LLC Agreement are consistent with the requirements of the Act.

Following the Closing, DE Holdings will continue to be the sole stockholder of DEI, which, in turn, holds 100% of the equity of the DE Exchanges. Although DE Holdings will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the DE Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each DE Exchange.[75] The New DE Holdings LLC Agreement therefore continues to include the provisions in the Fourth DE Holdings LLC Agreement that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b)[76] and 19(g)[77] of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. Specifically, the New DE Holdings LLC Agreement would contain the following provisions which are substantially similar to the comparable provisions in the Fourth DE Holdings LLC Agreement.

The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, would require that, for so long as DE Holdings, directly or indirectly, controls an Exchange Subsidiary,[78] DE Holdings' LLC Member, officers, employees and agents give due regard to the preservation of the independence of the self-regulatory function of such Exchange Subsidiary, as well as to its obligations to investors and the general public, and not take any actions that would interfere with the effectuation of any decisions by a board of directors of an Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of such Exchange Subsidiary to carry out its responsibilities under the Act.[79] The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, would require that DE Holdings comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and each Exchange Subsidiary, as applicable, pursuant to and to the extent of their respective regulatory authority.[80] Pursuant to the New DE Holdings LLC Agreement, DE Holdings' officers, employees and agents, by virtue of their acceptance of such positions, shall be deemed to agree (x) to comply with the U.S. federal securities laws and the rules and regulations thereunder; and (y) to cooperate with the Commission and each Exchange Subsidiary in respect of the Commission's oversight responsibilities regarding the Exchange Subsidiaries and the self-regulatory functions and responsibilities of the Exchange Subsidiaries, and DE Holdings will take reasonable steps to cause its officers, employees and agents to so cooperate.[81]

Furthermore, to the fullest extent permitted by law, DE Holdings and its officers, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each Exchange Subsidiary, as applicable, for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder arising out of, or relating to, the activities of an Exchange Subsidiary.[82] By virtue of their acceptance of any such position, DE Holdings and its officers, employees and agents also will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission and the Exchange Subsidiaries that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[83]

The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, also would contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DE Holdings. Pursuant to the New DE Holdings LLC Agreement, to the extent they are related to the operation or administration of the Exchange Subsidiary, the books, records, premises, officers, agents, and employees of DE Holdings are deemed to be the books, records, premises, officers, agents and employees of such Exchange Subsidiary for purposes of, and subject to oversight pursuant to, the Act.[84] In addition, for as long as DE Holdings controls, directly or indirectly, an Exchange Subsidiary, DE Holdings' books and records shall be subject at all times to inspection and copying by the Commission and the applicable Exchange Subsidiary, provided that such books and records are related to the operation or administration of an Exchange Subsidiary.[85]

The New DE Holdings LLC Agreement, similar to the Fourth DE Holdings LLC Agreement, also would provide that, to the fullest extent permitted by applicable law, all books and records of an Exchange Subsidiary reflecting confidential information

[73] DE Holdings also submitted its proposed amendments to the Sixth DE Holdings LLC Agreement to the EDGX Board of Directors. As discussed in EDGX's companion rule filing, the EDGX Board of Directors also determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder. *See* SR–EDGX–2013–43.

[74] 15 U.S.C. 78s(b).

[75] The Exchange notes that the proposed Combination will not affect the explicit agreement between the Exchange and DE Holdings which requires DE Holdings to provide adequate funding for the Exchange's operations, including the regulation of the Exchange. *See* Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010).

[76] 15 U.S.C. 78f(b).

[77] 15 U.S.C. 78s(g).

[78] For the purposes of the New DE Holdings LLC Agreement, the term ''Exchange Subsidiary'' is defined to include the Exchange and EDGX. Section 3.04(b) of the New DE Holdings LLC Agreement.

[79] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.1 *with* New DE Holdings LLC Agreement, Art. X, Section 10.01(a). These two provisions are substantively identical. Obsolete references to the ISE Exchange and to International Securities Exchange, LLC (''ISE LLC'') have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement.

[80] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.2 *with* New DE Holdings LLC Agreement, Art. X, Section 10.02(a).

[81] *Id.*

[82] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.3 *with* New DE Holdings LLC Agreement, Art. X, Section 10.03(a).

[83] *Id.*

[84] *Compare* Fourth DE Holdings LLC Agreement, Art. XI, Section 11.2(b) *with* New DE Holdings LLC Agreement, Art. XI, Section 11.02(b). These two provisions are the same except obsolete references to the ISE Exchange and to ISE LLC have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement. References to managers and directors have also been deleted because DE Holdings will be managed by its Sole LLC Member, new BGM, and will not be managed by managers or directors.

[85] *Id.*

pertaining to the self-regulatory function of an Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of DE Holdings, and the information contained in those books and records shall (i) be retained in confidence by DE Holdings, its Sole LLC Member, and its officers, employees and agents, and (ii) not be used for any non-regulatory purposes.[86] The New DE Holdings LLC Agreement provides, however, that the foregoing shall not be interpreted so as to limit or impede the rights of the Commission or an Exchange Subsidiary to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of the Sole LLC Member, or any of DE Holdings' officers, directors, employees or agents to disclose such information to the Commission or an Exchange Subsidiary.[87]

Furthermore, the New DE Holdings LLC Agreement would require that DE Holdings take reasonable steps necessary to cause its current officers, employees and agents and prospective officers, employees and agents, prior to the commencement of such Person's employment, appointment or other service, to consent in writing to the applicability of Section 11.02, and Article X, of the New DE Holdings LLC Agreement with respect to activities related to an Exchange Subsidiary.[88]

In addition, the New DE Holdings LLC Agreement would provide that, for so long as DE Holdings, directly or indirectly, controls an Exchange Subsidiary, before any amendment to or repeal of any provision of the New DE Holdings LLC Agreement shall be effective, those changes must be submitted to the board of directors of each Exchange Subsidiary, and if the same must be filed with or filed with and approved by the SEC before the changes may be effective, under Section 19 of the Act and the rules and regulations promulgated thereunder by the SEC or otherwise,[89] then the proposed changes to the New DE Holdings LLC Agreement shall not be effective until filed with or filed with and approved by the Commission, as the case may be.[90]

The Exchange also proposes that certain provisions of the Fourth DE Holdings LLC Agreement be deleted in their entirety or revised and simplified to reflect the transfer of ownership of DE Holdings to New BGM from the existing LLC Members. First, in light of the change in ownership, the Exchange proposes to eliminate the DE Holdings Ownership and Voting Limitations set forth in the Fourth DE Holdings LLC Agreement and replace them with a provision that identifies New BGM as the Sole LLC Member.[91] The identification of the Sole LLC Member of DE Holdings is designed to assure that any change to the indirect ownership or control of the DE Exchanges occurs through a change in the ownership or control of New BGM, or in accordance with the rule filing process described above. If the change of control occurs through a change in the ownership or control of New BGM, any purported change of such ownership or control would need to comply with the New BGM Charter and New BGM Bylaws, including the BGM Ownership Limitation and the BGM Voting Limitation (or a Commission-approved waiver therefrom).

In addition, the Exchange proposes to delete various other provisions that are applicable to a limited liability company with multiple LLC Members, but not to one with a Sole LLC Member. The more significant changes include the following:[92]

- The Exchange proposes that DE Holdings delete Article IV of the Fourth DE Holdings LLC Agreement regarding equity interests of DE Holdings. Article IV, among other things, provides that equity interests in DE Holdings are represented by Units,[93] authorizes DE Holdings to issue certificates evidencing the Units, and requires the maintenance of books for the purpose of registering the Transfer of Units. In contrast, Section 4.01 of the New DE Holdings LLC Agreement, which describes the capital structure of DE Holdings, states that the capital structure of DE Holdings consists of one class of common interests. All such common interests are identical with each other in every respect, and the LLC Member owns all of the common interests issued and outstanding.
- The Exchange proposes that DE Holdings delete Article V of the Fourth DE Holdings LLC Agreement regarding the capital contributions of the LLC Members, and replace it with Section 4.02 of the New DE Holdings LLC Agreement. Article V of the Fourth DE Holdings LLC Agreement describes each LLC Member's capital contribution, including its valuation,[94] and the terms of any additional capital contributions required of LLC Members.[95] In contrast, Section 4.02 of the New DE Holdings LLC Agreement states that a capital contributions account shall be maintained for the LLC Member, to which contributions shall be credited and against which distributions of capital contributions shall be charged. From time to time, the LLC Member may determine that DE Holdings requires capital and may make capital contributions in an amount determined by the LLC Member, and such contributions shall be credited to the LLC Member's capital contributions account.
- The Exchange proposes to delete Article VI of the Fourth DE Holdings LLC Agreement, which describes (i) the rights of LLC Members in the event of a Transfer[96] of Units, including the right of first refusal, drag-along rights and pre-emptive rights,[97] (ii) the general restrictions on Transfers of Units and the admission of new LLC Members; and (iii) the requirement for the Board to keep a list of LLC Members and the

[86] *Compare* Fourth DE Holdings LLC Agreement, Art. XI, Section 11.2(a) *with* New DE Holdings LLC Agreement, Art. XI, Section 11.02(a).

[87] *Id.*

[88] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.4 *with* New DE Holdings LLC Agreement, Art. X, Section 10.04.

[89] 15 U.S.C. 78s.

[90] *Compare* Fourth DE Holdings LLC Agreement, Art. XV, Section 15.2(b) *with* New DE Holdings LLC Agreement, Art. XII, Section 12.02(b). These two provisions are the same except obsolete references to the ISE Exchange and to ISE LLC have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement. In addition, this provision has been revised to reflect changes in the amendment process, as described above, and to reflect additional non-material changes.

[91] *See* New DE Holdings LLC Agreement, Art. II, Section 2.01.

[92] The Exchange also proposes a variety of other changes, including, but not limited to, (1) replacing the existing Recitals with a description of the Combination; (2) deleting Article I, which includes the Definitions section, because the definitions are generally applicable to deleted provisions; and (3) deleting Sections 7.17 (Tax Matters Partner), 7.18 (Restrictions on Foreign Operations) and 7.19 (Conversion to Corporation; Registration Rights; Initial Public Offering); 10.7 (Other Activities of Members); and 10.8 (Use of Trade Name and Trademarks), among others.

[93] ''Units'' are defined as the units of interest in the ownership and profits and losses of DE Holdings and such LLC Member's right to receive distributions in its capacity as a LLC Member. *See* Fourth DE Holdings LLC Agreement, Art. I, Section 1.1.

[94] *See* Fourth DE Holdings LLC Agreement, Art. V, Section 5.1.

[95] *See* Fourth DE Holdings LLC Agreement, Art. V, Section 5.2.

[96] A ''Transfer'' means (i) when used as a verb, to sell, transfer, assign, encumber or otherwise dispose of, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and (ii) when used as a noun, a direct or indirect, voluntary or involuntary, sale, transfer, assignment, encumbrance or other disposition by operation of law or otherwise. *See* Fourth DE Holdings LLC Agreement, Art. I, Section 1.1.

[97] *See* Fourth DE Holdings LLC Agreement, Art. VI, Sections 6.2, 6.3 and 6.4, respectively.

number of Units and Percentage Interest of each LLC Member. In contrast, Article VII of the New DE Holdings LLC Agreement states that the Sole LLC Member may not sell, assign, transfer, convey, gift, exchange or otherwise dispose of any or all of its common interests except pursuant to an amendment to the New DE Holdings LLC Agreement, which shall not be effective until filed with and approved by the Commission under Section 19 of the Act and the rules and regulations promulgated thereunder by the Commission or otherwise, as the case may be. After such amendment is effective and, upon receipt by DE Holdings of a written agreement executed by the person or entity to whom such common interests are to be transferred agreeing to be bound by the terms of the New DE Holdings LLC Agreement, such person shall be admitted as an LLC Member of DE Holdings. In addition, Section 2.05 of the New DE Holdings LLC Agreement states that new LLC Members of DE Holdings shall be admitted only upon the approval of the Sole LLC Member and pursuant to an amendment to the New DE Holdings LLC Agreement, which shall not be effective until filed with and approved by the Commission under Section 19 of the Act and the rules and regulations promulgated thereunder by the SEC or otherwise.[98]

• The Exchange proposes that DE Holdings delete Sections 7.1, 7.2, 7.3(c), 7.3(e), 7.4–7.9, and 7.14–7.19 of the Fourth DE Holdings LLC Agreement regarding the governance of DE Holdings.[99] Section 7.1 and 7.2(a) provide for the governance of DE Holdings by a Board of Managers, which is populated by representatives of various LLC Members. Section 7.2(b) permits the Board to designate committees subject to certain requirements, including the representation of certain significant LLC Members on the committee. Section 7.3(c) addresses matters related to Owner Directors of the Exchange and EDGX. As discussed below in Section 8 of this Proposed Rule Change, the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange and of EDGX, thereby making this provision unnecessary. Section 7.3(e) addresses meetings of equity holders of subsidiaries that are not exchanges. Sections 7.4 and 7.5 set forth requirements for board and committee meetings, and Section 7.6 permits the election of a Chairman of the Board. Section 7.7 sets forth the circumstances under which certain actions require supermajority board approval, majority board approval and/or the approval of a majority of all or a subset of LLC Members. Under the New DE Holdings LLC Agreement, DE Holdings will be managed by New BGM, as the Sole LLC Member, rather than a board.[100] Section 7.8 prohibits LLC Members from entering into voting trusts. Section 7.9 describes how Managers are agents of DE Holdings. Because DE Holdings will not have a Board of Managers or multiple LLC Members after Closing, these provisions would no longer be relevant.[101] The Exchange also proposes to delete Sections 7.14 through 7.19, which address, respectively, the powers of members, non-solicitation and confidentiality, reliance by third parties, the tax matters partner, restrictions on foreign operations, and the conversion to a corporation, registration rights and an initial public offering.

• The Exchange proposes to replace Article VIII of the Fourth DE Holdings LLC Agreement regarding distributions with the more simplified version as set forth in Article V, Section 5.02 of the New DE Holdings LLC Agreement. For example, Article VIII of the Fourth DE Holdings LLC Agreement addresses tax distributions to LLC Members and explains how withholdings on behalf of LLC Members are treated as distributions. Article V, Section 5.02 of the New Holdings LLC Agreement does not address these issues.

• The Exchange proposes to replace Article IX of the Fourth DE Holdings LLC Agreement with the more simplified version in Article V, Section 5.01 of the New DE Holdings LLC Agreement. Article IX of the Fourth DE Holdings LLC Agreement provides, among other things, for the calculation and allocation of profits and losses among LLC Members in order to determine distributions to LLC Members. In contrast, Article V, Section 5.01 does not address such issues because all allocations of profits and losses are made to the Sole LLC Member.

7. Amendments to DEI Certificate of Incorporation and DEI Bylaws

After Closing, DEI will continue to be a wholly owned subsidiary of DE Holdings and will continue to hold direct ownership of the DE Exchanges. DEI, however, will have a new ultimate parent company, New BGM. Therefore, the Exchange proposes that DEI make minor revisions to its Certificate of Incorporation and Bylaws to reflect certain aspects of the Combination.

As required by Article EIGHTH, Paragraph 3 of the current DEI Certificate of Incorporation and Article VI, Section 6.4 of the current DEI Bylaws, DEI submitted its proposed amendments to the DEI Certificate of Incorporation and DEI Bylaws to the Board of Directors of the Exchange. The Board of Directors of the Exchange determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder.[102] Therefore, the Exchange requests the Commission's approval of the proposed amendments to the DEI Certificate of Incorporation and DEI Bylaws pursuant to this Proposed Rule Change. The Exchange believes that the proposed changes to the DEI Certificate of Incorporation and DEI Bylaws are consistent with the requirements of the Act.

a. DEI Certificate of Incorporation

In connection with the Combination, the Exchange proposes that DEI amend and restate its Certificate of Incorporation. The DEI Certificate of Incorporation, as revised, is set forth in Exhibit 5E. DEI proposes to make the following amendments to its Certificate of Incorporation:

• Deleting as outdated Article FIFTH regarding the name and address of the sole incorporator.

• Deleting paragraphs 1 and 2 of Article SIXTH (renumbered Article FIFTH). Paragraph 1 of Article SIXTH states that the business and affairs of DEI shall be managed by or under the direction of the board of directors of DEI (''DEI board of directors''), provided that any action that specifically requires the approval of the Board of Managers and/or LLC Members of DE Holdings pursuant to Section 7.7 of the Fourth DE Holdings LLC Agreement, by and among the LLC Members of DE Holdings, as such agreement may be amended from time to time, shall require the approval of the stockholders of DEI. Paragraph 2 of Article SIXTH generally states that,

[98] Article VI of the Fourth DE Holdings LLC Agreement was amended to delete obsolete provisions, including provisions related to ISE Holdings and for dated actions for which the date had passed.

[99] Provisions comparable to the remaining provisions of Article 7 of the Fourth DE Holdings LLC Agreement have been incorporated into the New DE Holdings LLC Agreement.

[100] *See* New DE Holdings LLC Agreement, Art. III, Section 3.01.

[101] Article VII of the Fourth DE Holdings LLC Agreement was amended to reflect the various categories of changes described above in paragraph (ii) through (vi) in footnote 71.

[102] 15 U.S.C. 78s.

notwithstanding paragraph 1 of Article SIXTH, nothing in Section 7.7 of the Fourth DE Holdings LLC Agreement shall be applicable where the application of such provision(s) would interfere with the effectuation of any decisions by the DEI board of directors relating to regulatory functions of each Exchange Subsidiary (including disciplinary matters) or the structure of the market that each Exchange Subsidiary [103] regulates, or would interfere with the ability of each Exchange Subsidiary to carry out its responsibilities under the Act or to oversee the structure of the market that each Exchange Subsidiary regulates, in each case as determined by the DEI board of directors, which functions or responsibilities shall include the ability of the Exchange Subsidiary as a self-regulatory organization to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. Both paragraph 1 and 2 of Article SIXTH address the application of Section 7.7 of the Fourth DE Holdings LLC Agreement to the actions of DEI. As discussed above in Section 6 of this Proposed Rule Change, the Exchange proposes to delete Section 7.7 of the Fourth DE Holdings LLC Agreement because it describes certain circumstances that require the majority or supermajority vote of the DE Holdings Board of Managers or the LLC Members. However, such majority and supermajority voting requirements are unnecessary when, upon Closing, there will be only one LLC Member of DE Holdings and when DE Holdings will no longer have a Board of Managers. Therefore, paragraphs 1 and 2 of Article SIXTH would no longer be necessary.

• Moving the current definition of ''Exchange Subsidiary'' from current Article SIXTH to Article SEVENTH (renumbered Article SIXTH). Currently, the definition of ''Exchange Subsidiary'' is set forth in Article SIXTH. However, with the deletion of paragraphs 1 and 2 of Article SIXTH, the definition of ''Exchange Subsidiary'' also would be deleted. As a result, the Exchange proposes to move the definition to Article SEVENTH (renumbered as Article SIXTH).

• Changing the reference to ''DE Holdings'' in paragraph 4 of Article EIGHTH (renumbered as Article SEVENTH) from the abbreviated ''DE Holdings'' to ''Direct Edge Holdings LLC.'' Currently, Direct Edge Holdings LLC is defined as ''DE Holdings'' in paragraph 1 of Article SIXTH. However, with the deletion of paragraph 1, the definition of the abbreviated name also would be deleted. Therefore, it is necessary to use the full name, rather than the abbreviated version.

• Paragraph 3 of the Article SEVENTH, as re-numbered from Article EIGHTH, is proposed to be amended to make minor revisions to it so that it would read as follows: ''For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the board of directors of each Exchange Subsidiary and if the same must be filed with, or filed with and approved by, the Securities and Exchange Commission (the ''SEC'') before the changes may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder by the SEC or otherwise, then the proposed changes to this Certificate of Incorporation of this Corporation shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.'' [104]

• Making corresponding administrative changes to the DEI Certificate of Incorporation, including revising numbering and certain cross-references to reflect the above changes.

The Exchanges notes that it is not deleting Article EIGHTH, paragraph 4 (to be renumbered Article SEVENTH, paragraph 4), which identifies DE Holdings as the sole stockholder of DEI.

b. Amended and Restated Bylaws of DEI

In connection with the Combination, the Exchange proposes that DEI amend its Bylaws and adopt the amended Bylaws as its Amended and Restated Bylaws. The DEI Bylaws, as revised, are set forth in Exhibit 5F. The Exchange proposes that DEI make the following amendments to its Bylaws:

• Deleting the following phrase from Section 2.15(b): ''and other than 'Owner Directors' [105] as defined in the governance documents of EDGA and EDGX, as applicable.'' Section 2.15(b) states, among other things, that, at any meeting of the equity holders of an Exchange Subsidiary [106] held for the purpose of electing directors (other than the chief executive officer of the Exchange or EDGX, as applicable and other than Owner Directors), DEI shall cause all outstanding equity of such Exchange Subsidiary to be voted in favor of the election of certain directors. As discussed below in Section 8 of this Proposed Rule Change in more detail, the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange. Therefore, the provisions in the DEI Bylaws related to such Owner Directors are no longer applicable.

• Deleting Section 2.15(c) in its entirety. Section 2.15(c) states that DEI shall take all actions in its capacity as a stockholder of the Exchange and EDGX, as applicable, to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant LLC Member of DE Holdings that is entitled to nominate such Owner Director. Section 2.15(c) further states that, without limiting the generality of the foregoing, at any meeting of the stockholders of the Exchange or EDGX held for the purpose of electing or removing and/or replacing Owner Directors of such Exchange Subsidiary, or in the event written consents are solicited or otherwise sought from the stockholders of the Exchange or EDGX with respect thereto, DEI shall cause all outstanding shares of such Exchange Subsidiary owned by DEI and entitled to vote to be voted, or, in the event written consents are solicited or otherwise sought from the equity holders of an Exchange Subsidiary, shall cause to be validly

[103] For purposes of the DEI Certificate of Incorporation, ''Exchange Subsidiary'' means any subsidiary of DEI that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act. Article SIXTH, para. 2 of the current DEI Certificate of Incorporation.

[104] *See* Amendment No. 1 to the Form 19b–4 filed by the Exchange.

[105] ''Owner Directors'' are defined in the current Exchange Bylaws as a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) of the Exchange Bylaws and elected by the stockholders of the Exchange. Exchange Bylaws, Art. I, Paragraph (w). Correspondingly, a ''Designating Owner'' means an LLC Member of DE Holdings that holds (together with its Affiliates) at least 15% Percentage Interest (as defined in the Fourth DE Holdings LLC Agreement) in DE Holdings. A ''Percentage Interest'' is defined in the Article I of the Fourth DE Holdings LLC Agreement as, with respect to an LLC Member, the ratio of the number of Units held by the LLC Member to the total of all of the issued and outstanding Units, expressed as a percentage. For purposes of Article XII and any references to Article XII in the Fourth DE Holdings LLC Agreement, Percentage Interest also includes Units owned, directly or indirectly, of record or beneficially, by a Person, either alone or together with its Related Persons.

[106] An ''Exchange Subsidiary'' is defined in Section 2.15(b) of the DEI Bylaws as the Exchange, EDGX or any other subsidiary of DEI that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act.

executed only such written consents, (i) electing each Owner Director nominated by the Designating Owner or (ii) removing and/or replacing each Owner Director who had been nominated by the Designating Owner in accordance with the governance documents of such Exchange Subsidiary. Section 2.15(c) also states that DEI shall not vote or execute a consent to effectuate the matters in clauses (i) or (ii) unless and until the Designating Owner has provided written notice to DEI of such Designating Owner's designation of an individual to serve as an Owner Director, to be removed as an Owner Director or to replace another individual as an Owner Director, as applicable. Because the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange, Section 2.15(c) would no longer be applicable.[107]

• Eliminating Section 2.15(e) regarding the election, removal or replacement of directors designated by LLC Members of DE Holdings for any non-exchange subsidiaries of DEI entitled to make such designation under the governing documents of such subsidiary. Specifically, Section 2.15(e) states that, at any meeting of the equity holders of a subsidiary, other than an Exchange Subsidiary, held for the purpose of electing or removing and/or replacing any director designated by any DE Holdings LLC Member who is entitled to designate or remove one or more directors of such subsidiary in accordance with the governance documents of such subsidiary, or, in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, DEI shall cause all outstanding equity of such subsidiary owned by DEI and entitled to vote to be voted, or in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, shall cause to be validly executed only such written consents, (i) electing each director nominated by such DE Holdings LLC Member or (ii) removing and/or replacing such director who had been nominated by such DE Holdings LLC Member in accordance with the governance documents of such subsidiary. This provision is unnecessary going forward because, after Closing, there will be no non-exchange subsidiary of DEI.

• Changing the term ''Exchange Member Nominating Committee'' to ''Member Nominating Committee'' in Section 2.15(b). As discussed in more detail below in Section 8 of this Proposed Rule Change, the Exchange proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee'' to conform the term with the bylaws of the BATS Exchanges.[108] Therefore, this change is intended to conform the name of this committee with the name as set forth in the revised version of the Exchange Bylaws.

• Changing the term ''Exchange Member Director'' to ''Member Representative Director'' in Section 2.15(d) (to be renumbered Section 2.15(c)). As discussed in more detail below in Section 8 of this Proposed Rule Change, the Exchange proposes to change the name of the ''Exchange Member Director'' to ''Member Representative Director'' to conform the term with the bylaws of the BATS Exchanges.[109] Therefore, this change is intended to conform the name of this director with the name as set forth in the revised version of the Exchange Bylaws.

• Deleting Section 4.6(b) of the DEI Bylaws, which states that DEI shall not make a dividend payment to any stockholder of DEI if, and to the extent, such dividend payment would violate the General Corporation Law of the State of Delaware or other applicable law, or would come from any Regulatory Funds. ''Regulatory Funds'' is defined as ''any fees, fines or penalties derived from the regulatory operations of an Exchange Subsidiary (as defined herein), provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenue, transaction revenues or any other aspect of the commercial operations of such Exchange Subsidiary, even if a portion of such revenues are used to pay costs associated with the regulatory operations of such Exchange Subsidiary.'' [110] The Exchange Bylaws and the bylaws of EDGX each prohibit the Exchange and EDGX, respectively, from distributing any such funds to its stockholder, instead requiring that such funds only be applied to fund the legal and regulatory operations of the respective exchange or pay restitution and disgorgement of funds intended for customers.[111] As a result, DEI will not be permitted to come into possession of regulatory funds, as they will remain at the respective exchange and used only for permitted purposes. The Exchange therefore believes that a provision in the DEI Bylaws relating to the handling by DEI of such funds is unnecessary and potentially confusing.[112]

• Revising Section 5.8(a) to state that, to the fullest extent permitted by law, all books and records of an Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of DEI, and the information contained in those books and records, ''shall not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof.'' The Commission has previously approved such language.[113]

• Making minor revisions to the language in Section 6.4 to be fully consistent with the proposed language in Article XII of the New BGM Bylaws and in Section 12.02(b) of the New DE Holdings LLC Agreement. Revised Section 6.4 would read as follows: ''For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of these Bylaws shall be effective, those changes shall be submitted to the board of directors of each Exchange Subsidiary and if the same must be filed with or filed with and approved by the SEC before the changes may be effective, under Section 19 of the Exchange Act and the rules and regulations promulgated thereunder by the SEC or otherwise, then the proposed changes to these Bylaws shall not be effective until filed with or filed with and approved by the SEC, as the case may be.'' The Commission has previously approved this provision as proposed.[114]

[107] With the elimination of paragraph (c) of Section 2.15, the Exchange also proposes to renumber the current paragraph (d) of Section 2.15 as paragraph (c).

[108] *Compare* Art. I, para. (q) of the Current Exchange Bylaws *with* Art. I, para. (r) of the revised Exchange Bylaws.

[109] *Compare* Art. I, para. (p) of the Current Exchange Bylaws *with* Art., I, para. (s) of the revised Exchange Bylaws.

[110] DEI Bylaws, Section 4.6(b).

[111] *See* Exchange Bylaws, Art. X, Section 4; and EDGX Bylaws, Art. X, Section 4.

[112] The Exchange understands that the proposed BGM Holdings Bylaws do not contain a provision relating to BGM Holdings' handling of funds derived from the regulatory operations of its exchange subsidiaries, such as regulatory fees, fines and penalties. *See* SR–BATS–2013–059 and SR–BYX–2013–039. Similarly, the Exchange does not propose to add such a provision to the New DE Holdings LLC Agreement.

[113] *See, e.g.,* Securities Exchange Act Release No. 66171 (Jan. 17, 2013), 77 FR 3297 (Jan. 23, 2012).

[114] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

• Replacing the term ''Company'' with ''Corporation'' in Section 7.5 to make the terminology referring to DEI consistent throughout the Bylaws.

• Making non-substantive changes to correct typographical errors, such as deletions to unnecessary spaces.

8. Amendments to Exchange Certificate of Incorporation and Exchange Bylaws

In connection with the Combination, the Exchange proposes to make various revisions to its Certificate of Incorporation and Bylaws. Upon Closing, the Exchange's corporate family will include four separate exchanges, the two DE Exchanges and the two BATS Exchanges. Accordingly, the Exchange believes that it is important for each of the four exchanges to have a consistent, uniform approach to corporate governance. Therefore, to simplify and unify the governance and corporate practices of these four exchanges, the Exchange proposes to revise its Certificate of Incorporation and Bylaws to conform them with the certificates of incorporation and bylaws of the BATS Exchanges. In addition, the Exchange proposes several amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their bylaws as a result of the Combination.[115] These additional changes to the Exchange Bylaws would reconcile and conform the Exchange Bylaws and the bylaws of the BATS Exchanges going forward. The Exchange believes that the proposed changes to the Exchange Certificate of Incorporation and Exchange Bylaws are consistent with the requirements of the Act. Finally, in proposing these revisions to the Exchange Certificate of Incorporation and the Exchange Bylaws, the Exchange emphasizes that it believes that the Proposed Rule Change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on October 13, 2011.[116] Set forth below are the proposed changes to the Exchange Certificate of Incorporation and Exchange Bylaws.[117]

a. Exchange Certificate of Incorporation

The Exchange proposes to amend and restate its Certificate of Incorporation and rename it the Restated Certificate of Incorporation of the Exchange. The revised Exchange Certificate of Incorporation, which is set forth in Exhibit 5G, is modeled on, and substantially similar to, the current certificates of incorporation of the BATS Exchanges. The Commission has previously found the certificates of incorporation of the BATS Exchanges to be consistent with the Act.[118] Therefore, by making the Exchange Certificate consistent with the certificates of incorporation of the BATS Exchanges, the Exchange believes that, like the BATS Exchanges, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[119]

Specifically, to conform the Exchange Certificate of Incorporation with those of the BATS Exchanges, the Exchange proposes to make the following amendments:

• Delete as outdated Article FIFTH setting forth the name and mailing address of the sole incorporator.

• Delete Article SIXTH, which includes paragraphs one through five, in its entirety. Paragraph 1 provides that the business and affairs of the Exchange shall be managed by or under the direction of the Board; provided, that, any action that specifically requires the approval of the Board of Managers and/or LLC Members of DE Holdings pursuant to Section 7.7 of the Third Amended and Restated Limited Liability Company Operating Agreement of DE Holdings, dated as of December 23, 2008, by and among the LLC Members of DE Holdings, as such agreement may be amended from time to time, shall require the approval of the stockholders of the Exchange.[120] Paragraph 2 states that the election of directors need not be by written ballot. Paragraph 3 states that the Board of Directors of the Exchange is expressly authorized to adopt, amend, alter or repeal the Exchange Bylaws. Paragraph 4 states that the Bylaws may also be amended, altered or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Exchange. Paragraph 5 states that any Director may be removed with or without cause by a majority vote of the stockholders.[121] The Exchange proposes to delete this Article SIXTH because the certificates of incorporation of the BATS Exchanges do not contain these provisions, and the Exchange intends to conform the Exchange Certificate of Incorporation with the certificates of incorporation of the BATS Exchanges.

• Delete Article SEVENTH, which addresses liability of Directors to the Exchange or its stockholders for monetary damages for any breach of fiduciary duty. Specifically, Article SEVENTH states that, except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Exchange shall be personally liable to the Exchange or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of Article SEVENTH shall apply to or have any effect on the liability or alleged liability of any director of the Exchange for or with respect to any acts or omissions of such director occurring prior to such amendment. The Exchange proposes to delete this Article SEVENTH because the certificates of incorporation of the BATS Exchanges do not contain this provision. The deletion of this provision would not be expected to materially

[115] The BATS Exchanges describe these proposed revisions in the BATS Exchanges' companion rule filings related to the Combination. *See* SR–BATS–2013–059 and SR–BYX–2013–039.

[116] *See* Securities Exchange Act Release No. 65556 (Oct. 13, 2011).

[117] In addition to the substantive changes discussed below, the revised Certificate of Incorporation and Bylaws of the Exchange also reflect certain non-substantive differences, including, but not limited to, various conforming changes to terminology, renumbering and typographical changes.

[118] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[119] 15 U.S.C. 78f(b)(1).

[120] The Exchange also notes that paragraph 1 of Article SIXTH would be obsolete after the Closing. As discussed above in Section 7 of this Proposed Rule Change, Section 7.7 of the Fourth DE Holdings LLC Agreement sets forth the circumstances under which certain actions require supermajority board approval, majority board approval and/or the approval of a majority of all or a subset of LLC Members. Under the New DE Holdings LLC Agreement, DE Holdings will be managed by New BGM, as the Sole LLC Member, rather than a board. Because DE Holdings will only have one LLC Member after Closing, the provisions regarding majority and supermajority approval would be unnecessary. Accordingly, the Exchange proposes that DE Holdings delete Section 7.7 of the Fourth DE Holdings LLC Agreement. Correspondingly, the Exchange proposes to delete paragraph 1 of Article SIXTH as it would refer to provisions that no longer exists in the New DE Holdings LLC Agreement.

[121] The Exchange also notes that Article III, Section 4, Article IX, Section 1, and Article III, Section 7 of the Exchange Bylaws address the election of Directors, the amendment, alteration and repeal of the Exchange Bylaws and the removal of Directors, respectively. Therefore, the Exchange believes that the proposed deletions from Article SIXTH of the Exchange Certificate do not leave these areas unaddressed. Moreover, as discussed in Section 8(b) of this Proposed Rule Change, these provisions of the Exchange Bylaws also will be consistent with the bylaws of the BATS Exchanges.

affect the Exchange as it removes a provision limiting the personal liability of its Directors.

• Delete Article EIGHTH, which provides that the Exchange reserves the right to amend, alter, change or repeal any provision contained in the Exchange Certificate of Incorporation, in the manner now or hereafter prescribed by statute and the Exchange Certificate of Incorporation, and all rights conferred upon stockholders in the Exchange Certificate of Incorporation are granted subject to this reservation. The Exchange proposes to delete Article EIGHTH because the certificates of incorporation of the BATS Exchanges do not contain this provision.[122]

b. Exchange Bylaws

In connection with the Combination, the Exchange proposes to amend and restate its Second Amended and Restated Bylaws to adopt the amended Exchange Bylaws as its Third Amended and Restated Bylaws. The new Exchange Bylaws, which are set forth in Exhibit 5H, are modeled on, and substantially similar to, the current bylaws of the BATS Exchanges, as proposed to reflect the Combination. The Commission has previously found the current bylaws of the BATS Exchanges to be consistent with the Act.[123] Section (i) of this Section 8(b) summarizes the changes that the Exchange proposes to make to the Exchange Bylaws to conform them with the current bylaws of the BATS Exchanges. In addition, in Section (ii) of this Section 8(b) of this Proposed Rule Change, the Exchange summarizes its proposed amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their bylaws as a result of the Combination. The Exchange believes that, with these proposed changes, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[124]

(i) Changes to Conform to Existing Bylaws of BATS Exchanges

(I) Board of Directors

Article III of the Exchange Bylaws describes the powers, composition and selection of Directors. The Exchange proposes to amend various provisions in this Article to conform them to the bylaws of the BATS Exchanges.

First, the Exchange proposes to amend the size and composition of the Board, as set forth in Article III, Section 2. Currently, Section 2(a) states that, subject to Article III, Section 2(b), 4(g) and 6(a), the Board will consist of nineteen Directors, a majority of which must be Independent Directors.[125] In addition, the Board must be comprised initially of the following: The Chief Executive Officer, four Owner Directors,[126] 10 Independent Directors and four Exchange Member Directors.[127] The Owner Directors are subject to increase pursuant to Article III, Section 2(b) and 4(g), and Independent Directors and Exchange Member Directors are subject to increase pursuant to Article III, Section 2(b). Each Director will serve until his or her term expires as provided in Article III, Section 3. Furthermore, Section 2(b) states that the Board may, by resolution, add or remove Director positions to the Board, provided that (i) the number of Director positions will not be fewer than seven nor more than 25; (ii) no removal of a Director position will have the effect of shortening the term of an incumbent Director and (iii) the Board at all times will include a directorship for the Chief Executive Officer, a majority of Independent Directors, at least twenty percent Exchange Member Directors, and a number of Owner Director positions that equals the number of Owner Directors that the Designating Owners are entitle to nominate and that the stockholders of the Exchange have elected.

The Exchange proposes to revise these provisions to state that the Board would consist of four or more Directors, with the number thereof to be determined from time to time by the resolution of the Board, subject to the compositional requirements of the Board set forth in Article III, Section 2(b) of the revised Exchange Bylaws. At all times, the Board would consist of the Chief Executive Officer and sufficient numbers of Non-Industry[128] (including Independent[129]), Industry[130] and Member Representative Directors,[131] as those terms are defined in BATS Exchanges' current bylaws, to satisfy the following composition requirements: (i) The number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors elected pursuant to Article III, Section 4; and (ii) the number of Member Representative Directors shall be at least twenty percent of the Board.

With the introduction of the terms Industry and Non-Industry Directors to the Exchange Bylaws, the Exchange proposes to add definitions of these terms to Article I. Specifically, an Industry Director would be defined in Article I(o) as a

> Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the

[122] The Exchange also notes that the deletion of this provision does not change the manner in which provisions in the Exchange Certificate may be amended, altered, changed or repealed, as Article EIGHTH merely refers back to statutory rights in that regard and does not further elaborate on the means for amending the Exchange Certificate.

[123] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010); Securities Exchange Act Release No. 69884 (Jun. 27, 2013), 78 FR 40255 (Jul. 3, 2013).

[124] 15 U.S.C. 78f(b)(1).

[125] The term ''Independent Director'' is defined in Article I, paragraph (t) of the current Exchange Bylaws.

[126] The term ''Owner Director'' is defined in Article I, paragraph (w) of the current Exchange Bylaws.

[127] The term ''Exchange Member Director'' is defined in Article I, paragraph (p) of the current Exchange Bylaws.

[128] *See* Art. I(v) of the revised Exchange Bylaws. Because the Exchange proposes to introduce the new Non-Industry Director classification, the Exchange proposes to require that the Secretary collect information as is reasonably necessary to serve as a basis for determining the nominee's classification as a Non-Industry Director. *See* Art. III, Section 2(c) of the revised Exchange Bylaws.

[129] *See* Art. I(m) of the revised Exchange Bylaws.

[130] *See* Art. I(o) of the revised Exchange Bylaws.

[131] *See* Art. I(s) of the revised Exchange Bylaws.

Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

Correspondingly, the term ''Non-Industry Director'' would be defined in Article I(v) as a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

With the proposed change in composition of the Board, the Exchange will now use the term ''Non-Industry Directors,'' as opposed to just ''Independent Directors.'' These two terms are comparable, although not identical. Article I(t) of the current Exchange Bylaws generally defines the term ''Independent Director'' as a Director who has no material relationship with the Exchange, an Affiliate [132] of the Exchange, a Member of the Exchange or an Affiliate of a Member of the Exchange, provided that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Exchange, DEI, DE Holdings or EDGX. In contrast, a Non-Industry Director is defined as an Independent Director or any other Director that does not satisfy one of the specific scenarios in the definition of Industry Director. Therefore, the Non-Industry Director may be somewhat broader than the definition of an Independent Director because it may include an individual with a material relationship with the Exchange, its Affiliate, or a Member of the Exchange or its Affiliate, provided that it does not satisfy the definition of an Industry Director.

In addition, the Exchange proposes to eliminate the category of Owner Directors from its Board. An Owner Director is currently defined in Article I(w) as ''a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) and elected by the stockholders of the Company.'' A ''Designating Owner,'' in turn, is defined in Article I(i) as ''a member of Direct Edge Holdings that holds (together with its Affiliates) at least a 15% Percentage Interest [133] (as defined in the [the Fourth DE Holdings LLC Agreement]) in Direct Edge Holdings.'' DE Holdings will only have one LLC Member after the Combination. Accordingly, the Exchange proposes to delete the definitions of ''Owner Director'' and ''Designating Owner'' from Article I, as well as all references to and provisions related to Owner Directors throughout the Bylaws.[134]

Furthermore, the Exchange proposes to replace the term ''Exchange Member Director'' with the term ''Member Representative Director,'' and replace the existing definition of ''Exchange Member Director'' with the definition of ''Member Representative Director,'' as set forth in the bylaws of the BATS Exchanges. Although worded differently, the definitions of ''Exchange Member Director'' and ''Member Representative Director'' are substantively similar. Specifically, an Exchange Member Director is currently defined as an officer, director, employee or agent of an Exchange Member, other than an Owner Exchange Member, who is elected as a Director in accordance with the Bylaws. The Exchange proposes to define ''Member Representative Director'' as ''a Director who has been appointed as such to the initial Board of Directors pursuant to Article III, Section 4(g) of these Bylaws, or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these Bylaws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.'' [135]

Second, the Exchange proposes to amend the manner in which the Board is divided into classes. Specifically, Section 3(b) currently states that ''The Board shall be divided into three (3) classes.'' The Exchange proposes to provide additional clarity, by revising this provision to states that ''Each of the Non-Industry and Industry Directors (excluding the Chief Executive Officer, but including Member Representative Directors) shall be divided into three (3) classes.'' In addition, the Exchange proposes to clarify in Section 3(b) that Directors—other than the Chief Executive Officer—will serve staggered three year terms.

Third, the Exchange proposes to amend Section 5 of Article III regarding the Chairman of the Board to state that the Chief Executive Officer shall be the Chairman of the Board. Currently, the Chief Executive Officer may be, but is not required to be, the Chairman of the Board.

Fourth, the Exchange proposes to revise the process for filling Board vacancies as set forth in Section 6 of Article III. Currently, under Sections 6(a) and (b), a majority of Directors then in office, though less than a quorum or a sole remaining Director, are required to elect the new Director that has been nominated by the Nominating and Governance Committee. The Exchange proposes to amend this provision to require the stockholder to elect the nominee. In addition, Section 6(b), which addresses vacancies for Member Representative Directors, would be revised to permit the Member Nominating Committee to recommend an individual or list of individuals to the stockholders from which the stockholders shall elect the new Director, rather than nominating a person for the vacancies. In addition, the Exchange proposes to delete the provisos in Section 6(a) and (b) that state that any vacancy resulting from the removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Without these two provisos, the Director vacancies must be filled in accordance with the procedures set forth in Section 6(a) and (b). That is, the Nominating Committee must nominate, and the stockholders must elect, a person satisfying the classification (Industry, Non-Industry, or Independent Director), if applicable, for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term. The revised Exchange Bylaws would not specifically address whether or not the removal and new election may occur in the same meeting. The Exchange believes that, with these proposed changes, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[136]

Fifth, the Exchange Bylaws currently state in Section 2(d) of Article III that a Director will no longer qualify to be a Director upon a determination by the Board (i) that the Director no longer satisfies the classification for which the

[132] The term ''Affiliate'' is defined in Article I(b) of the current Exchange Bylaws.

[133] *See* Fourth DE Holdings LLC Agreement, Art. I.

[134] The following provisions in the current Exchange Bylaws related to Owner Directors will be deleted: Article III, Sections 2(a) and (b), 4(a), 4(g), 6(a), 6(c) and 7(a); Article VI, Section 2; and Article IX, Section 1.

[135] The Exchange also proposes to replace the term ''Owner Exchange Member'' with the new term ''Stockholder Exchange Member'' in Article I. The definitions of these two terms are identical.

[136] 15 U.S.C. 78f(b)(1).

Director was elected; and (ii) that the Director's continued service would violate the compositional requirements of the Board set forth in Article III, Section 2(b). The Exchange proposes to move this provision to new Section 7(b) and to revise the language to clarify that, under these two scenarios, the Director will be removed immediately upon determination of the Board by a majority vote of the remaining Directors.

Sixth, the Exchange proposes to amend Section 7(b) (to be renumbered Section 7(c)) to permit a Director to resign upon notice of resignation to the Chairman, the President or Secretary, rather than the Chairman, Chief Executive Officer or Secretary, as the Proposed Rule Change would require that the Chairman and Chief Executive Officer be the same person.

Seventh, the Exchange proposes to amend Section 10(a) of Article III regarding special meetings to permit the President to call a special meeting. Under the current Bylaws, the Chairman and Chief Executive Officer are authorized to do so. However, with the revisions pursuant to this Proposed Rule Change, the Chairman and Chief Executive Officer will be the same person. To continue to ensure that at least two different persons may call a special meeting, the Exchange proposes to permit the President in addition to the Chairman to call such meetings. The Commission has previously found this consistent with the Act as it is part of the current bylaws of the BATS Exchanges. Furthermore, the Exchange proposes to add language to paragraph (b) of Section 10 to describe the process for providing notice of special meetings to each Director. Specifically, Section 10 would state that notice of any special meeting shall be given to each Director at his or her business address or such other address as he or she may have advised the Secretary to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the Director to be notified. If mailed, such notice shall be deemed to be given five business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the Director to be notified.

Eighth, current Section 12 of Article III defines a quorum for the transaction of business as a majority of the number of Directors then in office, but in no event less than 1/3 of the total number of Directors. The Exchange proposes to eliminate from the quorum calculation the minimum requirement of 1/3 of the total number of Directors.

Ninth, the Exchange also proposes to add to Article III a new Section 13, entitled ''Presumption of Assent.'' It would state that a Director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the Secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall apply to a Director who voted in favor of such action.

Tenth, the Exchange proposes to add to Article III a new Section 17,[137] which would state that the Board shall have the power to interpret the Exchange Bylaws and any interpretation made by it shall be final and conclusive.

Finally, the Exchange proposes several amendments to current Section 16, entitled Conflicts of Interest; Contracts and Transactions Involving Directors, and to renumber it as Section 18. Section 16(a) currently states that, to the fullest extent permitted by law, a Director or a member of any committee may not participate in consideration or decision of any matter relating to a particular Member or Person if such Director or committee member has a material interest in, or a professional, business or personal relationship with, that Member or other Person, or if such participation shall create an appearance of impropriety. The Exchange proposes to add to this provision the statement that ''[i]n any such case, the Director or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.'' In addition, the Exchange proposes to delete the following statement from this paragraph: ''Exchange Member Directors shall not be deemed to be personally interested in the determination of matters that may affect the Exchange Members as a whole or certain groups of Exchange Members, and Exchange Member Directors shall not be prohibited from participating in such determinations in the normal course of conducting the Exchange's business.''

In addition, paragraph (b) of this Section addresses Exchange contracts and transactions involving Directors and officers. Specifically, this paragraph currently states that:

> No contract or transaction between the [Exchange] and one or more of its Directors or officers, or between the [Exchange] and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contracts or transaction, or solely because any such Director's or officer's votes are counted for such purpose, if (i) the material facts pertaining to such Director's or officer's relationship or interest and as to the contract or transactions are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the [Exchange] as of the time it is authorized, approved or ratified, by the Board, a committee or the stockholders.

The Exchange proposes to delete the phrase ''or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contracts or transaction, or solely because any such Director's or officer's votes are counted for such purpose,'' as well as clause (iii). In addition, the Exchange proposes to amend clause (ii) to state ''the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of disinterested Directors, even though the disinterested Directors be less than a quorum.'' With these changes, paragraph (b) will be consistent with the bylaws of the BATS Exchanges.

The changes to these provisions of the Exchange Bylaws relating to the Board of Directors will permit the Exchange to continue to be so organized and have

[137] As a result, the Exchange is proposing corresponding amendments to renumber current Section 16 as Section 18, as described below.

the capacity to be able to carry out the purpose of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[138]

(II) Stockholders

The Exchange proposes several minor changes to Article IV of the Exchange Bylaws, which describes matters related to the stockholders of the Exchange.

- The Exchange proposes to amend Section 2 to permit the Chairman, Board or the President to call a special meeting of the stockholders, rather than the Chairman, Board or Chief Executive Officer.
- The Exchange proposes to amend Section 3 to require the list of the stockholders to be open to examination by any stockholder at a place within the city where the meeting is to be held, or at the place where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held, rather than at the principal place of business of the Exchange.
- The Exchange proposes to add Section 7, which states that the stockholder may not transfer or assign, in whole or in part, its ownership interest(s) in the Exchange.

(III) Committees of the Board

The Exchange proposes the following amendments to Article V of the Exchange Bylaws, which sets forth various requirements regarding committees of the Board.

- Section 1 would no longer require the formation of an Executive Committee, although such a Committee would be permissible.
- The Exchange proposes to eliminate the requirement that Board committees other than those listed in this section be formed ''for a specific and limited purpose'' as set forth in Section 1.
- The Exchange proposes to amend the process for the appointment and removal of committee members, as well as the committee composition, as set forth in Section 2(a). The existing Bylaws require the Board, after consultation with the Chairman, to appoint committee members, and the Board to remove committee members. The Exchange proposes to require the Chairman, with the approval of the Board, to appoint committee members, and to permit the Chairman, with the approval of the Board, to remove committee members.[139] Correspondingly, the Chairman, rather than the Board, would be responsible for determining whether committees meet the applicable compositional requirements. In addition, under Article V, Section 2(a) of the current Exchange Bylaws, each committee must be comprised of at least three members of the Board, with a majority of Independent Directors (although Article V, Section 5(a) and (c) of the current Exchange Bylaws additionally require that the Regulatory Oversight Committee and Compensation Committee consist solely of Independent Directors). The Exchange proposes to require that each committee be comprised of at least three people and may include persons who are not members of the Board. Other proposed provisions of Article V would provide additional requirements for the composition of the various committees. For example, proposed Article V, Section 6(a) would require each voting member of the Compensation Committee to be a Non-Industry Director, and proposed Article V, Section 6(c) would require that each member of the Regulatory Oversight Committee be a Non-Industry Director. Furthermore, the revised Bylaws would clarify that committee members who are not also Board members shall only participate in committee actions to the extent permitted by law. Finally, the Exchange proposes to eliminate the statement that ''[t]he Board, after consultation with the Chairman, may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Except as otherwise set forth in these Bylaws, the Board, after consultation with the Chairman, may have non-voting observers attend committee meetings.''
- The Exchange proposes to add as new Section 2(b) a requirement that, upon request of the Secretary, each prospective committee member who is not a Director provide the Secretary such information as is reasonably necessary to serve as a basis for determining the prospective member's classification as an Industry, Non-Industry or Independent member. In addition, the Secretary would be required to certify to the Board each prospective committee member's classification. Such committee members must update the information submitted under new Section 2(b) at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.[140]
- With the introduction of the terms ''Industry member'', ''Non-Industry member'', ''Independent member'' and ''Member Representative member'' with respect to committees, the Exchange proposes to add definitions of each of these terms to Article I. Specifically, the Exchange proposes to define an Independent member as ''a member of any committee who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member, other than as a committee member. The term Independent member may, but is not required to, refer to an Independent Director who serves on a committee.'' In addition, the Exchange proposes to define an Industry member in Article I(p) as ''a member of any committee or hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional

[138] 15 U.S.C. 78f(b)(1).

[139] Note that the Exchange also proposes to revise Section 2(a) of the Exchange Bylaws to state that the Chairman, with the approval of the Board, shall appoint the chair of each committee. This change is discussed below in Section 8(b)(ii), as a new change to the Exchange Bylaws as well as to the bylaws of the BATS Exchanges.

[140] Note that comparable language to this provision is currently set forth in Article VI, Section 3. The Exchange proposes to delete the language in Article VI and move it to this Article.

revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.''

• In addition, the Exchange proposes to add the following definition of Non-Industry member as Article I(w): ''a member of any committee who is (i) an Independent member; or (ii) any other individual who would not be an Industry member.'' Finally, the Exchange proposes to define a ''Member Representative member'' in Article I(t) as ''a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.''

• The Exchange proposes to revise current Article V, Section 2(c) (renumbered as Section 2(d)) to state that the Chairman, with approval of the Board, instead of the Board, after consultation with the Chairman, will fill committee vacancies.

• The Exchange proposes to add as Article V, Section 3 a provision stating that, to the extent provided in the resolution of the Board of Directors of the Exchange, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange.

• The Exchange proposes to amend the provisions regarding the appointment, composition and responsibilities of the Compensation Committee in Section 5(a) (to be renumbered as Section 6(a)). Specifically, the Chairman, with the approval of the Board, would appoint a Compensation Committee, rather than the Board, after consultation with the Chairman. In addition, each member of the Compensation Committee would be a Non-Industry Director, rather than an Independent Director. Moreover, the Exchange would eliminate (1) the requirement that the committee have three members; (2) the requirement that the Compensation Committee assist the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as an SRO; and (3) the statement that the Board, after consultation with the Chairman, may designate non-voting observers who shall be permitted to attend and participate in committee meetings.

• The Exchange proposes to amend the provisions regarding the appointment, composition and responsibilities of the Audit Committee in Section 5(b) (to be renumbered as Section 6(b)). Specifically, the Chairman, with the approval of the Board, would appoint the Audit Committee, rather than the Board, after consultation with the Chairman. In addition, a majority of the members of the Audit Committee would be Non-Industry Directors, rather than Independent Directors. A Non-Industry Director, rather than an Independent Director, would serve as the Chairman of the Audit Committee. Moreover, the Exchange proposes to eliminate the following Audit Committee responsibilities: (1) assist the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; (2) take appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; (3) provide oversight over the technology and information integrity established by management and the Board; (4) selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, of the third party service provider) in consultation with management; and (5) overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to add the parenthetical ''(or nominate the independent auditors to be proposed for ratification by stockholders)'' to the function of selecting, evaluating, and where appropriate, replacing the Company's independent auditor. The Exchange also would clarify that the Audit Committee had ''exclusive'' authority to perform certain functions, including hiring the Exchange's Internal Audit Department, determining the compensation of the head of the Internal Audit Department and determining the budget for the Internal Audit Department. Finally, the Exchange would eliminate the statement in this Section that nothing in this Section shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function, provided that the Exchange shall supervise and have primary responsibility for any action undertaken by a third party auditor retained to perform such audit functions.

• The Exchange proposes to amend the provisions regarding the appointment and composition of the Regulatory Oversight Committee in Section 5(c) (to be renumbered as Section 6(c)). Specifically, the Chairman, with the approval of the Board, would appoint the Regulatory Oversight Committee, rather than the Board, after consultation with the Chairman. In addition, each member of the Regulatory Oversight Committee would be a Non-Industry Director, rather than an Independent Director.

• The Exchange proposes to amend the provisions regarding the appointment and composition of the Appeals Committee in Section 5(d) (to be renumbered as Section 6(d)). Specifically, the Chairman, with the approval of the Board, would appoint the Appeals Committee, rather than the Board, after consultation with the Chairman. In addition, the Appeals Committee would no longer consist of two Independent Directors and one Exchange Member Director. Instead, the Appeals Committee would consist of one Independent Director, one Industry Director, and one Member Representative Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as a replacement.

• The Exchange proposes to amend Section 5(e) (to be renumbered as Section 6(e)) regarding the Executive Committee in two ways. Specifically, the Chairman, with the approval of the Board, would appoint the Executive Committee, rather than the Board, after consultation with the Chairman. In addition, the Exchange would add the requirement that the number of Non-Industry Directors on the Executive Committee equal or exceed the number of Industry Directors on the Executive Committee.

• The Exchange proposes to add Section 6(f), stating that the Chairman, with the approval of the Board, may appoint a Finance Committee. If appointed, the Finance Committee will advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets.

The changes to these provisions of the Exchange Bylaws relating to committees of the Board will permit the Exchange

to continue to be so organized and have the capacity to be able to carry out the purpose of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[141]

(IV) Nominating Committees

The Exchange also proposes to amend Article VI regarding the Nominating Committees of the Exchange.[142] To conform the requirements regarding the Exchange's Nominating and Governance Committee with that of the BATS Exchanges, the Exchange proposes to rename the Nominating and Governance Committee the ''Nominating Committee.'' [143] In addition, the Exchange would change the composition of this Committee from a committee of three Independent Directors, to a committee in which the number of Non-Industry members equals or exceeds the number of Industry members. The Exchange also proposes to streamline the responsibilities of this Committee by eliminating the following responsibilities from the Committee's purview: (1) Developing and recommending governance policies to the Board; (2) nominating chairpersons to serve on committees of the Board; (3) overseeing an annual self-evaluation of the independent Directors and Board committees; (4) overseeing the implementation and effectiveness of the Bylaws, committee charters, policies and other governance documents as needed; (5) reviewing and recommending best practices in corporate governance; and (6) overseeing an orientation for new Directors. Finally, the Exchange proposes to add to Section 2 that a Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class. Notwithstanding the prior sentence, a Director may serve on the Nominating Committee in his or her final year of service on the Board. Following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

The Exchange also proposes to amend the description of the Exchange Member Nominating Committee, as set forth in Section 3 of Article VI. First, the Exchange proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee.'' [144] Second, the Member Nominating Committee will continue to nominate candidates for Exchange Member Directors (to be renamed the ''Member Representative Director'') position on the Board that is to be elected by Exchange Member or stockholders, but will no longer be tasked with the obligation to nominate candidates for ''all other vacant or new Exchange Member Director positions on the Board.'' Third, the Exchange would amend the description of the composition of this Committee by changing the committee member qualification requirement from ''an Exchange Member Director, except that such committee member is not required to be a Director'' to ''a Member Representative member.'' Fourth, the Exchange proposes to delete the provisions regarding the process for confirming whether a prospective committee member satisfies such member's classification requirements, and move such provisions to Article V, Section 2(b).

(V) Officers, Agents and Employees

The Exchange proposes the following amendments to Article VII of the Exchange Bylaws, which sets forth various requirements regarding the officers, agents and employees of the Exchange.

- The Exchange proposes to revise Section 1 to require that the Exchange have a President, Secretary and Treasurer in addition to the currently required Chief Executive Officer and Chief Regulatory Officer. In addition, the Exchange proposes to prohibit the same person from holding the offices of both the President and the Secretary. Currently, this prohibition applies to the offices of the Chief Executive Officer and the Secretary.
- The Exchange proposes to amend Section 3(a) of Article VII to permit an officer to provide his or her resignation to the President in addition to the Chairman, Chief Executive Officer or the Secretary. The Exchange also proposes the corresponding amendment to Section 3(a) to provide that an officer could no longer provide such resignation to a designee of the Board, if no such officers are then appointed. In addition, the Exchange proposes to add Section 3(c), which would state that vacancies in any office of the Exchange may be filled for the unexpired term by the Board.
- The Exchange proposes to amend Section 4 of Article VII regarding officer compensation to reflect the proposed change to Article V, Section 6(c) of the Exchange Bylaws regarding the compensation of the Chief Regulatory Officer. Specifically, the Exchange proposes to add the phrase ''Except as otherwise provided in Article V, Section 6(c) of these Bylaws,'' to the statement that the salaries of all other officers and agents of the Company shall be fixed by the Chief Executive Officer, in consultation with the Compensation Committee.
- The Exchange proposes to amend Section 6 of Article VII regarding the Chief Executive Officer to state that the Chief Executive Officer shall be the Chairman of the Board and ''shall preside at all meetings of the Board at which the Chief Executive Officer is present; provided, however, that he or she shall not participate in executive sessions'' of the Board.
- Section 7 of Article VII (to be renumbered Section 9) regarding the Chief Regulatory Officer would be revised to require the Chief Regulatory Officer to be an officer of the Exchange with the position of Executive Vice President or Senior Vice President.
- Section 8 of Article VII (to be renumbered Section 10) regarding the Secretary would be revised to state that the President, in addition to the Board and Chief Executive Officer, may assign duties to the Secretary. The President's ability to do so comports with the responsibilities as set forth in new proposed Section 7, as discussed below.
- The Exchange proposes to add new Sections 7, 8, 11, 12 and 13 to Article VII of the Exchange Bylaws describing the responsibilities of the President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, respectively. Specifically, Section 7 would state the following: ''The President shall, in the absence of the Chairman and Chief Executive Officer, preside at all meetings of the Board at which the President is present. The

[141] 15 U.S.C. 78f(b)(1).

[142] To conform the terms of Section 1 of Article VI with the bylaws of the BATS Exchanges, the Exchange also proposes to add the following: ''the stockholder shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of Article VI. In each subsequent year, each of the Nominating Committee and Member Nominating Committee shall nominate candidates to serve on the succeeding year's Nominating Committee and member Nominating Committee, as applicable, such candidates to be voted on by stockholders at the annual meeting of stockholders.''

[143] The Exchange proposes to make this change to the definition of ''Nominating and Governance Committee'' in Article I(v) (to be renumbered Article I(u)) and throughout the Bylaws).

[144] The Exchange proposes to make this change to the definition of ''Exchange Member Nominating Committee'' in Article I(q) (to be renumbered Article I(r)) as well as throughout the Bylaws where the term ''Exchange Member Nominating Committee'' is used.

President shall have general supervision over the operations of the Company. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.''

• In addition, Section 8 of Article VII regarding Vice Presidents would read as follows:

The Board shall appoint one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term ''Vice President'' used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

• Furthermore, new Section 11 of Article VII would describe the responsibilities of an Assistant Secretary as follows: ''In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.''

• In addition, Section 12 of Article VII, regarding Treasurers, would state:

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

Finally, new Section 13 of Article VII would describe the role of the Assistant Treasurer. Specifically, it would state that ''In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.''

(VI) Indemnification

The Exchange also proposes to make certain amendments to the indemnification provisions set forth in Section 1 of Article VIII of the Exchange Bylaws, including the following:

• The Exchange proposes to revise paragraph (a) (to be renumbered (b)). First, this paragraph would state that the Exchange shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed proceeding of any kind by reason of the fact that he is or was a Director or executive officer of the Exchange or is or was serving at the request of the Exchange as a Director or executive officer of another entity, prior to the final disposition of such proceeding, all expenses incurred by such person in such proceeding upon receipt of such person's undertaking to repay amounts if it should be determined ultimately that such person is not entitled to be indemnified. The Exchange would add a second paragraph to this renumbered paragraph (b) stating that in general no advance shall be made by the Exchange to an executive officer of the Exchange (except by reason of the fact that such executive officer is or was a Director of the Exchange in which event this paragraph shall not apply) in any proceeding of any kind if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that the facts demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Exchange.

• The Exchange proposes to delete paragraph (c) and replace it in its entirety. Paragraph (c) currently states that, if a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under Article VIII is not paid in full within thirty days after a written claim by the applicable person has been received by the Exchange, such person may file suit to recover the unpaid amount and, if successful shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Exchange shall have the burden of proving that such person is not entitled to the indemnification or advancement of expenses under applicable law. The revised paragraph (c) would state that any right to indemnification or advances granted by Article VIII is enforceable by or on behalf of the person holding such right if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant, if successful in whole or in part, shall also be entitled to be paid expenses relating to prosecuting his claim.

• The Exchange proposes to revise paragraph (f) (to be renumbered paragraph (e)) to clarify that the rights conferred on any person by Article VIII continue as to a person who has ceased to be a Director or executive officer of the Exchange.

• The Exchange proposes to amend paragraph (k) (to be renumbered paragraph (i)) by adding two new paragraphs. The first new paragraph states that the term ''proceeding'' shall be broadly construed. The second new paragraph provides that references to a ''director,'' ''officer,'' ''employee,'' or ''agent'' of the Exchange shall include, without limitation, situations where such person is serving at the request of the Exchange as a director, officer, employee, trustee or agent of another entity.

• The Exchange also proposes to make certain additional amendments to Article VIII of the Exchange Bylaws that are not material and will not impair the ability of (1) the Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder or (2) the Commission to enforce the Act and the rules and regulations thereunder.

(VII) Miscellaneous Provisions

The Exchange proposes to make the following amendments to Article XI of the Exchange Bylaws:

• Revising the language of the following sentence in Section 3 of Article XI: ''All books and records of the

[Exchange] reflecting confidential information pertaining to the self-regulatory function of the [Exchange] (including disciplinary matters, trading data, trading practices, and audit information) and the information contained in those books and records shall be retained in confidence by the [Exchange] and the Directors, officers, employees, hearing officers, other agents and advisors of the [Exchange], shall not be used by the [Exchange] for any non-regulatory purposes and shall not be made available to any Person (including any [Member]), other than to personnel of the Commission, and those Directors, officers, employees, hearing officers, other agents and advisors of the [Exchange] to the extent necessary or appropriate to discharge properly the self-regulatory responsibilities of the [Exchange].'' Specifically, the Exchange proposes to (i) delete the phrase ''and the information contained in those books and records''; (ii) replace the phrase ''the Directors, officers, employees, hearing officers, other agents and advisors'' of the Exchange with the more general term ''personnel''; (iii) add the following to the list of persons who may receive confidential information to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange: Members of committees of the Board, members of the Board, hearing officers and other agents of the Exchange.

• Amending Section 6(a) of Article XI (Execution of Instruments, Contracts, etc.) to eliminate the statement that the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer, or the Secretary may from time to time designate may sign checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money, and to eliminate the defined term ''Authorized Officers.'' Correspondingly, any ''officer, employee or agent,'' instead of an Authorized Officer, would be authorized, in the name of and on behalf of the Exchange, to enter into or execute and deliver deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

• Amending Section 6(b) of Article XI to permit any officer of the Exchange, or, to the extent designated for such purposes from time to time by the Board, an employee or agent of the Exchange, rather than an Authorized Officer, to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Exchange. Such designation may contain the power to substitute, in the discretion of the person named, one or more persons.

• Deleting Section 8 of Article XI regarding how notices contemplated by the Exchange Bylaws may be given.[145]

• Deleting Section 10 of Article XI regarding stock certificates and uncertificated shares.

(VIII) Additional Amendments

In addition to the definitional changes discussed above, the Exchange proposes to make the following changes to Article I of the Exchange Bylaws regarding definitions.[146]

• Amend the definition of ''Act'' by deleting the parenthetical ''and in effect from time to time and any successor statute'' to conform to the BATS Exchanges' definition.

• Replace the Exchange's current definition of ''Affiliate'' with the BATS Exchanges' definition. The Exchange currently defines an ''Affiliate'' as ''with respect to any Person, any other person directly or indirectly through one or more intermediaries Controlling, Controlled by, or under direct or indirect common Control with, such Person. 'Affiliated' shall have the correlative meaning.'' Correspondingly, the Exchange currently defines ''Control'' to mean ''the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. 'Controlling' and 'Controlled' shall have correlative meanings.'' The Exchange would eliminate both of these definitions, and adopt the following definition of ''affiliate'': ''a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.''

• Amend the definition of ''Board'' to include ''Board of Directors'' as a defined term.

• Delete the definition of ''Business Day,'' and add the definition of ''day''. ''Day'' would be defined as a ''calendar day.''

• Define a ''broker'' as having the same meaning as in Section 3(a)(4) of the Act.

• Delete the definition of ''Chairman'' as it is defined in Article III, Section 5 of the Bylaws.

• Delete the definition of ''Control.''

• Define a ''dealer'' as having the same meaning as in Section 3(a)(5) of the Act.[147]

• Delete the definition of ''DGCL'' as the term will not be used in the revised Exchange Bylaws.

• Delete the definitions of ''Direct Edge Holdings,'' ''Direct Edge'' and ''Holdings Operating Agreement.''

• Revise the definition of an ''Exchange Member'' to replace the reference to a broker or dealer that has been admitted to membership in the ''Exchange'' with the more general phrase ''national securities exchange operated by the [Exchange].''

• Replace the term ''Exchange Member Representative'' with the term ''Executive Representative.'' In addition, the Exchange proposes to clarify within the definition the means by which the Executive Representative may give notice to the Secretary. Specifically, the amendment would provide that notice may be given ''via electronic process or such other process as the [Exchange] may prescribe.''

• Revise the proviso in the definition of ''Independent Director,'' which currently states that ''an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company, Direct Edge, Direct Edge Holdings or EDGX Exchange, Inc.'' The Exchange proposes to replace the phrase ''Direct Edge, Direct Edge Holdings or EDGX Exchange, Inc.'' with the phrase ''or its stockholder.''

• Replace the current definition of ''List of Candidates'' with the version of the definition employed by the BATS Exchanges. Specifically, the Exchange proposes to delete its existing definition, which states that the List of Candidates ''shall have the meaning set forth in Article III, Section 4(e).'' In its place, the Exchange would define a List of Candidates as ''the list of nominees for Member Representative Director positions as nominated by the Member Nominating Committee and amended by petitions filed by Exchange Members. The List of Candidates is submitted to Exchange Members for the final selection of nominees to be elected by stockholders to serve as Member Representative Directors.''

• Revise the definition of ''Person.'' The Exchange currently defines a ''Person'' as ''any individual, partnership, joint stock company,

[145] Comparable language has been moved to Article III, Section 10.

[146] The Exchange also proposes to make changes to other provisions of the Bylaws that reflect the changes made to these definitions.

[147] 15 U.S.C. 78c(a)(5).

corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department or agency or political subdivision of any government.'' The new definition would define a ''person'' as ''a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.''

• Delete the specific reference to branch managers from the definition of ''person associated with an Exchange Member.''

• Delete the definition of ''Petition Candidates.''

• Delete the definition of ''Petition Deadline'' and replace the term ''Petition Date'' with the term ''Record Date.'' The Exchange would continue to define the ''Record Date'' as ''a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders.'' In addition, however, the Exchange proposes to clarify that the Record Date is ''set as the last date on which Exchange Members may petition to add to the List of Candidates and used to determine whether Exchange Members are entitled to vote on the final List of Candidates.''

• Amend the definition of ''Rules'' by deleting the parenthetical ''with respect to the company.''

• Delete the definition of ''SRO.'' [148]

• Corresponding technical, non-substantive changes to conform the paragraph letters for defined terms.

The Exchange notes that it is not proposing to change the statement in the definition of ''stockholder'' that identifies DEI as the sole stockholder of the Exchange.[149]

(ii) Changes to Conform to the BATS Exchanges' Proposed Changes to the Existing Bylaws in Connection With the Combination

In addition to the changes discussed above, the Exchange proposes to make the following amendments to the Exchange Bylaws, which are consistent with the changes proposed to be made by the BATS Exchanges in connection with the Combination:

• Adding new Section 2(b) and amending Section 3(b) of Article III of the Exchange Bylaws to clarify that the Chief Executive Officer of the Exchange is considered to be an Industry Director, but is excluded from being designated as a member of one of the three classes of directors for purposes of the Board's staggered three-year terms. The Exchange understands that the BATS Exchanges have proposed this amendment to clarify, rather than change, their current practice. The revised Exchange Bylaws require that the Board of Directors be composed of one Director who is the Chief Executive Officer of the Exchange, and a sufficient number of Non-Industry Directors (including Independent Directors), Industry Directors and Member Representative Directors such that (i) the number of Non-Industry Directors, including at least one Independent Director, equals or exceeds the sum of the number of Industry Directors and Member Representative Directors, and (ii) the number of Member Representative Directors equals at least 20 percent of the Board of Directors (the ''Exchange Board Composition Requirements'').[150] Because the definition of ''Industry Director'' includes a Director that has an employment relationship with the Exchange,[151] the Chief Executive Officer of the Exchange will always meet the definition of ''Industry Director.'' Consistent with this definition, and in order to effectuate the Exchange Board Composition Requirements, the Exchange considers the Chief Executive Officer to be an Industry Director. Were the Chief Executive Officer to not be considered for purpose of determining composition of the board, the total number of persons affiliated with the securities industry (including Industry Directors, Member Representative Directors and the Chief Executive Officer) could potentially exceed the number of Non-Industry Directors—a result that the Exchange believes the Exchange Board Composition Requirements were intended to prevent. The Exchange therefore proposes to add new Section 2(b) of Article III of the Exchange Bylaws to explicitly clarify that the Chief Executive Officer shall be considered to be an Industry Director. The Exchange Bylaws separately provide that each of the Non-Industry Directors and Industry Directors are divided into one of three classes to serve staggered three-year terms.[152] Unlike other Industry Directors, rather than serving a three-year term, the Chief Executive Officer of the Exchange serves on the Board of Directors until he or she ceases to be Chief Executive Officer.[153] The Exchange is therefore proposing to amend Section 3(b) of Article III of the Exchange Bylaws to explicitly clarify that the reference to each Industry Director serving a staggered three-year term excludes the Chief Executive Officer.

• Amending Section 4(a), Section 4(c) and Section 4(e) of Article III of the Exchange Bylaws to permit the Director nomination and election process (including the Member Representative Director nomination and election process conducted by the Member Nominating Committee) to be conducted through either an annual or special meeting of stockholders, rather than solely through an annual meeting of stockholders. Without this change, should one or more vacancies on the Board of Directors occur, the vacancies would continue until they can be filled at an annual meeting. As a result, vacancies that arise soon after an annual meeting could remain for close to a full year. The Exchange therefore proposes to amend the Exchange Bylaws to add flexibility to the governance process around the nomination and election of a Director position that may become vacant at a time that does not coincide with the Exchange's annual director election process, by permitting the process to occur at any time via a special meeting of stockholders.

• Amending Section 2(a) of Article V of the Exchange Bylaws to clarify that the Chairman, with the approval of the Board, not only appoints the members of all committees of the Board, but also the chair of each committee. The Exchange understands that this amendment is intended to reflect the current committee and committee Chair appointment processes utilized by the BATS Exchanges.

• Amending Section 6(c) of Article V of the Exchange Bylaws to clarify that the Regulatory Oversight Committee responsibilities include, in consultation with the Chief Executive Officer of the Exchange, establishing the goals, assessing the performance, and fixing the compensation of the Chief Regulatory Officer of the Company. These amendments are intended to reflect the current responsibilities of the Regulatory Oversight Committee for the Exchange.

• Expanding the prohibition contained in Section 2 of Article XI of the Exchange Bylaws. Currently, Section 2 prohibits DEI and DE Holdings directors, officers, employees, agents or advisors who are not also directors, officers, staff, counsel or advisors of the Exchange from participating in any meetings of the Exchange's Board of Directors (or any committee thereof) pertaining to the self-regulatory function

[148] As discussed above, the Exchange also proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee,'' and move the definition from Art. I(q) to I(r).

[149] *See* Exchange Bylaws, Art. I(hh) (to be renumbered Article I(cc)).

[150] *See* Exchange Bylaws, Art. III, Section 2(b).

[151] *See* Exchange Bylaws, Art. I, para. (o)(vi).

[152] *See* Exchange Bylaws, Art. III, Section 3(b).

[153] *See* Exchange Bylaws, Art. III, Section 3(a).

of the Exchange (including disciplinary matters). Because, following the Combination, the Exchange also will be owned indirectly by New BGM, instead of only directly by DEI and indirectly by DE Holdings, the Exchange is proposing to expand this prohibition to cover both its direct and indirect parent companies. The Exchange believes that this amendment will protect the independence of the Exchange's self-regulatory activities.

• Correcting certain typographical errors, including conforming the spelling of ''Bylaws'' throughout the organizational documents of the Exchange and its parent companies.

9. Exchange Rule 2.3—Member Eligibility

Pursuant to Exchange Rule 2.3, in order to be eligible for membership in the Exchange, a registered broker or dealer is required to be a member of at least one other national securities association or national securities exchange. However, membership in the Exchange's affiliated national securities exchange, EDGX, is not sufficient for purposes of eligibility for Exchange membership. As a result of the Combination, the Exchange will additionally become affiliated with the BATS Exchanges. The Exchange continues to believe that it is appropriate to limit its membership to registered broker-dealers that are members of at least one national securities association or national securities exchange that is not affiliated with the Exchange. Therefore, the Exchange proposes to amend Exchange Rule 2.3 to specify that a registered broker-dealer will be eligible for membership only if it is a member of a national securities association or national securities exchange other than or in addition to BATS, BYX, or EDGX. The proposed amendments to Exchange Rule 2.3 are set forth in Exhibit 5I.

10. Exchange Rule 2.12—DE Route as Inbound Router

DE Route provides Members of the Exchange and EDGX with optional routing services to other market centers. Thus, in certain circumstances, DE Route provides inbound routing from EDGX to the Exchange. Exchange Rule 2.12 governs this inbound routing of orders by DE Route to the Exchange in DE Route's capacity as a facility of EDGX. Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange has implemented limitations and conditions on DE Route's affiliation with the Exchange in order to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGX. These conditions and limitations, set forth in Exchange Rule 2.12(a), require that:

(1) The Exchange must enter into (a) a plan pursuant to Rule 17d–2 under the Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (b) a regulatory services contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.

(2) The Regulatory Contract must require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules, and requires that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or Commission rules.

(3) The Exchange, on behalf of its parent company, must establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Members of the Exchange.

(4) The Exchange may furnish to DE Route only the same information and on the same terms as the Exchange makes available in the normal course of business to other users.[154]

In addition, Exchange Rule 2.12(b) states that, provided the conditions in Exchange Rule 2.12(a) are complied with, and provided further that DE Route operates as an outbound router on behalf of EDGX on the same terms and conditions as it does for the Exchange, and in accordance with the rules of EDGX, DE Route may provide inbound routing services to the Exchange from EDGX.

Similar to the role of DE Route with respect to the DE Exchanges, the Exchange understands that BATS Trading provides members of the BATS Exchanges with optional routing services to other market centers, which may include routing from a BATS Exchange to the Exchange. Following the Combination, it is expected that BATS Trading will continue to provide these routing services, which may involve routing to the Exchange. Because, following the Combination, BATS Trading will be affiliated with and potentially routing to the Exchange, the Exchange believes that the potential conflict of interest currently addressed by Exchange Rule 2.12 with respect to DE Route must also be addressed with respect to BATS Trading.

The Exchange is therefore proposing to amend and expand Exchange Rule 2.12 such that substantially the same conditions and limitations that currently apply to the inbound routing of orders by DE Route apply to the inbound routing of orders by BATS Trading. The proposed amendments to Exchange Rule 2.12, as set forth in Exhibit 5K, would provide that, in order for the Exchange to accept inbound routed orders from BATS Trading, the conditions and limitations currently set forth in Exchange Rule 2.12 with respect to DE Route must also be satisfied with respect to BATS Trading.

The Exchange believes that these proposed amendments will adequately manage the potential for a conflict of interest that could arise from BATS Trading routing orders to the Exchange. The Exchange expects to arrange that these conditions be met prior to the Closing so as to allow BATS Trading to continue routing to the Exchange following the Closing without interruption.[155]

In addition, the language in Exchange Rule 2.12(a) leading into the four conditions described above incorrectly refers to the conditions being undertaken by ''each of the Exchange and DE Route.'' However, by their terms, the conditions contained in Exchange Rule 2.12 are undertaken only by the Exchange and, in one case, the Exchange on behalf of its parent company. The Exchange therefore proposes to delete the incorrect reference to DE Route.

11. Exchange Rule 2.10—Affiliation Between Exchange and a Member

a. Affiliation With BATS Trading

Exchange Rule 2.10 provides that, subject to certain exceptions, without the prior approval of the Commission,

[154] *See* Exchange Rule 2.12(a)(2).

[155] If such conditions and limitations are not satisfied by Closing, the Exchange will not accept inbound orders from BATS Trading until such conditions and limitations are satisfied.

(i) the Exchange or any entity with which the Exchange is affiliated (as defined in Rule 12b–2 under the Act), may not directly or indirectly acquire or maintain an ownership interest in a Member of the Exchange, and (ii) a Member of the Exchange may not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange.

BATS Trading is currently a Member of the Exchange. As a result of the Combination, (i) New BGM, an entity affiliated with the Exchange, will acquire and maintain an indirect ownership interest in BATS Trading, and (ii) BATS Trading will become an affiliate of the Exchange. Pursuant to Exchange Rule 2.10, the Exchange is seeking the Commission's prior approval to permit this affiliation.

The Exchange notes that the purpose of Exchange Rule 2.10 is to prevent or manage potential conflicts of interest that could arise from the Exchange or its affiliates having an ownership interest in an Exchange Member, particularly with respect to the Exchange's obligation under Section 19(g) of the Act to enforce its Members' compliance with the Act, the Commission's rules thereunder, and Exchange Rules.[156]

The Exchange believes that it should be permitted to become affiliated with BATS Trading, notwithstanding BATS Trading's Exchange membership. As described above, as a result of the proposed amendments to Exchange Rule 2.12, the Exchange intends on addressing the potential conflicts of interests arising from its expected affiliation with BATS Trading by, among other things, entering into (i) a plan pursuant to Rule 17d–2 under the Act with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (ii) a Regulatory Contract with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules. The Exchange believes that any potential conflict of interest that would arise as a result of its affiliation with BATS Trading will be mitigated by the same procedures that the Exchange anticipates adopting to satisfy the proposed amendments to Exchange Rule 2.12. The Exchange therefore requests that, pursuant to Exchange Rule 2.10, the Commission approve the indirect acquisition of BATS Trading by an affiliate of the Exchange and the resulting affiliation between the Exchange and BATS Trading, so long as the requirements under Exchange Rule 2.12, as proposed to be amended, are satisfied.

b. Proposed Amendments to Exchange Rule 2.10

The Exchange also proposes to make several changes to Exchange Rule 2.10 to reflect the proposed change in the corporate structure of the Exchange after Closing. Specifically, Rule 2.10 currently states that nothing in Rule 2.10 shall prohibit a Member or its affiliate from acquiring or holding an equity interest in DE Holdings that is permitted by the DE Holdings Ownership and Voting Limitations. Furthermore, Rule 2.10 currently states that nothing in Rule 2.10 shall prohibit a Member from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such Member or any officer, director, manager, managing member, partner or affiliate of such Member being or becoming a Director serving on the Board of Directors of DE Holdings. Because New BGM will replace DE Holdings as the ultimate parent company of the Exchange after Closing, New BGM's governing documents, as opposed to the revised DE Holdings governing documents, set forth the relevant ownership and voting limitations, and provide for Member representation on the New BGM Board. Therefore, the Exchange proposes to replace the references to DE Holdings and its governing documents in Rule 2.10 with references to New BGM and its governing documents. The proposed revisions to Exchange Rule 2.10 are set forth in Exhibit 5J.

In addition, current Exchange Rule 2.10 states that nothing in this Rule shall prohibit the Exchange from being an affiliate of DE Route or of EDGX Exchange, Inc. Because the Exchange will be affiliated with BATS Trading and the BATS Exchanges, as well as DE Route and EDGX, after Closing, the Exchange proposes to expand this provision to specifically permit the Exchange's affiliation with BATS Trading and the BATS Exchanges.

2. Statutory Basis

The Exchange believes that the Proposed Rule Change is consistent with the requirements of the Act[157] and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[158] In particular, the proposal is consistent with Section 6(b)(1) of the Act[159] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the New BGM Charter and New BGM Bylaws, like the Current BGM Charter and Current BGM Bylaws, various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange upon Closing. Including such provisions in the New BGM Charter and New BGM Bylaws is important because New BGM will be the new ultimate parent company of the Exchange. For example, the New BGM Bylaws, as described above, are drafted to preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange is able to obtain information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out their regulatory responsibilities under the Act. In addition, the New BGM Charter and New BGM Bylaws are drafted to make sure that the Exchange's Board of Directors receives notice of any amendment to the New BGM Charter and New BGM Bylaws so that the Exchange's Board of Directors may review and approve, and the Exchange may make any filings with the Commission necessary for the Exchange to fulfill its regulatory duties under the Act. The New BGM Charter also imposes the BGM Ownership Limitation and BGM Voting Limitation to preclude undue influence over or interference with the Exchange's self-regulatory functions and fulfillment of its regulatory duties under the Act. Moreover, to the extent any protections are being deleted in any governing documents, there are adequate substitutes proposed to be implemented. For example, the deletion of the DE Holdings Ownership and Voting Limitations are being deleted, in favor of the BGM Ownership Limitation and the BGM Voting Limitation.

Moreover, notwithstanding the Proposed Rule Change, including the change to the ownership structure of the

[156] 15 U.S.C. 78s(g).

[157] 15 U.S.C. 78s(b)(1).

[158] 15 U.S.C. 78f(b).

[159] 15 U.S.C. 78f(b)(1).

Exchange, the Commission will continue to have regulatory authority [160] over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parents with respect to activities related to the Exchange.[161] As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of Section 6(b)(5) of the Act.[162] The Proposed Rule Change is consistent with and facilitates a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Proposed Rule Change provides transparency and certainty, and promotes efficiency, with respect to the governance and corporate structure of the Exchange and its direct and indirect parent companies. For example, the Exchange proposes to adopt an approach to corporate governance that is consistent with the approach taken by the BATS Exchanges and previously approved by the Commission.[163] The Exchange proposes to revise the Exchange Certificate of Incorporation and Exchange Bylaws to make them substantively consistent with the BATS Exchanges' existing governing documents. In addition, the Exchange proposes several amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their Bylaws as a result of the Combination. The Exchange believes that these additional changes, among other things, will remove administrative impediments to, and reduce the potential for conflicts of interest in, the governance of the Exchange. By simplifying and unifying the governance structure of the four exchanges in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

In addition, the Exchange expects that the Combination will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Combination will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Combination will result in a third major exchange operator which will have more streamlined and efficient operations, including the transition of the DE Exchanges to a technology platform in common with the BATS Exchanges, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas where the two major exchange operators lead, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the change in ownership; the Exchange will operate in essentially the same manner upon Closing as it operates today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. The changes the Exchange is proposing to Exchange Rules 2.3 are designed to extend the membership eligibility criteria in a way that is consistent with the current rule, taking into account the prospective affiliation with the BATS Exchanges. The proposed changes to Exchange Rules 2.12 and 2.10 are designed to address the potential for conflicts of interest due to the prospective affiliation between the Exchange and BATS Trading. The Exchange believes that these proposed changes to its Rules are consistent with the requirements of the Act and the rules and regulations thereunder. The Exchange believes that these rule changes promote the maintenance of a fair and orderly market, the protection of investors and the public interest, and is in the best interests of the Exchange and its Members as it would continue to allow routing of orders between four affiliated exchanges.

Finally, with the Proposed Rule Change, the Exchange emphasizes that it believes that the Proposed Rule Change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on October 13, 2011.[164]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Combination will produce a stronger and more efficient entity that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act [165] is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[166]

[160] *See, e.g.,* New DE Holdings LLC Agreement, Art. X, Section 10.03.

[161] *See, e.g.,* New BGM Bylaws, Section 14.05; BGM Holdings Bylaws, Section 7.3.

[162] 15 U.S.C. 78f(b)(5).

[163] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[164] *See* Securities Exchange Act Release No. 65556 (Oct. 13, 2011).

[165] 15 U.S.C. 78f(b)(8).

[166] *See, e.g.,* Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR–CBOE–2011–107 and SR–NSX–2011–14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR–NYSE–2005–77).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–2013–34 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–2013–34. 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–EDGA–2013–34 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[167]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29900 Filed 12–16–13; 8:45 am]

BILLING CODE 8011–01–P

[167] 17 CFR 200.30–3(a)(12).

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Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310 and 333

Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of the Tentative Final Monograph; Reopening of Administrative Record; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310 and 333

[Docket No. FDA–1975–N–0012] (Formerly Docket No. 1975N–0183H)

RIN 0910–AF69

Safety and Effectiveness of Consumer Antiseptics; Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of the Tentative Final Monograph; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this proposed rule to amend the 1994 tentative final monograph or proposed rule (the 1994 TFM) for over-the-counter (OTC) antiseptic drug products. In this proposed rule, we are proposing to establish conditions under which OTC consumer antiseptic products intended for use with water (referred to throughout as consumer antiseptic washes) are generally recognized as safe and effective. In the 1994 TFM, certain antiseptic active ingredients were proposed as being safe for antiseptic handwash use by consumers based on safety data evaluated by FDA as part of our ongoing review of OTC antiseptic drug products. However, in light of more recent scientific developments and changes in the use patterns of these products we are now proposing that additional safety data are necessary to support the safety of antiseptic active ingredients for this use. We also are proposing that all consumer antiseptic wash active ingredients have data that demonstrate a clinical benefit from the use of these consumer antiseptic wash products compared to nonantibacterial soap and water.

DATES: Submit electronic or written comments by June 16, 2014. See section VIII of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–1975–N–0012 and Regulatory Information Number (RIN) number 0910–AF69, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–1975–N–0012 and RIN 0910–AF69 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Colleen Rogers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5411, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

FDA is proposing to amend the 1994 TFM for OTC antiseptic drug products that published in the **Federal Register** of June 17, 1994 (59 FR 31402). The 1994 TFM is part of FDA's ongoing rulemaking to evaluate the safety and effectiveness of OTC drug products marketed in the United States on or before May 1972 (OTC Drug Review).

FDA is proposing to establish new conditions under which OTC consumer antiseptic products intended for use with water are generally recognized as safe and effective (GRAS/GRAE) based on FDA's reevaluation of the safety and effectiveness data requirements proposed in the 1994 TFM in light of comments received, input from subsequent public meetings, and our independent evaluation of other relevant scientific information it has identified and placed in the docket. We are not, at this time, proposing conditions under which OTC consumer antiseptic hand rubs (commonly called hand sanitizers) or antiseptics intended for use by health care professionals are GRAS/GRAE.

Summary of the Major Provisions of the Regulatory Action in Question

We are proposing that additional safety and effectiveness data are necessary to support a GRAS/GRAE determination for OTC antiseptic active ingredients intended for repeated daily use by consumers. The safety data, the effectiveness data, and the effect on the previously proposed classification of active ingredients are described briefly in this summary.

Effectiveness

A determination that an active ingredient is GRAS/GRAE for a particular intended use requires consideration of the benefit-to-risk ratio for the drug for that use. If the active ingredient in a drug product does not provide clinical benefit, but potentially increases the risk associated with the drug (e.g., from reproductive toxicity or carcinogenicity), then the benefit-risk calculation shifts, and the drug is not GRAS/GRAE. New information on potential risks posed by the use of certain consumer antiseptic washes has prompted us to reevaluate the data needed for classifying consumer antiseptic wash active ingredients as generally recognized as effective (GRAE). As a result, the risk from the use of a consumer antiseptic wash drug product must be balanced by a demonstration that it is superior to washing with nonantibacterial soap and water in reducing infection.

We have evaluated the available literature, and the data and other information that were submitted to the rulemaking on the effectiveness of consumer antiseptic wash active ingredients, as well as the recommendations from the public meetings held by the Agency on antiseptics. The record does not currently contain sufficient data to show that there is any additional benefit from the use of consumer antiseptic hand or body washes compared to nonantibacterial soap and water. Adequate and well-controlled clinical outcome studies capable of identifying the conditions of use that reduce the numbers of infections would demonstrate whether there is a benefit from the use of consumer antiseptic washes. Consequently, we are proposing that data from clinical outcome studies (demonstrating a reduction in infections) are necessary to support a GRAE determination for consumer antiseptic wash active ingredients.

Safety

Several important scientific developments that affect the safety

evaluation of these ingredients have occurred since FDA's 1994 evaluation of the safety of consumer antiseptic active ingredients under the OTC Drug Review. New data suggest that the systemic exposure to these active ingredients is higher than previously thought, and new information about the potential risks from systemic absorption and long-term exposure have become available. New safety information also suggests that widespread antiseptic use can have an impact on the development of bacterial resistance.

The previous GRAS determinations were based on safety principles that have since evolved significantly due to advances in technology, development of new test methods, and experience with performing test methods. The standard battery of tests that were used to determine the safety of drugs has changed over time to incorporate improvements in safety testing. In order to ensure that consumer antiseptic wash active ingredients are GRAS, data that meet current safety standards are needed.

Based on these developments, we are now proposing that additional safety data will need to be submitted to the administrative record for each consumer antiseptic wash active ingredient to support a GRAS classification. The data requirements proposed in this proposed rule are the minimum data necessary to establish the safety of long-term, daily, repeated exposure to antiseptic active ingredients used in consumer wash products in light of the new safety information. The data we propose is needed to demonstrate safety for all consumer antiseptic wash active ingredients falls into three broad categories: (1) Safety data studies described in current FDA guidance (e.g., preclinical and human pharmacokinetic studies, developmental and reproductive toxicity studies, and carcinogenicity studies); (2) data to characterize potential hormonal effects; and, (3) data to evaluate the development of resistance.

Active Ingredients

In the 1994 TFM, 22 antiseptic active ingredients were classified for OTC antiseptic handwash use (59 FR 31402 at 31435) (for a list of all active ingredients covered by this proposed rule, see tables 3 and 4). Among these 22 active ingredients are triclosan and triclocarban, two of the most commonly used active ingredients in consumer antiseptic washes and the subject of much scientific debate. Our detailed evaluation of the effectiveness and safety of triclosan and triclocarban, as well as other active ingredients for which data were submitted, can be found in sections VI.A and VII.D of this proposed rule. In the 1994 TFM, only one active ingredient that is being evaluated for use as a consumer antiseptic wash, povidone-iodine (5 to 10 percent), was proposed to be classified as GRAS/GRAE (59 FR 31402 at 31436). However, we now propose that none of the consumer antiseptic wash active ingredients classified in the 1994 TFM (including povidone-iodine) has the safety and effectiveness data needed to support a classification of GRAS/GRAE for consumer antiseptic hand or body washes. The data available and the data that are missing are discussed separately in this proposed rule for each active ingredient.

Several consumer antiseptic wash active ingredients evaluated in the 1994 TFM were proposed as GRAS, but not GRAE, because they lack sufficient evidence of effectiveness for consumer use. We are now proposing that these ingredients need additional safety data, as well as effectiveness data, to be classified as GRAS/GRAE.

Costs and Benefits

We estimate the benefits of the proposed rule in terms of the 2.2 millions pounds reduction in annual aggregate exposure to antiseptic active ingredients, including triclosan, chloroxylenol, and benzalkonium chloride. The inadequacy of the available dermal exposure data prevents us from characterizing the health effects resulting from widespread long-term exposure to such ingredients and prevents us from translating the estimated reduced exposure into monetary equivalents of health effects. We estimate the costs of the proposed rule, consisting of one-time costs of relabeling and reformulation, ranging from $112.2 to $368.8 million. Annualized over 10 years, the primary cost estimate is approximately $23.6 million at a 3 percent discount rate and $28.6 million at a 7 percent discount rate. Under the proposed rule, we estimate that each pound of reduced exposure to antiseptic active ingredients would cost $3.86 to $43.67 at a 3 percent discount rate and $4.69 to $53.04 at a 7 percent discount rate.

Summary of costs and benefits of the proposed rule	Total benefits	Total costs annualized over 10 years (in millions)	Total one-time costs (in millions)
Total	Reduced exposure to antiseptic active ingredients by 2.2 million pounds annually.	$23.6 (at 3%) ..... $28.6 (at 7%)	$112.2 to $368.8

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I. Introduction

In the following sections, we provide a brief description of terminology used in the OTC Drug Review regulations,

and an overview of OTC topical antiseptic drug products, and then describe in more detail the OTC consumer antiseptics that are the subject of this proposed rule.

A. Terminology Used in the OTC Drug Review Regulations

1. Proposed, Tentative Final, and Final Monographs

To conform to terminology used in the OTC Drug Review regulations (§ 330.10 (21 CFR 330.10)), the September 1974 advance notice of proposed rulemaking (ANPR) was designated as a ''proposed monograph.'' Similarly, the notices of proposed rulemaking, which were published in the **Federal Register** of January 6, 1978 (43 FR 1210) (the 1978 TFM), and in the **Federal Register** of June 17, 1994 (59 FR 31402) (the 1994 TFM), were each designated as a ''tentative final monograph.'' The present proposed rule, which is a reproposal regarding consumer antiseptic wash drug products, is also designated as a ''tentative final monograph.''

2. Category I, II, and III Classifications

The OTC drug procedural regulations in § 330.10 use the terms ''Category I'' (generally recognized as safe and effective and not misbranded), ''Category II'' (not generally recognized as safe and effective or misbranded), and ''Category III'' (available data are insufficient to classify as safe and effective, and further testing is required). Section 330.10 provides that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph (i.e., a final rule or regulation). Therefore, this proposed rule (at the tentative final monograph stage) retains the concepts of Categories I, II, and III.

At the final monograph stage, FDA does not use the terms ''Category I,'' ''Category II,'' and ''Category III.'' In place of Category I, the term ''monograph conditions'' is used; in place of Categories II and III, the term ''nonmonograph conditions'' is used.

B. Topical Antiseptics

The OTC topical antimicrobial rulemaking has had a broad scope, encompassing drug products that may contain the same active ingredients, but that are labeled and marketed for different intended uses. In 1974, the Agency published an ANPR for topical antimicrobial products that encompassed products for both health care and consumer use (39 FR 33103, September 13, 1974). The ANPR covered seven different intended uses for these products: (1) Antimicrobial soap; (2) health care personnel handwash; (3) patient preoperative skin preparation; (4) skin antiseptic; (5) skin wound cleanser; (6) skin wound protectant; and (7) surgical hand scrub (39 FR 33103 at 33140). FDA subsequently identified skin antiseptics, skin wound cleansers, and skin wound protectants as antiseptics used primarily by consumers for first aid use and referred to them collectively as ''first aid antiseptics''. We published a separate TFM covering the first aid antiseptics in the **Federal Register** of July 22, 1991 (56 FR 33644) (First Aid TNM). Thus, first aid antiseptics are not discussed further in this document.

The four remaining categories of topical antimicrobials were addressed in an amended TFM, published on June 17, 1994 (59 FR 31402). This TFM covered: (1) Antiseptic handwash (i.e., consumer handwash); (2) health care personnel handwash; (3) patient preoperative skin preparation; and (4) surgical hand scrub (59 FR 31402 at 31442). In the 1994 TFM, FDA also identified a new category of antiseptics for use by the food industry and requested relevant data and information (59 FR 31402 at 31440). Antiseptics for use by the food industry are not discussed further in this document.

With regard to the health care and consumer antiseptic products, we are now proposing that our evaluation of OTC antiseptic drug products be further subdivided into health care antiseptics and consumer antiseptics. We believe that these categories are distinct based on the proposed use setting, target population, and the fact that each setting presents a different risk for infection. Therefore, the safety and effectiveness should be evaluated for each intended use separately.

Health care antiseptics are drug products intended for use by health care professionals in a hospital setting or other health care situations outside the hospital, and include health care personnel hand antiseptics, surgical hand scrubs, and patient preoperative skin preparations. In 1974, when the ANPR (39 FR 33103) to establish an OTC topical antimicrobial monograph was published in the **Federal Register,** antimicrobial soaps used by consumers were distinct from professional use antiseptics, such as health care personnel handwashes. (See section I.C of this proposed rule about the term ''antimicrobial soaps''.) In contrast, in the 1994 TFM, we proposed that both consumer antiseptic handwashes and health care personnel handwashes should have the same effectiveness testing and performance criteria. In response to the TFM we received submissions from the public arguing that consumer products serve a different purpose and should continue to be distinct from health care antiseptics. We agree, and in this proposed rule we make a distinction between consumer antiseptics for use by the general population and health care antiseptics for use in hospitals or in other specific health care situations.

We refer to the group of products covered by this proposed rule as ''consumer antiseptics.'' Consumer antiseptic drug products addressed by this proposal include a variety of personal care products intended to be used with water, such as antibacterial soaps, handwashes, and antibacterial body washes. These products do not include consumer antiseptic hand rubs (commonly called hand sanitizers). These products may be used by consumers for personal use in the home on a frequent, even daily, basis. In the U.S. consumer setting, where the target population is composed of generally healthy individuals, the risk of infection and the scope of the spread of infection is relatively low compared to the health care setting, where patients are generally more susceptible to infection and the potential for spread of infection is high.

C. This Proposed Rule Covers Only Consumer Antiseptic Washes

In this proposed rule, FDA proposes the establishment of a monograph for OTC consumer antiseptics that are intended for use as either a handwash or a body wash, but that are not identified as ''first aid antiseptics'' in the 1991 First Aid TFM. When the 1994 TFM was published, the term for daily consumer use antiseptics was changed to ''antiseptic handwash.'' In response to this change, we received comments that the term ''antiseptic handwash'' did not include all of the consumer products on the market, such as hand rubs and body washes. Therefore, in this proposed rule, we use the term ''consumer antiseptic,'' which is a broad term and meant to include all of the types of antiseptic products used on a frequent or daily basis by consumers. The proposed rule does not include consumer antiseptic hand rubs (commonly called hand sanitizers).

The distinctions between washes and rubs, and between handwashes and body washes are discussed in this section.

1. Consumer Washes and Consumer Rubs

Consumer antiseptics (other than first aid antiseptics) fall into two categories: (1) Products that are rinsed off, including handwashes and body washes, and (2) products that are not rinsed off after use, including hand rubs and antibacterial wipes. The 1994 TFM did not distinguish between products that we are now calling antiseptic washes and products we are now calling antiseptic rubs. Nor did the 1994 TFM distinguish between consumer antiseptic handwashes and rubs and health care antiseptic handwashes and rubs. This proposed rule covers consumer antiseptic washes only and does not cover consumer antiseptic rubs. Completion of the monograph for Consumer Antiseptic Wash Products and certain other monographs for the active ingredient triclosan is subject to a Consent Decree entered by the United States District Court for the Southern District of New York on November 21, 2013, in *Natural Resources Defense Council, Inc.* v. *United States Food and Drug Administration, et al.,* 10 Civ. 5690 (S.D.N.Y.).

2. Handwashes and Body Washes

Consumer antiseptic hand and body washes were not a category of topical antiseptic drug products specifically identified by the Advisory Review Panel on OTC Topical Antimicrobial I Drug Products (Antimicrobial I Panel or Panel). In the ANPR and the 1978 TFM, products for daily consumer use were called ''antimicrobial soaps.'' This category encompassed deodorant soaps and hand soaps containing antimicrobial ingredients used for handwashing and personal hygiene.

In the 1994 TFM, we concluded that there was no reason to continue to include ''antimicrobial soap'' as a separate product category because soap was considered to be a dosage form and specific dosage forms were not being included in the monograph unless there was a particular safety or efficacy reason to do so (59 FR 31402 at 31407). At that time, we had not identified antiseptic body washes as a separate category of product.

Comments on the 1994 TFM noted that the elimination of the category of antimicrobial soaps in the 1994 TFM resulted in products that otherwise would have been considered antimicrobial soaps (such as antimicrobial bar soaps) being placed in the category of antiseptic handwashes. The comments stated that because the proposed labeling for antiseptic handwash products directs use on only the hands and forearms, this category is not appropriate for certain products that were originally proposed to be called ''antimicrobial soaps'' and that were to be used on the whole body (i.e., bar soaps). We agree with the comments to the extent that some products previously identified as antimicrobial soaps had, among other intended uses, the intended use of being used on the entire body. In this proposed rule, we are identifying products with the intended use of being used on the entire body as antiseptic body washes. Consequently, the active ingredients reviewed by the Panel for use in antimicrobial soaps have been reviewed for use in antiseptic body washes.

D. Comment Period

Because of the complexity of this proposed rule, we are providing a comment period of 180 days. Moreover, new data or information may be submitted to the docket within 12 months of publication, and comments on any new data or information may then be submitted for an additional 60 days (see § 330.10(a)(7)(iii) and (a)(7)(iv)). In addition, FDA will also consider requests for an extension of the time to submit new safety and/or effectiveness data to the record if such requests are submitted to the docket within the initial 180-day comment period. Upon the close of the comment period, FDA will review all data and information submitted to the record in conjunction with all timely and complete requests to extend. In assessing whether to extend the comment period to allow for additional time for studies to generate new data and information, FDA will consider the data already in the docket along with any information that is provided in any requests to extend. FDA will determine whether the sum of the data, if timely submitted, is likely to be adequate to provide all the data that are necessary to make a determination of general recognition of safety and effectiveness.

II. Background

In this section we describe the significant rulemakings and public meetings relevant to this rulemaking, and how we are responding to comments received in response to the 1994 TFM.

A. Significant Rulemakings Relevant to This Proposed Rule

A summary of the significant **Federal Register** publications relevant to this proposed rule is provided in table 1 of this proposed rule. Other **Federal Register** publications relevant to this proposed rule are available from the Division of Dockets Management (see **ADDRESSES**).

TABLE 1—SIGNIFICANT RULEMAKING PUBLICATIONS RELATED TO CONSUMER ANTISEPTIC DRUG PRODUCTS

Federal Register notice	Information in notice
1974 ANPR (September 13, 1974, 39 FR 33103).	We published an advance notice of proposed rulemaking to establish a monograph for OTC topical antimicrobial drug products, together with the recommendations of the Panel, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class.
1978 Antimicrobial TFM (January 6, 1978, 43 FR 1210).	We published our tentative conclusions and proposed effectiveness testing for the drug product categories evaluated by the Panel. The 1978 TFM reflects our evaluation of the recommendations of the Panel and comments and data submitted in response to the Panel's recommendations.
1991 First Aid TFM (July 22, 1991, 56 FR 33644).	We amended the 1978 TFM to establish a separate monograph for OTC first aid antiseptic products. In the 1991 TFM, we proposed that first aid antiseptic drug products be indicated for the prevention of skin infections in minor cuts, scrapes, and burns.
1994 Healthcare Antiseptic TFM (June 17, 1994, 59 FR 31402).	We amended the 1978 TFM to establish a separate monograph for the group of products that were referred to as OTC topical health care antiseptic drug products. These antiseptics are generally intended for use by health care professionals. In this proposed rule we also recognized the need for antibacterial personal cleansing products for consumers to help prevent cross contamination from one person to another and proposed a new antiseptic category for consumer use: Antiseptic handwash.

B. Public Meetings Relevant to This Proposed Rule

In addition to the **Federal Register** publications listed in table 1 of this proposed rule, there have been three meetings of the Nonprescription Drugs Advisory Committee (NDAC) and one public feedback meeting that are relevant to the discussion of consumer antiseptic wash safety and effectiveness. These are summarized in table 2 of this proposed rule.

TABLE 2—PUBLIC MEETINGS RELEVANT TO CONSUMER ANTISEPTICS

Date and type of meeting	Topic of discussion
January 1997 NDAC Meeting (Joint meeting with the Anti-Infective Drugs Advisory Committee) (January 6, 1997, 62 FR 764).	Antiseptic and antibiotic resistance in relation to an industry proposal for consumer and health care antiseptic effectiveness testing (Health Care Continuum Model) (Refs. 1 and 2).
March 2005 NDAC Meeting (February 18, 2005, 70 FR 8376).	The use of surrogate endpoints and study design issues for the in vivo testing of health care antiseptics (Ref. 3)
October 2005 NDAC Meeting (September 15, 2005, 70 FR 54560).	Benefits and risks of consumer antiseptics. NDAC expressed concern about the pervasive use of consumer antiseptic washes where there are potential risks and no demonstrable benefit. To demonstrate a clinical benefit, NDAC recommended clinical outcome studies to show that antiseptic washes are superior to nonantibacterial soap and water (Ref. 4).
November 2008 Public Feedback Meeting	Demonstration of the effectiveness of consumer antiseptics (Ref. 5).

C. Comments Received by FDA

In response to the 1994 TFM, FDA received approximately 160 comments from drug manufacturers, trade associations, academia, testing laboratories, consumers, health professionals, and law firms. Copies of the comments received are on public display at *http://www.regulations.gov* (see **ADDRESSES**).

Because only consumer antiseptic washes are discussed in this proposed rule, only those comments and data concerning the 1994 TFM that are related to consumer antiseptic wash active ingredients are addressed. If in the future we determine that there are monograph consumer antiseptic wash active ingredients that are safe and effective, we will address labeling and final formulation testing of consumer antiseptic washes, and the comments that were received on those subjects, in a future document. Comments that were received in response to the 1994 TFM regarding other intended uses of the active ingredients will be addressed in future documents related to those other uses.

This proposal constitutes FDA's evaluation of submissions made in response to the 1994 TFM to support the safety and effectiveness of OTC consumer antiseptic wash active ingredients (Refs. 6 through 10). We reviewed the available literature and data and other comments submitted to the rulemaking and are proposing that adequate data for a determination of safety and effectiveness were not yet available for any consumer antiseptic wash active ingredient.

III. Active Ingredients With Insufficient Evidence of Eligibility for the OTC Drug Review

In this section of the proposed rule we describe the requirements for eligibility for the OTC Drug Review and the ingredients submitted to the OTC Drug Review that lack adequate evidence of eligibility for evaluation as consumer antiseptic washes.

A. Eligibility for the OTC Drug Review

An OTC drug is covered by the OTC Drug Review if its conditions of use existed in the OTC drug marketplace on or before May 11, 1972 (37 FR 9464). Conditions of use include, among other things, active ingredient, dosage form and strength, route of administration, and specific OTC use or indication of the product (see 21 CFR 330.14(a)). To determine eligibility for the OTC Drug Review, FDA typically must have actual product labeling or a facsimile of labeling that documents the conditions of marketing of a product prior to May 1972 (see § 330.10(a)(2)). FDA considers a drug that is ineligible for the OTC Drug Review to be a new drug that will require FDA approval through the new drug application (NDA) process. Ineligibility for use as a consumer antiseptic wash does not affect eligibility for other indications under the OTC Drug Review.

Based on a review of the labeling submitted to the Antimicrobial I Panel, the ingredients discussed in section III.B of this proposed rule currently do not have adequate evidence of eligibility for evaluation under the OTC Drug Review as a consumer antiseptic wash. Due to their lack of eligibility, effectiveness and safety information that has been submitted to the rulemaking for these antiseptic active ingredients are not discussed in this proposed rule. However, if documentation of the type described in this section is submitted, these active ingredients could be determined to be eligible for evaluation.

B. Eligibility of Certain Active Ingredients for the OTC Drug Review

1. Chlorhexidine Gluconate

Previously, chlorhexidine gluconate 4 percent aqueous solution as a health care antiseptic was found to be ineligible for inclusion in the monograph and was not included in the 1994 TFM (59 FR 31402 at 31413). We have not received any new information since the 1994 TFM demonstrating that this active ingredient is eligible for the monograph. Consequently, we are not proposing to change the categorization of chlorhexidine gluconate from that of a new drug based on the lack of documentation demonstrating its eligibility as a consumer antiseptic wash, and we do not include a discussion of any safety or effectiveness data submitted for chlorhexidine gluconate.

2. Polyhexamethylene Biguanide; Benzalkonium Cetyl Phosphate; Cetylpyridinium Chloride; Salicylic Acid; Sodium Hypochlorite; Tea Tree Oil; Combination of Potassium Vegetable Oil Solution, Phosphate Sequestering Agent, and Triethanolamine

Following the publication of the 1994 TFM, FDA received submissions for the first time requesting that polyhexamethylene biguanide, benzalkonium cetyl phosphate, cetylpyridinium chloride, salicylic acid, sodium hypochlorite, tea tree oil, and the combination of potassium vegetable oil solution, phosphate sequestering agent, and triethanolamine be added to the monograph (Refs. 11 through 17).

These compounds were not addressed in prior FDA documents related to the monograph and were not evaluated for antiseptic handwash use by the Antimicrobial I Panel. The submissions received by the Agency to date do not include documentation demonstrating the eligibility of any of these seven compounds for inclusion in the monograph (Ref. 18). Therefore, polyhexamethylene biguanide, benzalkonium cetyl phosphate, cetylpyridinium chloride, salicylic acid, sodium hypochlorite, tea tree oil, and the combination of potassium vegetable oil solution, phosphate sequestering agent, and triethanolamine have not been demonstrated to be eligible for the OTC Drug Review. Based on the information about eligibility that we have at this time, we propose to categorize them as new drugs, and we do not include a discussion of safety or effectiveness data submitted for them.

3. Alcohol (Ethyl Alcohol) and Isopropyl Alcohol

In the 1994 TFM, denatured ethyl alcohol (ethanol or alcohol) 60 to 95 percent by volume in an aqueous solution was one of two active ingredients classified as Category I for use as an antiseptic handwash or health care personnel handwash (59 FR 31402 at 31442). Isopropyl alcohol 70 to 91.3 percent was classified as Category III for use as an antiseptic handwash or health care personnel handwash. The only consumer products containing alcohol or isopropyl alcohol that were submitted to the OTC Drug Review were products that were intended to be used without water (Ref. 19). Consequently, alcohol and isopropyl alcohol have not been demonstrated to be eligible for the OTC Drug Review for evaluation as consumer antiseptic wash drug products, which by definition are intended to be rinsed off with water. Based on the information we currently have about eligibility of these active ingredients, we propose to categorize alcohol and isopropyl alcohol intended for use as an antiseptic wash as new drugs, and we do not include a discussion of safety or effectiveness of alcohol or isopropyl alcohol for such use. This proposal relates to antiseptic washes and does not include consumer antiseptic hand rubs (commonly called hand sanitizers).

IV. Ingredients Previously Proposed as Not Generally Recognized as Safe and Effective (GRAS/GRAE)

FDA may determine that an active ingredient is not GRAS/GRAE (i.e., nonmonograph) because of lack of evidence of effectiveness or lack of evidence of safety or both. In the 1994 TFM (59 FR 31402 at 31435), FDA proposed that the active ingredients fluorosalan, hexachlorophene, phenol (greater than 1.5 percent), and tribromsalan be found not GRAS/GRAE for use as an antiseptic handwash or health care personnel handwash. The Agency did not classify hexachlorophene or tribromsalan in the 1978 TFM (43 FR 1210 at 1227) because it had already taken final regulatory action against hexachlorophene (21 CFR 250.250) and certain halogenated salicylamides, particularly tribromsalan (21 CFR 310.502). No substantive comments or new data were submitted to support reclassification of any of these ingredients to GRAS/GRAE status. Therefore, FDA is continuing to propose that these active ingredients be found not GRAS/GRAE for OTC consumer antiseptic hand or body washes as defined in this proposed rule and that any OTC consumer antiseptic hand or body wash drug product containing any of these ingredients not be allowed to continue to be introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application effective, except as otherwise provided in other regulations, as of 1 year after publication of the final monograph in the **Federal Register**.

V. Summary of Proposed Classifications of OTC Consumer Antiseptic Wash Active Ingredients

Tables 3 and 4 in this proposed rule list the classification proposed in the 1994 TFM for each OTC consumer antiseptic active ingredient and the classification being proposed in this proposed rule. The specific data that has been submitted to the public docket (the rulemaking) and evaluated by FDA and the description of data still lacking in the administrative record is described in detail for each active ingredient separately in section VII.D of this proposed rule.

TABLE 3—CLASSIFICATION OF OTC CONSUMER ANTISEPTIC ACTIVE INGREDIENTS IN THIS PROPOSED RULE AND IN THE 1994 TFM

Active ingredient	1994 TFM	This proposed rule
Hexylresorcinol	IIIE [1]	IIISE.
Iodine complex (ammonium ether sulfate and polyoxyethylene sorbitan monolaurate).	IIIE	IIISE.
Iodine complex (phosphate ester of alkylaryloxy polyethylene glycol).	IIIE	IIISE.
Nonylphenoxypoly (ethyleneoxy) ethanoliodine.	IIIE	IIISE.
Poloxamer iodine complex.	IIIE	IIISE.
Povidone-iodine 5 to 10 percent.	I [2]	IIISE.
Secondary amyltricresols.	IIIE	IIISE.
Triclocarban	IIIE	IIISE.
Undecoylium chloride iodine complex.	IIIE	IIISE.

[1] "III" denotes that additional data are needed. "E" denotes effectiveness data needed. "S" denotes safety data needed.

[2] "I" denotes that an active ingredient has been shown to be safe and effective.

This proposed rule does not change the status of a number of antiseptic active ingredients previously proposed as lacking sufficient evidence of safety and effectiveness or the status of several ingredients previously proposed as having been shown to be unsafe, ineffective, or both (see table 4 of this proposed rule).

TABLE 4—OTC CONSUMER ANTISEPTIC ACTIVE INGREDIENTS WITH NO CHANGE IN CLASSIFICATION IN THIS PROPOSED RULE COMPARED TO THE 1994 TFM

Active ingredient	No change in classification
Benzalkonium chloride	IIISE [1]
Benzethonium chloride	IIISE
Chloroxylenol	IIISE
Cloflucarban	IIISE
Fluorosalan	II [2]
Hexachlorophene	II
Methylbenzethonium chloride.	IIISE
Phenol (less than 1.5 percent).	IIISE
Phenol (greater than 1.5 percent).	II
Sodium oxychlorosene	IIISE
Tribromsalan	II
Triclosan	IIISE
Triple dye [3]	II

[1] "III" denotes that additional data are needed. "S" denotes safety data needed. "E" denotes effectiveness data needed.

[2] "II" denotes that an active ingredient has been shown to be unsafe, ineffective, or both.

[3] Triple dye was proposed as Category II for antimicrobial soap due to a physical and/or chemical incompatibility in formulation and for skin antiseptic (except for use in neonatal ward) in the 1978 TFM (43 FR 1210 at 1227), and was not further evaluated as an antiseptic handwash in the 1994 TFM (59 FR 31402 at 31436). FDA has received no further information on triple dye for use as an antiseptic wash since the 1994 TFM.

VI. Effectiveness (Generally Recognized as Effective) Determination

OTC regulations (§ 330.10(a)(4)(ii)) define the standards for establishing an OTC active ingredient as GRAE. These regulations require controlled clinical trials of the kind described in § 314.126(b) (21 CFR 314.126(b)) as proof of the effectiveness of an active ingredient unless this requirement is waived. According to § 314.126(a), these clinical studies must be adequate and well-controlled studies that can distinguish the effect of a drug from other influences such as a spontaneous change in the course of the disease, placebo effect, or biased observation. In general, such studies include controls that are adequate to provide an assessment of drug effect, adequate measures to minimize bias, and the use of adequate analytical methods to demonstrate effectiveness. For active ingredients being evaluated in the OTC Drug Review, this means that a demonstration of the contribution of the active ingredient to any effectiveness observed is required before an ingredient can be GRAE.

In the 1994 TFM, we proposed a log reduction standard (a clinical simulation standard) for establishing effectiveness of consumer and health care antiseptics (59 FR 31402 at 31448) for the proposed intended use of decreasing bacteria on the skin. The 1994 TFM log reduction standard for effectiveness is based on an unvalidated surrogate endpoint (i.e., number of bacteria removed from the skin), rather than a clinical outcome (e.g., reduction in the number of infections). Because of new concerns about the potential risks (e.g., resistance and hormonal effects) posed by the repeated daily use of consumer antiseptic washes (see section VII of this proposed rule), we are now proposing that a different type of effectiveness study is necessary to support the GRAE status of consumer antiseptic wash active ingredients. We are proposing that the use of antiseptic active ingredients to be used in consumer antiseptic wash products be supported by studies that demonstrate a direct clinical benefit (i.e., a reduction of infection). Data from these clinical outcome studies will help assure that any potential risk from consumer antiseptic wash products is balanced by a demonstrated clinical benefit.

This effectiveness requirement is consistent with NDAC's recommendations from the October 2005 meeting regarding consumer antiseptics (Ref. 4). NDAC unanimously agreed that in order to be considered effective, a demonstration that the drug removes bacteria is not enough and that consumer antiseptic products should provide a clinical benefit by reducing infections. They concluded that studies using surrogate endpoints would not be adequate to demonstrate this benefit and recommended studying the impact of these products on infections in specific populations of consumers that use these products. NDAC also did not believe that it is possible to generalize from effectiveness in the health care environment to effectiveness in the consumer setting because of differences in populations and other risk factors.

NDAC concluded that it would be feasible to use clinical outcome studies to show a benefit of consumer antiseptic washes over and above washing with nonantibacterial soap. They pointed out that there are already studies in the community setting that have looked at clinical outcomes, such as the number of symptoms or infections over a given timeframe. NDAC concluded that it would not be unethical to run a placebo-controlled study of consumer antiseptic washes to demonstrate clinical benefit. NDAC also stated that it is important to know if there is any added benefit from the antiseptic active ingredient in consumer antiseptic wash products. We agree with NDAC's recommendations on this issue.

A coalition of trade organizations that represent antiseptic manufacturers submitted comments disagreeing with NDAC's conclusions. The comments state that clinical outcome studies in the consumer setting are not feasible because of the cost and considerable number of confounding factors that would make interpretation of the studies difficult (Refs. 5, 20, and 21). Some of these confounding factors identified in these comments included:

- Number and length of handwashes performed
- Amount of product used
- Compliance with handwashing technique and frequency
- Blinding of products
- Use of other (non-study) products when outside the home
- Type of infection
- Virulence of the infecting microorganism
- Generally low bacterial infection rate in the United States

NDAC found the studies by Luby et al. (Ref. 22) and Larson et al. (Ref. 23), which are discussed in section VI.A of this proposed rule, to be evidence that such clinical outcome studies are feasible. We agree. Although there are many confounding factors that must be addressed when designing a clinical outcome study of the effectiveness of antiseptic washes in the consumer setting, this is the case in any clinical outcome study. Despite this fact, well-designed clinical outcome studies are conducted for other types of drug products, and the most important factors can be addressed in an appropriately designed study. If effectiveness cannot be demonstrated in a clinical outcome study for consumer antiseptic washes, we should not rush to conclude that it is the confounding factors that limit our ability to detect a benefit; rather, if the study is appropriately designed, it is likely telling us that the consumer antiseptic wash does not provide a clinically significant benefit in a population at low risk to develop an infection, such as a healthy consumer.

As discussed later in this section of this proposed rule, we evaluated all the available effectiveness studies for consumer antiseptic washes to determine if the data supported effectiveness of consumer antiseptic active ingredients based on the 1994 TFM effectiveness criteria. We found that the available studies are not adequate to support a GRAE determination for any consumer antiseptic wash active ingredient under

either the 1994 TFM effectiveness criteria or what we propose now.

A. Evaluation of Effectiveness Data

1. Clinical Simulation Studies

Most of the data available to support the effectiveness of consumer antiseptic washes are based on clinical simulation studies, such as the one described in the 1994 TFM (59 FR 31402 at 31444). The premise behind these studies is that bacterial reductions achieved in this type of study translate to a reduced risk for infection. However, there currently are no clinical data that demonstrate that the specific bacterial log reductions that we have relied upon as a demonstration of effectiveness lead to a specific reduction in infections. We now believe that the appropriate demonstration of effectiveness is a clinical outcome study. Moreover, clinical outcome studies are feasible in the consumer setting and may not give rise to ethical concerns such as those that could occur in studies in a hospital setting.

Although we are now proposing to require clinical outcome studies, we evaluated all clinical simulation studies that were submitted to the OTC Drug Review for evidence of antiseptic hand and body wash effectiveness demonstrated under the log reduction criteria proposed in the 1994 TFM (59 FR 31402 at 31448) (Ref. 6). We also searched the published literature for clinical simulation studies that assess antiseptic wash effectiveness also using the log reduction criteria in the 1994 TFM (Refs. 24, 25, and 26). Overall, when judged against the criteria in the 1994 TFM, the studies are not adequately controlled to allow an accurate assessment of the effectiveness of consumer antiseptic wash active ingredients for one or more reasons.

First, the majority of testing was conducted using a formulated product without adequate comparison to a vehicle control, which is needed to demonstrate the contribution of the antiseptic active ingredient, if any (43 FR 1210 at 1240). Second, many studies did not include an active control, which is needed to validate the conduct of the study (59 FR 31402 at 31450). Third, many studies lacked adequate documentation of neutralization (43 FR 1210 at 1244). Residual antiseptic remaining on the skin after rinsing, if not effectively neutralized, will continue its antimicrobial action and result in an exaggerated bacterial reduction that is not reflective of product performance on the skin. Finally, none of the studies were of adequate size to assure a statistically valid demonstration of log reductions. The Agency's detailed evaluation of the data is on file at *http://www.regulations.gov* (see **ADDRESSES**) (Ref. 26). Only one submitted clinical simulation study was adequately designed and controlled to evaluate the contribution of the active ingredient to the observed bacterial log reductions (Ref. 27). This study compared a liquid soap containing 0.7 percent triclocarban to both the formulation without any antiseptic (placebo) and a 4 percent chlorhexidine gluconate active control. The triclocarban-containing soap was superior to placebo and met the 1994 TFM effectiveness criteria of a 2-$\log_{10}$ reduction after the first wash and a 3-$\log_{10}$ reduction after the eleventh wash (59 FR 31402 at 31448). The active control also met the 1994 TFM effectiveness criteria when tested against *Serratia marcescens* and validated the study conduct. Therefore, this was a valid, adequately controlled study that met the effectiveness criteria proposed in the 1994 TFM.

Although the 0.7 percent triclocarban soap met the standard for effectiveness proposed in the 1994 TFM, the log reduction differences compared to placebo were small (less than a 0.5-log reduction difference compared to placebo after the first wash and just over a 1-log reduction difference after the eleventh wash). Because we do not have any data that correlates specific bacterial log reductions with clinical outcomes, we have no basis to interpret the impact of these small log reductions on infections in a population at low risk for infection. Thus, even with an adequately designed and controlled clinical simulation study, the data do not provide sufficient evidence of a meaningful contribution of consumer antiseptic wash active ingredients relative to a placebo handwash.

2. Exposure-Response Studies

Although most clinical simulation studies submitted to the OTC Drug Review only evaluated bacterial log reductions, one study (Ref. 21) attempted to correlate the reduction of bacteria on the hands with a reduction in infection rate. The study was designed to compare the ability of a nonantibacterial handwash to the ability of an antiseptic (triclosan) handwash to reduce bacteria on the hands after a single use. The study also evaluated the impact of product use on the subsequent transfer of surviving bacteria from washed hands to a ready-to-eat food item, melon balls. The observed reduction in bacterial transfer was then used to estimate the potential reduction in infection risk from antiseptic use based on published bacterial exposure-response data for *Shigella flexneri* (*S. flexneri*). Here, exposure-response data refers to the correlation between the amount of *S. flexneri* ingested and the severity of clinical disease (e.g., diarrhea) that results from that ingestion. The rationale for this study design is that if ready-to-eat food was contaminated with bacteria left behind on washed hands and then eaten, those organisms would have the potential to cause illness. This scenario has the potential to occur in the consumer setting during domestic food preparation.

The antiseptic handwash met the 1994 TFM criteria for bacterial reduction after one wash; however, the study used a novel hand contamination method (Ref. 28) that has not been sufficiently validated. In addition, we believe this novel hand contamination method does not accurately reflect an antiseptic handwash's intended use because it ignores an important reservoir of bacteria on the hands (i.e., the area around and under the fingernails), which is evaluated when the whole hand contamination method is used. Further, although the study authors report that the transfer of bacteria to melon balls decreased with use of a consumer antiseptic handwash, it is not clear what factors other than the antiseptic may influence bacterial transfer from skin to ready-to-eat foods such as melon. Therefore, the results of this study do not demonstrate the effectiveness of the consumer antiseptic handwash used in this study because of the novel and unvalidated methodology.

In addition, the data used by the study authors for the infection risk estimates have several limitations. First, the bacterial exposure-response data for *S. flexneri* are based on a small number of control subjects in human feeding studies (Refs. 29 through 33). Second, there is substantial variability in the exposure-response data. In cases where the same bacterial dose was fed to subjects in different studies, the number of subjects that became ill varied greatly (e.g., 33 to 86 percent) (Refs. 30 and 31). Third, investigators used different criteria to define illness in the various feeding studies (Refs. 29, 30, and 32). Depending on which parameter was examined, the percentage of subjects that were defined as having illness varied. In studies that examined both clinical symptoms and bacterial shedding or antibody response, there was no parameter that consistently appeared to be correlated with illness in all subjects. Finally, much of the feeding data comes from high-dose exposures. Consequently, the infection rates at low

doses must be extrapolated, and there may be a high degree of uncertainty for these values. Furthermore, the bacterial exposure-response data from feeding studies are not linear, which means that an increase in the bacterial dose does not necessarily correlate with an increase in the number of subjects who become ill. Because of this, a statistical model must be used to create the bacterial exposure-response curve (Ref. 34). Use of different statistical models is likely to provide different results.

3. Clinical Outcome Studies

Unlike clinical simulation studies that evaluate effectiveness using unvalidated surrogate endpoints, adequate and well-controlled studies in the general population could more directly demonstrate the existence of any clinical benefit for consumer antiseptic washes. Although these studies are complex because of the number of factors that need to be controlled for, we believe that they are feasible and are the most appropriate method of demonstrating the effectiveness of consumer antiseptic washes.

FDA evaluated all the clinical outcome studies that were submitted to the OTC Drug Review to look for evidence of a clinical benefit from the use of consumer antiseptic washes (Ref. 6). In addition, we searched the published literature for clinical outcome studies that would provide evidence of a clinical benefit from the use of consumer antiseptic washes (Refs. 25 and 26). We are defining a clinical benefit here as a reduction in the number of infections in the population that uses the consumer antiseptic wash.

We found only a few clinical outcome studies for consumer antiseptic washes. Overall, most of the studies were confounded, underpowered, and/or not properly controlled. Importantly, most of the studies did not include a vehicle control and, therefore, are not able to show the contribution of the antiseptic active ingredient to the observed clinical outcome.

Only two of the clinical outcome studies identified were randomized, blinded, and placebo-controlled with no major design flaws, and only one of these was designed to evaluate the effectiveness of a particular antiseptic active ingredient. These are the best available studies to evaluate the impact of consumer antiseptic washes on infections. Neither of these studies demonstrates a benefit from the use of the tested antiseptic active ingredient; however, their study designs can be used as a guide in the development of future clinical outcome studies of consumer antiseptic wash active ingredients.

The first study compared the household use of a 1.2 percent triclocarban-containing consumer antiseptic wash (bar soap) to placebo wash (nonantibacterial bar soap) or to standard practice in squatter neighborhoods in Pakistan (Ref. 22). Thirty-six neighborhoods were randomized to 1 of 3 groups, with at least 300 households in each group. Fieldworkers visited households weekly for 1 year to encourage handwashing in the two soap groups and to record symptoms in all groups. The primary study outcomes were the incidence rates of diarrhea, impetigo, and acute respiratory tract infection. The authors report that handwashing with either soap significantly reduced diarrhea and acute lower respiratory tract infections, and handwashing in conjunction with daily bathing prevented impetigo. There was no difference between nonantibacterial soap and triclocarban-containing soap. Consequently, this study does not show a clinical benefit from the use of the consumer antiseptic wash over nonantibacterial soap and water, and does not support a GRAE finding for the active ingredient (triclocarban).

The second study, conducted in the United States, examined the use of triclosan-containing hand soap in the home (Ref. 23). This was a randomized, double-blind, placebo-controlled trial in 224 inner city households randomly assigned to use hand soap and household cleaning products with or without antimicrobial ingredients for 48 weeks. The authors measured infections by assessing the number of infectious disease symptoms during the course of the study (e.g., diarrhea). Test households received several antibacterial cleaning products: Liquid triclosan hand soap, quaternary ammonium hard surface and kitchen cleaner, and oxygenated bleach laundry detergent. Control households received similar nonantibacterial hand soap, hard surface and kitchen cleaner, and laundry detergent. Both groups received nonantibacterial liquid dish soap and bar soap. Adherence to the product regimen was assessed monthly by weighing the remainder of the products and inspecting the home for the presence of other products.

The participants in both groups experienced primarily respiratory symptoms (runny nose, sore throat, or cough). The differences between the intervention and control groups were not significant for any symptoms or for numbers of symptoms. The study did not show any reduction in symptoms of infectious disease or disease transmission as a result of antimicrobial product use.

4. Antiseptic Body Wash Studies

Several studies were submitted to show a clinical benefit from the use of consumer antiseptic body washes in the prevention of skin infection (Ref. 25). In contrast to antiseptic handwashes, which are meant to work by removing transiently acquired microorganisms, antiseptic body washes are meant to reduce the number of resident bacteria on the skin. The majority of these studies describe the use of antiseptics for nonmonograph indications, such as for the treatment of atopic dermatitis or erythrasma. Furthermore, in most of the studies, the effectiveness of the antiseptic body wash was not the focus of the study. For example, often the antiseptic body wash was part of a treatment regimen that included antibiotics or corticosteroid creams, and the effectiveness of the treatment regimens as a whole were the primary focus of the investigation. Overall, these studies were not adequately controlled to assess the contribution of the antiseptic active ingredient, and these data are not sufficient to demonstrate a clinical benefit (Ref. 25).

B. In Vitro Studies To Support a Generally Recognized as Effective Determination

In the 1994 TFM we proposed that the effectiveness of antiseptic active ingredients could be supported by a combination of in vitro studies and in vivo clinical simulation testing as described in § 333.470 (59 FR 31402 at 31437). Today, we continue to believe that a GRAE determination for an antiseptic active ingredient should be supported by an adequate characterization of the antimicrobial activity of the ingredient. Extensive testing for this purpose was proposed in the 1994 TFM which included a determination of the in vitro spectrum of antimicrobial activity, minimum inhibitory concentration (MIC) testing against 25 fresh clinical isolates and 25 laboratory strains, and time-kill testing against 10 laboratory strains (59 FR 31402 at 31444). Comments received in response to the 1994 TFM objected to the proposed in vitro testing requirements, stating that they were overly burdensome (Ref. 35). Consequently, submissions of in vitro data submitted to support the effectiveness of antiseptic active ingredients were far less extensive than proposed in the TFM (Ref. 6).

Based on our proposal for clinical outcome studies to support a GRAE

determination and in consideration of comments on our in vitro testing proposal (Ref. 35), FDA has reevaluated its proposed testing standards. Because of the short exposure times for consumer antiseptic products, we no longer believe that MICs are relevant to the effectiveness of antiseptic active ingredients. We also now believe that a modified time-kill assay designed to provide an assessment of how rapidly an antiseptic active ingredient produces a bactericidal effect is a more efficient and less burdensome way of documenting in vitro antiseptic activity. Further, because clinical outcome studies are now needed to support a GRAE determination, we no longer believe that a demonstration of in vitro antiseptic activity against an extensive list of organisms is necessary.

Therefore, we now propose that data from a modified time-kill assay designed to provide an adequate assessment of how rapidly an antiseptic active ingredient produces a bactericidal effect and to estimate the antibacterial spectrum of an antiseptic active ingredient would be sufficient to characterize the in vitro antimicrobial activity of an antiseptic active ingredient. The assay should test the following reference strains and representative clinical isolates:

- *Enterococcus faecalis* (ATCC 19433 and ATCC 29212)
- *Staphylococcus aureus* (ATCC 6538 and ATCC 29213) and methicillin-resistant *S. aureus* (MRSA) (ATCC 33591 and ATCC 33592)
- *Streptococcus pyogenes* (ATCC 14289 and ATCC 19615)
- *Listeria monocytogenes* (ATCC 7644 and ATCC 19115)
- *Campylobacter jejuni* (ATCC 33291 and ATCC 49943)
- *Escherichia coli* (ATCC 11775 and ATCC 25922)
- *Pseudomonas aeruginosa* (ATCC 15442 and ATCC 27853)
- *Salmonella enterica Serovar Enteritidis* (ATCC 13076) and *Serovar Typhimurium* (ATCC 14028). Serovar refers to the subspecies classification of a group of microorganisms based on cell surface antigens.
- *Shigella sonnei* (ATCC 9290 and ATCC 25931)

The consumer antiseptic drug product will be considered bactericidal at the concentration and contact time that demonstrates a 3-$\log_{10}$ (99.9 percent) or greater reduction in bacterial viability for all of the tested strains. This is the same performance criterion used by the Clinical and Laboratory Standards Institute (Ref. 36).

VII. Safety (Generally Recognized as Safe) Determination

In the 1994 TFM, 11 active ingredients were classified as GRAS for antiseptic handwash use (59 FR 31402 at 31435). There have since been a number of important scientific developments affecting our evaluation of the safety of these active ingredients and causing us to reassess the data necessary to support a GRAS determination. There is now new information regarding the potential risks from systemic absorption and long-term exposure to antiseptic active ingredients. The potential for widespread antiseptic use to promote the development of antibiotic-resistant bacteria also needs to be evaluated. Further, additional experience with and knowledge about safety testing has led to improved testing methods. Improvements include study designs that are more capable of detecting potential safety risks. Based on our reassessment, we are proposing new GRAS data requirements for consumer antiseptic wash active ingredients. For our administrative record to be complete with regard to these new safety concerns, additional safety data will be necessary to support a GRAS determination for consumer antiseptic wash active ingredients.

A. New Issues

Since the 1994 TFM was published, new data have become available indicating that systemic exposure to topical antiseptic active ingredients may be more than previously thought. Systemic exposure refers to the presence of antiseptic active ingredients inside and throughout the body. For example, triclosan is an antiseptic active ingredient commonly found in consumer antiseptic hand and body wash products. It is absorbed through the skin and has been found in both human breast milk and urine (Refs. 37 and 38). Further, triclosan has been found at relatively consistent levels in urine samples collected from a representative sample of the U.S. population since sampling began in 2003 (Ref. 39). We believe that the consequences of this systemic exposure need to be assessed.

Given the prevalent use of consumer antiseptic wash drug products, systemic exposure may be commonplace (see Ref. 40 for a discussion of the consumer antiseptic wash market). While some systemic exposure data exist for triclosan, many of the other antiseptic wash active ingredients have not been evaluated in this regard. Currently there is also a lack of data to assess the impact of important drug use factors that can influence systemic exposure such as dose, application frequency, application method, duration of exposure (e.g., potentially a consumer's entire lifetime), product formulation, skin condition, and age.

The evaluation of the safety of drug products involves correlating findings from animal toxicity studies to the level of exposure to the drug obtained from pharmacokinetic studies in animals and humans. Our administrative record lacks the data necessary to determine if there is an acceptable margin of safety for the repeated daily use of consumer antiseptic wash active ingredients. Thus, we are continuing to propose that this data is necessary for consumer antiseptic wash active ingredients. This information will help identify potential safety concerns and help determine if an adequate safety margin exists for OTC human use. One effect of systemic exposure to consumer antiseptic wash ingredients that has come to our attention since publication of the 1994 TFM is data suggesting that triclosan and triclocarban can cause alterations in thyroid, reproductive, growth, and developmental systems of neonatal and adolescent animals (Refs. 41 through 50). Hormonally active compounds have been shown to affect not only the exposed organism, but also subsequent generations (Ref. 51). These effects may not be related to direct deoxyribonucleic acid (DNA) mutation, but rather to alterations in factors that regulate gene expression (Ref. 52).

A hormonally active compound that causes reproductive system disruption in the fetus or infant may have effects that are not apparent until many years after initial exposure. There are also critical times in fetal development when a change in hormonal balance that would not cause any lasting effect in an adult could cause a permanent developmental abnormality in a child. For example, untreated hypothyroidism during pregnancy has been associated with cognitive impairment in the offspring (Refs. 53, 54, and 55).

Because consumer antiseptic washes are chronic use products and are used by sensitive populations such as children and pregnant women, evaluation of the potential for chronic toxicity and effects on reproduction and development should be included in the safety assessment. The designs of general toxicity and reproductive/developmental studies are often sufficient to identify developmental effects that can be caused by hormonally active compounds through the use of currently accepted endpoints and standard good laboratory practice

toxicology study designs. However, additional study endpoints may be needed to fully characterize the potential effects of drug exposure on the exposed individuals. In light of the preliminary findings for triclosan and triclocarban, it is particularly important that adequate analysis of all potential toxic effects of antiseptic active ingredients be conducted before their classification as GRAS. Section VII.C of this proposed rule describes the types of studies that can adequately evaluate an active ingredient's potential to cause developmental or reproductive toxicity, or adverse effects on the thyroid gland.

The potential of hormonally active antiseptic active ingredients to cause developmental or reproductive effects raises particular concerns for the safe use of these ingredients on children. Currently, there is a lack of data to assess the systemic exposure of antiseptic active ingredients in children. Additional data to support the safety of the use of consumer antiseptic active ingredients on children may be needed. The need for additional data in children would depend on the risks identified in the animal safety assessment. If studies in children are needed, we recommend that manufacturers discuss the types of studies needed with FDA before proceeding.

B. Antimicrobial Resistance

Since publication of the 1994 TFM, there is new information raising concerns about the impact of widespread antiseptic use on the development of antimicrobial resistance (Refs. 56 through 59). Bacteria use some of the same resistance mechanisms against both antiseptics and antibiotics. Thus, the use of antiseptic active ingredients with resistance mechanisms in common with antibiotics may have the potential to select for bacterial strains that are also resistant to clinically important antibiotics, adding to the problem of antibiotic resistance. Laboratory studies of some of the antiseptic active ingredients evaluated in this proposed rule demonstrate the development of reduced susceptibility to antiseptic active ingredients and some antibiotics after growth in nonlethal amounts of the antiseptic (i.e., low-to-moderate concentrations of antiseptic) (Refs. 25 and 60 through 77). These studies provide ample evidence of bacterial resistance mechanisms that could select for antiseptic or antibiotic resistance in the natural setting.

The impact on bacterial resistance in the natural setting (rather than in the laboratory) has not been extensively evaluated. The existing data are very limited in scope. A few studies have not found evidence of such selective pressures occurring in the natural setting (Refs. 78 through 81). However, these data are limited by the small numbers and types of organisms, the brief time periods, and locations examined. More importantly, none of these consumer studies address the level of exposure to antiseptic active ingredients. Thus, the available data are not sufficient to support a finding that these mechanisms would not have meaningful clinical impact. Given the increasing evidence about the magnitude of the antibiotic resistance problem and the speed with which new antibiotic resistant organisms are emerging, it is important to assess this potential consequence of consumer antiseptic use (Ref. 82).

FDA has been evaluating the role that consumer antiseptic products may play in the development of antibiotic resistance for quite some time, and has sought the advice from expert panels on this topic on two occasions. In 1997, a joint Nonprescription Drugs and Anti-Infective Drugs Advisory Committee concluded that the data were not sufficient to take any action on this issue at that time (Ref. 2). The joint Committee recommended that FDA work with industry to establish surveillance mechanisms to address antiseptic and antibiotic resistance. At the October 2005 NDAC meeting on antiseptics for consumer use, however, some NDAC members expressed concern about the societal consequences of the pervasive use of consumer antiseptic wash products, including the potential for antiseptic use to lead to changes in bacterial susceptibilities to clinically important antibiotics (Ref. 4).

Reports of the persistence of low levels of some consumer antiseptic wash active ingredients in the environment (Refs. 83, 84, and 85) signal the need to better understand the impact of widespread use of consumer antiseptic washes. Section VII.C of this proposed rule describes the data that will help establish a better understanding of the interactions between antiseptic active ingredients and bacterial resistance mechanisms in consumer products and will provide the information needed to perform an adequate risk assessment for these consumer product uses. FDA recognizes that the science of evaluating the potential of compounds to cause bacterial resistance is evolving, and acknowledges the possibility that alternative data different from that listed in section VII.C may be identified as an appropriate substitute for evaluating resistance.

C. Studies to Support a Generally Recognized as Safe Determination

A GRAS determination for consumer antiseptic wash active ingredients should be supported by both nonclinical (animal) and clinical (human) studies. In order to issue a final monograph for these products, this safety data must be in the administrative record (i.e., rulemaking docket). In order to assist manufacturers or others who wish to pursue GRAS status for these active ingredients we are including specific information based in part on existing FDA guidance about the kinds of studies to consider conducting and submitting. We have published guidance documents describing the nonclinical safety studies that a manufacturer should perform when seeking to market a drug product under an NDA (Refs. 86 through 91). These guidance documents also provide suitable guidance for performing the studies necessary to determine GRAS status for a consumer antiseptic wash active ingredient. Because consumer antiseptic washes may be used repeatedly over a lifetime and in sensitive populations, we propose that antiseptic active ingredients will need to be tested for carcinogenic potential, developmental and reproductive toxicity (DART), and other potential effects as described in more detail in this section.

1. Safety Studies Described in Existing FDA Guidances

NDA safety studies that are described in the existing FDA guidances (Refs. 86 through 91) provide a framework for the types of studies that are needed for FDA to assess the safety of each antiseptic active ingredient and make a GRAS determination. A description of each type of study and how we would use this information to determine safety is provided in table 5.

TABLE 5—REQUESTED SAFETY DATA AND RATIONALE FOR STUDIES

Type of study	Study conditions	What the data tell us	How the data are used
Animal pharmacokinetic absorption, distribution, metabolism, and excretion (ADME) (Refs. 88 and 92).	Both oral and dermal administration.	Allows identification of the dose at which the toxic effects of an active ingredient are observed due to systemic exposure of the drug. ADME data provide: The rate and extent an active ingredient is absorbed into the body (e.g., AUC, Cmax, Tmax);[1] where the active ingredient is distributed in the body; whether metabolism of the active ingredient by the body has taken place; information on the presence of metabolites; and how the body eliminates the original active ingredient (parent) and its metabolites (e.g., T½)[2].	Used as a surrogate to identify toxic systemic exposure levels that can then be correlated to potential human exposure via dermal pharmacokinetic study findings. Adverse event data related to particular doses and drug levels (exposure) in animals are used to help formulate a safety picture of the possible risk to humans.
Human pharmacokinetics (Ref. 93).	Dermal administration using multiple formulations under maximum use conditions.	Helps determine how much of the active ingredient penetrates the skin, leading to measurable systemic exposure.	Used to relate the potential human exposure to toxic drug levels identified in animal studies.
Carcinogenicity (ICH S1A and S1B (Refs. 86, 87, and 90)).	Minimum of one oral and one dermal study for topical products.	Provides a direct measure of the potential for active ingredients to cause tumor formation (tumorogenesis) in the exposed animals.	Identifies the systemic and dermal risks associated with drug active ingredients. Taken together, these studies are used to identify the type of toxicity, the level of exposure that produces this toxicity, and the highest level of exposure at which no adverse effects occur, referred to as the ''no observed adverse effect level'' (NOAEL). The NOAEL is used to determine a safety margin for human exposure.
Developmental toxicity (ICH S5 (Ref. 89)).	Oral administration.	Evaluates the effects of a drug on the developing offspring throughout gestation and postnatally until sexual maturation.	
Reproductive toxicity (ICH S5 (Ref. 89)).	Oral administration.	Assesses the effects of a drug on the reproductive competence of sexually mature male and female animals.	

[1] ''AUC'' denotes the area under the concentration-time curve, a measure of total exposure or the extent of absorption. ''Cmax'' denotes the maximum concentration, which is peak exposure. ''Tmax'' denotes the time to reach the maximum concentration, which aids in determining the rate of exposure.

[2] ''T½'' denotes the half-life, which is the amount of time it takes to eliminate half the drug from the body or decrease the concentration of the drug in plasma by 50 percent.

Because the available data indicate that some antiseptic active ingredients are absorbed after topical application in humans and animals, it is necessary to assess the effects of long-term dermal and systemic exposure to these ingredients. It also is important that the human pharmacokinetic studies reflect maximal use conditions of consumer antiseptic washes using different formulations to fully characterize the active ingredient's potential for dermal penetration. Because consumer antiseptic active ingredients can be formulated into either hand or body washes and consumers may use both on a daily basis, studies examining maximal use conditions must take full body exposure into account.

The duration of the studies should be sufficient to reach steady-state levels of absorption (i.e., the concentration of active ingredient is unchanged by further application of the product because the amount of active ingredient being absorbed is equal to the amount being eliminated by the body). For a steady-state study, the measurement of total exposure would be the area under the concentration-time curve (AUC) for plasma, serum, or blood over the length of the dosing interval at steady-state. Steady-state must be demonstrated by an unchanged AUC or drug concentration on 3 consecutive days taken at the same time of day.

These studies represent FDA's current thinking on the data needed to support a GRAS determination for an OTC antiseptic active ingredient and are similar to those recommended by the Antimicrobial I Panel (described in the ANPR (39 FR 33103 at 33135)). The Panel's recommendations for data to support the safety of an OTC topical antimicrobial active ingredient included studies to characterize the following:

- Degree of absorption through intact and abraded skin and mucous membranes
- Tissue distribution, metabolic rates, metabolic fates, and rates and routes of elimination
- Teratogenic and reproductive effects
- Mutagenic and carcinogenic effects

2. Studies To Characterize Hormonal Effects

We propose that data are also needed to assess whether antiseptic active ingredients have hormonal effects that could produce developmental or reproductive toxicity. A hormonally active compound is a substance that interferes with the production, release, transport, metabolism, binding, activity, or elimination of natural hormones, which results in a deviation from normal homeostasis, development, or reproduction (Ref. 94). Exposure to a hormonally active compound early in development can result in long-term or delayed effects, including neurobehavioral, reproductive, or other adverse effects.

There are several factors common to antiseptic wash products that make it necessary to assess their full safety profile prior to classifying an antiseptic wash active ingredient as GRAS. These are:

- Evidence of systemic exposure to several of the antiseptic active ingredients
- Consumer exposure to multiple sources of antiseptic active ingredients or other drugs that may be hormonally active compounds
- Exposure to antiseptic active ingredients throughout a consumer's lifetime starting in utero

Most antiseptic active ingredients have not been evaluated for these effects despite the fact that several of the ingredients have evidence of systemic absorption. For antiseptic active ingredients that have not been evaluated, in vitro receptor binding or enzyme assays can provide a useful

preliminary assessment of the potential hormonal activity of an ingredient. However, such preliminary assays do not provide conclusive evidence that such an interaction will lead to a significant biological change (Ref. 95). Conversely, lack of binding does not rule out an effect (e.g., compounds could affect synthesis or metabolism of a hormone resulting in drug-induced changes in hormone levels indirectly).

a. *Traditional studies.* General toxicity and reproductive/developmental studies such as the ones described in this section are generally sufficient to identify potential hormonal effects on the developing offspring. Developmental and reproductive toxicity caused by hormonal effects will generally be identified using these traditional studies if the tested active ingredient induces a detectable change in the hormone-responsive tissues typically evaluated in the traditional toxicity study designs.

Repeat-dose toxicity (RDT) studies. RDT studies typically include a variety of endpoints, such as changes in body weight gain, organ weights, gross organ changes, clinical chemistry changes, or histopathology changes, which can help identify adverse hormonal effects of the tested drug. The battery of organs typically collected for histopathological evaluation in RDT studies includes reproductive organs and the thyroid gland, which can indicate potential adverse hormonal effects. For example, estrogenic compounds can produce effects such as increased ovarian weight and stimulation, increased uterine weight and endometrial stimulation, mammary gland stimulation, decreased thymus weight and involution, or increased bone mineral density.

DART studies. Some developmental stages that are evaluated in DART studies, such as the gestational and neonatal stages, may be particularly sensitive to hormonally active compounds. Traditional DART studies capture gestational developmental time points effectively, but are less adequate for evaluation of effects on postnatal development. Endpoints in pre/postnatal DART studies that may be particularly suited at detecting hormonal effects include vaginal patency, preputial separation, anogenital distance, and nipple retention. Behavioral assessments (e.g., mating behavior) of offspring may also detect neuroendocrine effects.

Carcinogenicity studies. A variety of tumors that result from long-term hormonal disturbance can be detected in carcinogenicity assays. For example, the effect of a persistent disturbance of particular endocrine gland systems (e.g., hypothalamic-pituitary-adrenal axis) can be detected in these bioassays. Certain hormone-dependent ovarian and testicular tumors and parathyroid hormone-dependent osteosarcoma also can be detected in rodent carcinogenicity bioassays.

b. *Supplementary studies.* If no signals are obtained in the traditional RDT, DART, and carcinogenicity studies, assuming the studies covered all the life stages at which a consumer may be exposed to such products (e.g., pregnancy, infancy, adolescence), then no further assessment of drug-induced hormonal effects are needed. However, if a positive response is seen in any of the animal studies and this response is not adequately understood, then additional studies, such as juvenile animal, pubertal animal, or multigeneration studies, may be needed (Ref. 96). Juvenile animal, pubertal animal, and multigeneration studies are designed to evaluate endocrine effects in developmental stages that supplement the information obtained from traditional DART studies (Refs. 97, 98, and 99).

Juvenile animal studies. Young animals are considered juveniles after they have been weaned. In traditional DART studies, neonatal animals (pups) are typically dosed only until they are weaned. If a drug is not secreted via the mother's milk, the DART study will not be able to test the direct effect of the drug on the pup. Furthermore, since pups are not dosed after weaning, they are not exposed to the drug during the juvenile stage of development. A juvenile animal toxicity study in which the young animals are dosed directly can be used to evaluate potential drug-induced effects on postnatal development for products intended for pediatric populations.

Pubertal animal studies. The period between the pup phase and the adult phase, referred to as the juvenile phase of development, includes the pubertal period where the animal reaches puberty and undergoes important growth landmarks. In mammals, puberty is a period of rapid morphological changes and endocrine activity. Studies in pubertal animals are designed to detect alterations of pubertal development, thyroid function, and hypothalamic-pituitary-gonadal system maturation (Ref. 100).

Multigeneration studies. The multigeneration reproductive toxicity studies (Ref. 98) are conducted to assess the performance and integrity of the male and female reproductive systems and include assessment of gonadal function, the estrous cycle, mating behavior, conception, gestation, parturition, lactation, weaning, and growth and development of the offspring. The multigeneration study also provides information about the effects of the test substance on neonatal morbidity, mortality, target organs in the offspring, and data on prenatal and postnatal developmental toxicity.

In those cases where adverse effects are noted on the developing offspring due to a disturbance of any of the organ systems discussed previously in this proposed rule, a risk-benefit analysis should be conducted based on the dose-response observed for the findings and the animal-to-human exposure comparison. If such an assessment indicates a potentially significant risk, then the antiseptic active ingredient with such findings would not be suitable for inclusion in an OTC monograph. Consequently, such antiseptic active ingredients would require an approval via the NDA pathway prior to marketing.

3. Studies To Evaluate the Potential Impact of Antiseptics Active Ingredient on the Development of Resistance

Since the 1994 TFM published, the issue of antiseptic resistance and the potential for antibiotic cross-resistance has been the subject of much study and scrutiny. In particular, triclosan has been shown to cause changes in bacterial efflux activity at nonlethal concentrations (Refs. 62, 64, 66, 101, and 102). Efflux pumps are an important nonspecific bacterial defense mechanism that can confer resistance to a number of substances toxic to the cell, including antibiotics. For this reason, the effects of triclosan's use as a preservative in cosmetic products on the development of resistance have been evaluated by a number of European Advisory Review Committees (Refs. 103 through 108). In general, these Advisory Review Committees have concluded that the data are not sufficient to conclude that the use of triclosan poses a public health risk. However, more recently, a number of data gaps have been identified that some Advisory Review Committees believe need to be addressed to allow for a complete risk assessment of the use of triclosan (Refs. 107 and 108).

Our own evaluation also found data gaps with respect to triclosan's impact on the development of resistance; however, based on the data available for other active ingredients, the need to evaluate potential resistance is not limited to triclosan. Further, because of the pervasive use of consumer antiseptic wash products we believe that it is necessary to assess this safety issue prior to classifying an antiseptic active

ingredient as GRAS. Therefore, in addition to the preclinical data requirements (as discussed in this section of this proposed rule), data are also needed to clarify the effect of antiseptic active ingredients on the emergence of bacterial resistance.

Laboratory studies are a feasible first step in evaluating the impact of exposure to nonlethal amounts of antiseptic active ingredients on antiseptic and antibiotic bacterial susceptibilities. As discussed in section VII.D of this proposed rule, some of the active ingredients evaluated in this proposed rule have laboratory data demonstrating the development of reduced susceptibility to antiseptic active ingredients and antibiotics after exposure to nonlethal concentrations. However, the testing conducted thus far has been limited largely to human bacterial pathogens. Only limited data exist on the effects of antiseptic exposure on the bacteria that are predominant in the oral cavity, gut, skin flora, and the environment (Ref. 109). These organisms represent pools of resistance determinants that are potentially transferable to human pathogens (Refs. 110 and 111). Broader laboratory testing would more clearly define the scope of the impact of antiseptic active ingredients on the development of resistance and provide a useful preliminary assessment of an antiseptic active ingredient's potential to foster the development of resistance.

Studies evaluating the impact of antiseptic active ingredients on the antiseptic and antibiotic susceptibilities of each of the following types of organisms could support a GRAS determination for antiseptic active ingredients intended for use in OTC consumer antiseptic wash products:

- Human bacterial pathogens
- Nonpathogenic organisms, opportunistic pathogens, and obligate anaerobic bacteria that make up the resident microflora of the human skin, gut, and oral cavity
- Food-related bacteria such as *Listeria, Lactobacillus,* and *Enterococcus*
- Nonpathogenic organisms and opportunistic pathogens from environmental compartments (e.g., soil)

If the results of these studies show no evidence of changes in antiseptic or antibiotic susceptibility, then no further studies addressing the development of resistance are needed to support a GRAS determination.

However, for antiseptic active ingredients that demonstrate an effect on antiseptic and antibiotic susceptibilites, additional data will be necessary to help assess the likelihood that changes in susceptibility observed in the preliminary studies would occur in the consumer setting. Different types of data could be used to assess whether or not ingredients with positive laboratory findings pose a public health risk. We do not anticipate that it will be necessary to obtain data from multiple types of studies for each active ingredient to adequately assess the potential to affect resistance. Such studies include, but are not limited to the following:

- Information about the mechanism(s) of antiseptic action (for example, membrane destabilization or inhibition of fatty acid synthesis), and whether there is a change in the mechanism of action with changes in antiseptic concentration
- Information clarifying the mechanism(s) for the development of resistance or reduced susceptibility to the antiseptic active ingredient (for example, efflux mechanisms)
- Data characterizing the potential for reduced antiseptic susceptibility caused by the antiseptic active ingredient to be transferred to other bacteria that are still sensitive to the antiseptic
- Data characterizing the concentrations and antimicrobial activity of the antiseptic active ingredient in biological and environmental compartments (for example, on the skin, in the gut, and in environmental matrices)
- Data characterizing the antiseptic and antibiotic susceptibility levels of environmental isolates in areas of prevalent antiseptic use (for example, in the home, health care, food handler, and veterinary settings)

These data can help ascertain whether or not an antiseptic active ingredient is likely to induce nonspecific bacterial resistance mechanisms such as those that have been shown to occur with triclosan exposure. These data could also help determine the likelihood that changes in susceptibility would spread to other bacterial populations and whether or not concentrations of antiseptics exist in biological and environmental compartments that are sufficient to induce changes in bacterial susceptibilities. Data on the antiseptic and antibiotic susceptibilities of bacteria in areas of prevalent antiseptic use can help demonstrate whether or not changes in susceptibility are occurring with actual use. Because actual use concentrations of consumer antiseptics are much higher than the MICs for these active ingredients, data from compartments where sublethal concentrations of biologically active antiseptic active ingredients may occur (e.g., environmental compartments) can give us a sense of the potential for change in antimicrobial susceptibilities in these compartments (Refs. 83, 84, and 112 through 115). However, FDA recognizes that methods of evaluating this issue are an evolving science and that there may be other data appropriate to evaluate the impact of antiseptic active ingredients on the development of resistance. For this reason, FDA encourages interested parties to consult with FDA on the specific studies appropriate to address this issue.

In those cases where data of the type described in this proposed rule shows that changes in bacterial susceptibilities are likely to occur in the consumer setting, an analysis of the risk in relation to the effectiveness shown for the active ingredient would be conducted. Based on this evaluation, a determination would be made as to whether the antiseptic active ingredient would be suitable for inclusion in an OTC monograph.

D. Review of Available Data for Each Antiseptic Active Ingredient

We have identified for each antiseptic active ingredient whether the studies outlined in section VII.C of this proposed rule are available. Table 6 of this proposed rule lists the types of studies available for each antiseptic active ingredient proposed as Category I or Category III in the 1994 TFM and indicates whether the currently available data are adequate to serve as the basis of a GRAS determination. Although we have data from submissions to the rulemaking and from information we have identified in the literature, our administrative record is incomplete for some types of safety studies for many of the active ingredients (see table 6 of this proposed rule).

TABLE 6—SAFETY STUDIES AVAILABLE FOR CONSUMER ANTISEPTIC WASH ACTIVE INGREDIENTS [1]

Active ingredient	Human pharmacokinetic	Animal pharmacokinetic (ADME)	Oral carcinogenicity	Dermal carcinogenicity	Reproductive toxicity (DART)	Potential hormonal effects	Resistance potential
Benzalkonium chloride			✓				✓
Benzethonium chloride		✓		✓✓	✓		✓
Chloroxylenol	✓	✓			✓		✓
Hexylresorcinol		✓	✓✓				
Iodophors:							
Iodine complex (ammonium ether sulfate and polyoxyethylene sorbitan monolaurate)			✓✓*		✓✓*	✓✓	
Iodine complex (phosphate ester of alkylaryloxy polyethylene glycol)			✓✓*		✓✓*	✓✓	
Nonylphenoxypoly (ethyleneoxy) ethanoliodine			✓✓*		✓✓*	✓✓	
Poloxamer-iodine complex			✓✓*		✓✓*	✓✓	
Povidone-iodine	✓✓		✓✓*		✓✓*	✓✓	
Undecoylium chloride iodine complex			✓✓*		✓✓*	✓✓	
Methylbenzethonium chloride [2]							
Phenol [2]							
Secondary amyltricresols [2]							
Sodium oxychlorosene [2]							
Triclocarban	✓	✓	✓✓		✓	✓	✓
Triclosan	✓✓	✓	✓✓		✓✓	✓	✓

[1] Empty cell indicates no data available; "✓" indicates some data available, but inadequate; "✓✓" indicates available data are adequate; * indicates based on studies of potassium iodide.
[2] These active ingredients are not discussed further because no safety data were submitted.

In the remainder of this section, we discuss the existing data and data gaps for each of the following antiseptic wash active ingredients that was proposed as GRAS in the 1994 TFM and explain why these active ingredients are no longer proposed as GRAS (i.e., why they are now proposed as Category III):

- Hexylresorcinol
- Iodophors (i.e., all iodine-containing ingredients)
- Triclocarban

We also discuss the following antiseptic active ingredients that were proposed as Category III in the 1994 TFM and for which there are some new data available and explain why these ingredients are still Category III:

- Benzalkonium chloride
- Benzethonium chloride
- Chloroxylenol
- Triclosan

We do not discuss the following antiseptic active ingredients that were proposed as Category III in the 1994 TFM because we are not aware of any safety data for these active ingredients:

- Methylbenzethonium chloride
- Phenol (less than 1.5 percent)
- Secondary amyltricresols
- Sodium oxychlorosene

1. Hexylresorcinol

In the 1994 TFM, FDA proposed to classify hexylresorcinol as GRAS for use as an OTC antiseptic handwash based on the recommendations of the Panel, who concluded that the topical application of hexylresorcinol is safe (39 FR 33103 at 33134). In support of its conclusion, the Panel cited hexylresorcinol's long history of use as an oral antihelmintic (a drug used in the treatment of parasitic intestinal worms) in humans and the lack of allergic reactions or dermatitis associated with topical use. The Panel noted that no information was provided regarding dermal or ophthalmic toxicity or absorption and blood levels attained after application to intact or abraded skin or mucous membranes, but concluded that the few animal toxicity studies submitted as summaries indicated a ''low order'' of toxicity (Ref. 116).

In light of the new safety information about the potential risks of systemic exposure to antiseptic active ingredients, the data relied on by the Panel no longer can be considered adequate to support a GRAS determination. Currently, there are only minimal data available to assess the safety of the repeated, daily, long-term use of hexylresorcinol.

a. *Summary of available hexylresorcinol safety data.*

Hexylresorcinol ADME data. There currently are no well characterized absorption studies in either humans or animals and only minimal ADME data by the oral route available. In one study (Ref. 117) male dogs were given single oral doses of 1 or 3 grams (g) of 4-hexylresorcinol. The majority of the administered dose was detected in its free form in the feces (67 to 80 percent) with some excretion in the urine (10 to 29 percent) primarily as conjugates. Urinary excretion was rapid, mainly in the first 6 hours, and levels were undetectable 12 hours after the 1 g dose and 24–36 hours after the 3 g dose.

In the only study in humans (Ref. 118), two men received oral doses of 1 g of 4-hexylresorcinol. An average of 18 percent of the dose was recovered in urine within the first 12 hours; thereafter, the compound was not detected in urine samples. Fecal excretion accounted for 64 percent of the dose. It has been reported that hexylresorcinol is excreted via the urine mainly in the form of an ethereal sulfate conjugate (Ref. 119).

Overall, the animal ADME data are not adequate and additional pharmacokinetic data (e.g., AUC, Tmax, and Cmax) at steady-state levels continue to be necessary to bridge animal data to humans.

Hexylresorcinol carcinogenicity data. An adequate oral carcinogenicity study was conducted by the National Toxicology Program (NTP) in which hexylresorcinol was administered orally to groups of rats and mice of each sex 5 days per week for 2 years (Ref. 120). No evidence of carcinogenicity was found in rats. However, precancerous cells of the adrenal gland were observed at increased incidences in dosed male mice. A marginal upward trend in tumors of the adrenal gland was also observed in male mice. The increase of these two types of cancers was not statistically significant and was considered equivocal by the NTP.

FDA agrees that the findings in male mice should not be considered a positive carcinogenic signal. No changes were noted in the adrenal glands in 16-

and 30-day subgroups included in the study. Also, the fact that the marginal increase in changes that occurred in male mice were not corroborated in earlier RDT studies in female mice, or in rats of either sex, makes the weight of the evidence for the male-only findings weak. In an 18-month intravaginal study (Ref. 121), injection of 1 percent hexylresorcinol dissolved in carbowax 1000 twice weekly in 20 female mice did not cause any genital tract tumors.

The submitted oral carcinogenicity data are adequate and show that hexylresorcinol does not pose a risk of cancer after repeated oral administration under the experimental conditions used; however, data from a dermal carcinogenicity study are lacking.

b. *Hexylresorcinol safety data gaps.* In summary, our administrative record for the safety of hexylresorcinol is incomplete with respect to the following:

- Human pharmacokinetic studies under maximal use conditions when applied topically, including documentation of validation of the methods used to measure hexylresorcinol and its metabolites
- Animal ADME
- Data to help define the effect of formulation on dermal absorption
- Dermal carcinogenicity
- DART studies
- Potential hormonal effects
- Data from laboratory studies that assess the potential for the development of resistance to hexylresorcinol and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule

2. Iodophors (Iodine-Containing Ingredients)

Iodophor complexes are complexes formed between iodine, which is the active antimicrobial component, and a carrier molecule. Both surfactant and nonsurfactant compounds have been complexed with iodine. The rate of the release of ''free'' elemental iodine from the complex is a function of the equilibrium constant of the complexing formulation (39 FR 33103 at 33129). The following surfactant and nonsurfactant iodophor complexes were proposed as GRAS in the 1994 TFM for OTC antiseptic handwash use (59 FR 31402 at 31435):

- Iodine complex (ammonium ether sulfate and polyoxyethylene sorbitan monolaurate)
- Iodine complex (phosphate ester of alkylaryloxy polyethylene glycol)
- Nonylphenoxypoly (ethyleneoxy) ethanoliodine
- Poloxamer-iodine complex
- Povidone-iodine 5 to 10 percent
- Undecoylium chloride iodine complex

Iodine is found naturally in the human body and is essential for normal human body function. In the body, iodine accumulates in the thyroid gland and is a critical component of thyroid hormones. People obtain iodine through their food and water, which are often supplemented with iodine to prevent iodine deficiency. Because consumers are widely exposed to iodine, it has been the subject of comprehensive toxicological review by public health organizations (Refs. 122 and 123).

In the 1994 TFM, FDA stated that neither the medium nor large molecular weight size povidone molecules presented a safety risk when limited to the topical uses described in the monograph and that larger size molecules would not be absorbed under the TFM conditions of use (59 FR 31402 at 31424). We continue to believe that the larger size molecules pose no risk of absorption. However, data are lacking on the absorption of smaller molecular weight povidone molecules and for other carriers currently under consideration, e.g. poloxamer. Human absorption studies following maximal dermal exposure to these carriers can be used to determine the risk of systemic toxicity from the carrier molecule. For carrier molecules that are absorbed following dermal exposure, we propose that the following data are needed: Systemic toxicity of the carrier in animal studies that identify the target organ for toxicity, and characterization of the metabolic fate of the carrier as recommended by the Panel (39 FR 33103 at 33130).

a. *Summary of iodophor safety data.*

Iodophor human pharmacokinetics data. Several studies demonstrated that iodine applied to human skin was systemically absorbed to some extent (Ref. 122). The studies consistently found raised blood concentrations of both organic (protein-bound) and inorganic (nonbound) iodine following topical application of iodine-containing antiseptics, indicating that iodine permeated the skin. However, the studies did not provide sufficient information to quantify typical amounts of iodine that can be absorbed from topically applied products containing iodine. In addition, the studies do not provide pharmacokinetic data at maximal exposure and steady-state levels.

Most of the absorption studies evaluated povidone-iodine. Significant iodine absorption was seen as a result of topical application of povidone-iodine either as a surgical scrub (Ref. 124) or as an antiseptic treatment of premature babies in a neonatal intensive care nursery (Ref. 125). Nobukuni et al. (Ref. 126) evaluated the effect of long-term topical povidone-iodine treatment on serum iodine levels and thyroid function in bedridden inpatients. Inpatients treated with povidone-iodine had higher blood concentrations of organic iodine compared to the control group, suggesting absorption of topically applied iodine. It is possible that steady-state levels may have been achieved in this study; however, this was not directly demonstrated.

Although these studies provide some information on absorption of topically applied povidone-iodine, they do not provide sufficient information to estimate typical amounts of iodine that could be absorbed from consumer antiseptic wash products containing povidone-iodine. Nor can the results of these studies be extrapolated to assess the potential dermal penetration of iodine from other iodophor complexes. Because the iodophor complex affects the release rate of iodine, absorption data are needed for each different complex.

Iodophor ADME data. In addition to human absorption data (described in the previous subsection), the distribution, metabolism, and excretion of iodine have been characterized in humans for oral exposures (Ref. 122). Because the distribution of absorbed iodine has been shown to be similar regardless of the route of exposure, we can use data from oral exposures in assessing distribution, metabolism, and excretion of iodine from topical exposure. Most of the iodine from orally ingested sodium iodide accumulates in the thyroid (approximately 20 to 30 percent) as iodide or is excreted in the urine (30 to 60 percent) within 10 hours (Refs. 122 and 127). The elimination half-life of absorbed iodine is approximately 31 days in healthy adult males (Ref. 127), but has considerable variability (Ref. 128). Overall, the distribution, metabolism, and excretion of iodine have been adequately assessed in humans and no further animal ADME data is needed.

Iodophor carcinogenicity data. The oral carcinogenicity data indicate that iodine does not pose a risk of cancer in rats after repeated oral administration to rats under the experimental conditions used (Ref. 129). Overall, there was no significant increase in the incidence of tumors from iodine exposure. Although there was an increased incidence of squamous cell carcinomas in the submandibular salivary gland in the

high dose group, this increase was not significant.

The ability of iodine to function as a tumor promoter (i.e., something that stimulates existing tumors to grow) also has been evaluated in rats. In a study by Takegawa et al. (Ref. 130), rats were pretreated with a chemical that can initiate tumors (DHPN). One group then received a high dose of potassium iodide (1,000 parts per million (ppm)) in their water while a control group received untreated water over 82 weeks. The iodine-treated group had a significantly higher incidence of follicular thyroid cancer compared to the control group, suggesting that iodine may be a tumor promoter for other carcinogens in the thyroid gland.

In another study (Ref. 131), rats were injected with either DHPN or saline and then received doses of potassium iodide in their drinking water to simulate conditions of iodine deficiency to iodine excess. For the two highest-dose groups, 5 of 20 rats and 2 of 20 rats developed thyroid tumors, respectively. Although the authors concluded that excess iodine can promote thyroid tumor formation, these results were barely significant, and higher dosing did not correlate with increased tumor promotion activity. Therefore, some evidence suggests that very high oral doses of iodine may have tumor promoter activity. However, based upon the available data, oral doses of iodine do not significantly raise the risk of cancer in animals.

Iodophor DART data. The effects of iodine on embryo-fetal development and on fertility were studied in animals (Ref. 132). No fetal malformations were reported when the fetuses were exposed to iodine prenatally, nor were there any effects on fertility in adult animals that were exposed to iodine. The design of these studies, however, does not fit into current testing paradigms for an adequate evaluation of the reproductive and developmental toxicity of a drug.

One series of studies (Ref. 132) evaluated the effects of diets supplemented with high levels of iodine on reproduction, lactation, and survival in rats, hamsters, rabbits, and pigs. For the rats, excess iodine in the diet (2,500 ppm) was associated with an increase in the incidence of death in newborns and an increase in the time to give birth. In rabbits, a dose-dependent decrease in newborn survival was observed. There were no observed effects in hamsters or pigs. The results suggest a species difference in response to similar levels of excess iodine; however, the daily iodine intake per kilogram (kg) of body weight varied among species. Further, these studies do not evaluate all the necessary endpoints regarding fertility and embryo-fetal development.

Shoyinka, Obidike, and Ndumnego (Ref. 133) evaluated the effect of iodine on the male reproductive system of rats. A statistically significant ($p<0.05$) increase in the average weights of the testes and epididymides, and approximately 12 percent decrease in epididymal sperm counts were observed in the high dose-treated group. The authors suggest that excess iodine may reduce fertility by lowering epididymal sperm counts.

We found no information on reproductive effects in humans due to dermal iodine exposure. However, transient hypothyroidism (diminished production of thyroid hormones) in infants has been reported as a result of topical exposure to povidone-iodine (Refs. 134 through 138). Thyroid hormone deficiency from any cause at critical times of development may result in adverse effects, including abnormal pubertal development (Ref. 122). Although excess iodine may result in hypothyroidism, iodine deficiency is more likely to cause prenatal and postnatal hypothyroidism (Ref. 122).

Overall, the effect of iodine on development and reproductive toxicology are well characterized and additional DART studies are not needed.

Iodophor data on hormonal effects. We found no nonclinical studies that examine the effect of excess iodine or iodine deficiency on endocrine systems in animal models. However, clinical data indicate that at high doses iodine ingestion exerts a direct effect on the thyroid gland and on the regulation of thyroid hormone production and secretion (Ref. 122). The effects of iodine on the thyroid gland have been shown to include hypothyroidism, hyperthyroidism (excessive production or secretion of thyroid hormones), and inflammation of the thyroid. These conditions can adversely affect reproduction, growth, and developmental systems in humans.

The data demonstrating the thyroid effects of iodine are primarily from oral administration (Ref. 122). There is much less information on thyroid effects after topical administration of iodine. The majority of cases of thyroid hormone changes resulting from topical administration of iodine involve mothers and newborn infants. Studies have shown that topical povidone-iodine applied to pregnant and breast-feeding women causes transient hypothyroidism in their newborns (Refs. 135, 136, 139, and 140). Iodine-induced hypothyroidism has been reported in nursing infants whose mothers used topical or vaginal iodine-containing antiseptics during pregnancy or after delivery (Refs. 135, 136, and 141). Other studies have shown hypothyroidism in infants after topical iodine exposure (Refs. 125, 134, 138, and 142). Elevated thyroid stimulating hormone (TSH) levels have been reported in full-term newborns after repeated topical application of povidone-iodine (Refs. 143 and 144).

Iodine readily crosses the placenta and is concentrated in the mammary gland and secreted in breast milk (Ref. 145). Although iodine-induced hypothyroidism is transient in newborns, even transient hypothyroidism should be avoided during this critical phase of brain development to prevent loss of intellectual capacity (Refs. 146, 147, and 148).

For adults, the association between topically applied iodine and hypothyroidism is unclear. One study in 27 bedridden inpatients treated continuously with povidone-iodine for 3 to 133 months showed changes in TSH levels (Ref. 126). However, these data are difficult to extrapolate to typical consumer antiseptic hand or body wash use because povidone-iodine was applied to damaged skin in this study. Another study in 16 nurses who used povidone-iodine regularly for handwashing and gargling (Ref. 149) found that thyroid hormone levels were not significantly different from control subjects who rarely used povidone-iodine, which suggests topical povidone-iodine does not significantly affect thyroid function.

Oral exposure to iodine has been demonstrated to cause significant thyroid effects (Refs. 122 and 123). Several clinical studies demonstrated that high oral doses of iodine can affect blood levels of thyroid hormones, but rarely did these effects seriously impair thyroid function. Oral iodine exposure exceeding 200 mg/day (2.8 mg/kg/day) during pregnancy can result in congenital hypothyroidism (Ref. 122). Generally, however, adverse effects were only observed following very high oral doses that caused very high serum iodine concentrations.

Drawing conclusions from these studies is difficult because the studies have several limitations. Many of these studies lacked control groups, used small subject numbers, and/or did not record subjects' iodine status at baseline (iodine-deficient subjects may be more susceptible to thyroid effects caused by iodine exposure). The study results are also difficult to compare because the studies used different subject age groups, subject types, iodine

formulations and amounts, durations and frequency of iodine treatment, and methods for measuring absorbed iodine levels or thyroid effects. Despite these deficiencies, we believe there are adequate data regarding the potential of iodine to cause changes in thyroid hormone levels and additional studies are not necessary.

b. *Iodophor safety data gaps.* In summary, our administrative record for the safety of iodophor complexes is incomplete with respect to the following:

- Human studies of the absorption of iodine following maximal dermal exposure to the complexes
- Human absorption studies of the carrier molecule for small molecular weight povidone molecules and the other carriers listed in this section
- Dermal carcinogenicity studies for each of the iodophor complexes
- Data from laboratory studies that assess the potential for the development of resistance to iodine and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule

3. Triclocarban

In the 1994 TFM, FDA proposed to classify triclocarban as GRAS for use as an OTC antiseptic handwash. This determination was based on safety data and information that were submitted in response to the 1978 TFM on triclocarban formulated as bar soap (Refs. 151 and 152). These data included blood levels, target organs for toxicity, and no effect levels and were discussed in the 1991 First Aid TFM (56 FR 33644 at 33664). The existing data, however, are no longer sufficient to fully evaluate the safety of triclocarban. New information regarding potential risks from systemic absorption and long-term exposure to antiseptic active ingredients is leading us to propose additional safety testing.

a. *Summary of triclocarban safety data.*

Triclocarban human pharmacokinetic data. Some human pharmacokinetic parameters were reported in a study where six male subjects received a single oral dose of ^{14}C-labeled triclocarban: The maximum plasma concentration (i.e., Cmax) was 3.7 nanomole (nmol)-equivalents of triclocarban per g of plasma (approximately 1,200 nanograms per milliliter (ng/mL)) and occurred at 2.8 hours (Tmax) (Ref. 152). Although human pharmacokinetic parameters were reported in this study, triclocarban was administered orally. As a result, the exposure when applied topically under maximal use conditions and when steady-state levels were reached is unknown.

We found several studies in humans that examine the absorption of triclocarban after topical application (Refs. 153 through 156). Most of these studies evaluated absorption after a single topical exposure and used a small number of subjects. After a single exposure, blood levels of triclocarban ranged from below the limit of detection (10 ng/mL) to a Cmax of 530 nanomolar (nM) (167 ng/mL) (Refs. 153, 154, and 155). Small amounts of triclocarban were also detectable in the urine and feces of subjects. The estimated total average recovery ranged between 0.39 and 0.6 percent of the applied dose. Although small, these studies suggest that very little triclocarban is absorbed after a single topical exposure; however, steady-state levels were not evaluated.

Howes and Black (Ref. 156) examined absorption of triclocarban after repeated daily application in a 28-day bathing study. Twelve subjects bathed once daily using bar soap that contained 2 percent triclocarban. Each subject was exposed to approximately 260 mg of triclocarban per day. Triclocarban was below the limit of detection (25 ng/mL) in all samples at all time points. A manufacturer of triclocarban has suggested that steady-state levels were achieved in this study (Ref. 157), but this was not directly demonstrated.

In addition to systemic exposure as a result of dermal absorption, consumers may have prolonged exposure to those antiseptic active ingredients that remain bound to the skin after use (that is, substantive). Triclocarban has been shown to be substantive. North-Root et al. (Ref. 158) measured the amount of triclocarban that remained on the skin after a single application of bar soap in 12 human subjects. An average of 1.4 percent of the applied triclocarban remained on the skin. Substantive product remaining on the skin after rinsing may lead to additional absorption and systemic exposure.

Overall, the human pharmacokinetic studies are not adequate, and we propose that human pharmacokinetic studies using dermal administration under maximal use conditions are still needed to define the level of systemic exposure following repeated use. In addition, data are needed to help define the effect of formulation on dermal absorption.

Triclocarban ADME data. Triclocarban is readily metabolized in both humans and animals (Refs. 159 through 162). Birch et al. (Ref. 159) identified the metabolites of triclocarban in plasma and urine after oral exposure in rats, rhesus monkeys, and humans. The principal metabolites common to all species were the sulfate and glucuronide conjugates of 2′-, 3′-, and 6-hydroxy-triclocarban. However, there were differences in triclocarban metabolism between rats and higher primates, and the monkey appears to be the more appropriate model for studying triclocarban pharmacokinetics in humans (Ref. 159).

Elimination of triclocarban metabolites from the plasma appears to be biphasic. In adult rhesus monkeys, elimination from the plasma occurs in two distinct phases: Rapid elimination of parent triclocarban and glucuronide conjugates, and slower elimination of sulfate conjugates (Ref. 160). Similarly, in humans, the major plasma metabolites are glucuronide conjugates, which were eliminated in urine with a half-life of about 2 hours (Ref. 152). Triclocarban sulfate conjugates are removed from plasma with a half-life of about 20 hours, presumably into the bile.

The majority of triclocarban and its metabolites are eliminated through the feces, with smaller amounts eliminated through the urine. In a human study where six male volunteers received a single oral dose of ^{14}C-labeled triclocarban in corn oil, 70 percent of the dose was eliminated in the feces and elimination was complete after 120 hours (Ref. 152). Twenty-seven percent of the dose was eliminated in urine, and the urinary excretion of triclocarban and its metabolites was complete by 80 hours after dosing.

Although there are some ADME data on triclocarban after oral exposure, there are little data after topical exposure. Gruenke et al. (Ref. 163) analyzed plasma and urine samples from human subjects who used triclocarban-containing bar soap. The major plasma metabolite was a sulfate of hydroxy-triclocarban, with levels ranging from 0–20 ng/mL. The major metabolites found in the urine were triclocarban glucuronides, with typical levels averaging 30 ng/mL. The authors did not describe the frequency or length of time the subjects bathed with the soap; consequently, it is not known whether maximal exposure or steady-state levels were reached. Overall, the animal ADME data are not adequate and additional pharmacokinetic data (e.g., AUC, Tmax, and Cmax) at steady-state levels continue to be necessary to bridge animal data to humans.

Triclocarban carcinogenicity data. A manufacturer submitted a 2-year oral carcinogenicity study of triclocarban in rats (Refs. 150 and 151). Based on this study, the no observed adverse effect level (NOAEL) for triclocarban in the rat

is 25 mg/kg/day. Although no carcinogenicity findings were seen in this study, some noncarcinogenicity findings were noted. Male rats treated with 75 and 250 mg/kg/day doses of triclocarban exhibited male sex organ toxicity, including degeneration of the seminiferous tubules, enlargement of the epididymal secretory epithelium, and a decrease or absence of sperm in epididymal ducts.

No dermal carcinogenicity data have been submitted for triclocarban. Previously, we considered data from systemic exposure to represent a worst case scenario for topical products. Now, however, we recognize that topical products may affect the skin or be metabolized in the skin, which is not addressed in oral carcinogenicity studies.

The submitted oral carcinogenicity data are adequate and show that triclocarban does not pose a risk of cancer after repeated oral administration under the experimental conditions used; however, data from a dermal carcinogenicity study are lacking.

Triclocarban DART data. Our records indicate that a manufacturer submitted data regarding the reproductive toxicity of triclocarban to a triclocarban drug master file (Ref. 164). Safety data submitted to drug master files are not publicly available and, consequently, cannot be used to support a GRAS classification (§ 330.10(a)(4)(i)). For FDA to include these data in the administrative record for this rulemaking, they must be submitted to this rulemaking or be otherwise publicly available.

Triclocarban data on hormonal effects. Recent studies have demonstrated that triclocarban may have the ability to alter the activity of the androgen system (Refs. 41 and 42). Chen et al. (Ref. 42) reported that triclocarban enhanced the testosterone-induced androgen receptor-mediated response both in cell culture and in an in vivo rat model although triclocarban by itself had no activity. When castrated male rats were fed a diet containing 0.25 percent triclocarban and treated with testosterone propionate (0.2 mg/kg) for 10 days, all male sex accessory organs were significantly increased in size compared to rats treated with either triclocarban or testosterone alone. The implications of these findings on human health, especially for children, are not well understood.

The testicular effects seen in the 2-year oral carcinogenicity study (Refs. 150 and 151) also suggest a hormonal disturbance on the testes as a result of exposure to triclocarban. Our records indicate that additional studies to address possible testicular effects have been conducted and submitted to a triclocarban drug master file (Ref. 164). For FDA to include these data in the administrative record for this rulemaking, they must be submitted to the rulemaking or otherwise publicly available. Overall, the data submitted to the antiseptic rulemaking are not adequate to address concerns about hormonal effects of triclocarban. We propose that additional reproductive and developmental studies are necessary, which should include an assessment of any hormonal effects.

Triclocarban resistance data. We found one study that examined the potential for development of cross-resistance between triclocarban and antibiotics. Cole et al. (Ref. 78) described antibiotic and antiseptic susceptibilities of staphylococci isolated from the skin of consumers who used nonantibacterial or antiseptic body washes. Subjects were considered antiseptic body wash users if they used either bar soaps containing triclocarban (triclocarban group) or liquid bath or shower products containing triclosan (triclosan group) on a regular basis for at least 30 days prior to study initiation. From a pool of 450 qualified subjects, 70 were randomly chosen for each treatment arm (non-user, triclocarban group, or triclosan group).

Bacterial skin samples were collected using a pre-validated method and were comprised of the combined samples from both forearms. *Staphylococcus aureus* and coagulase-negative *Staphylococcus* (CNS) were presumptively identified according to morphology, pigmentation, hemolysis, and other characteristics from these samples. One representative of each colony type from each sample was selected for further testing, for a total of 317 isolates: 16 *S. aureus* and 301 CNS.

All 317 *Staphylococcus* isolates were tested for susceptibility to 10 antibiotics, including the primary and secondary antibiotics of choice for treatment of *Staphylococcus* infections, by a commercial lab using an automated procedure. In addition, all isolates were tested for MIC of triclocarban and triclosan using a standard broth microdilution method.

The percentage of CNS isolates resistant to any of the 10 antibiotics was similar for all three groups (non-user, triclocarban, or triclosan group). When data from both user groups (triclocarban and triclosan) were pooled, there was no statistical difference in bacterial resistance patterns between users and non-users with the exception of tetracycline, which approached significance ($p = 0.052$). The authors did not provide the rationale for pooling triclocarban and triclosan user data in the analysis. Currently, there is no evidence to suggest that bacteria would use the same mechanisms of resistance against these two antiseptic active ingredients. When CNS susceptibility to antiseptics was examined, the MIC range for triclocarban was the same among all three groups (maximum MIC value of 0.750 (no units provided)). No patterns emerged when the data were analyzed for cross-resistance between triclocarban or triclosan and antibiotics.

The authors conclude that this study shows no increase in antibiotic resistance from the regular use of triclocarban body wash. But, this study was not adequately designed to determine whether use of antiseptic body washes leads to changes in antibiotic or antiseptic susceptibilities. Given the limited number of isolates examined, it is not clear that the study was adequately powered to detect a difference in resistance patterns. Furthermore, the amount of antiseptic exposure was not defined. The length of time subjects has used antiseptic body washes (beyond the specified 30 days), the frequency of bathing, and the volume of antiseptic wash used per bath or shower was not reported. Finally, few bacterial isolates were examined. It is reasonable to examine the susceptibilities of *Staphylococcus* species; however, an average of only 1.5 isolates was obtained from each subject. Overall, the available data are not adequate to characterize triclocarban's potential to foster the development of cross-resistance with clinically important antibiotics and we propose that these studies are needed.

b. *Triclocarban safety data gaps.* In summary, our administrative record for the safety of triclocarban is incomplete with respect to the following:

- Human pharmacokinetic studies under maximal use conditions when applied topically, including documentation of validation of the methods used to measure triclocarban and its metabolites
- Animal ADME
- Data to help define the effect of formulation on dermal absorption
- Dermal carcinogenicity
- DART studies
- Potential hormonal effects
- Data from laboratory studies that assess the potential for the development of resistance to triclocarban and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule

4. Benzalkonium Chloride

In the 1994 TFM, FDA categorized benzalkonium chloride in Category III because of a lack of adequate safety data for its use as OTC antiseptic handwash (59 FR 31402 at 31435). Because of its widespread use as an antimicrobial agent in cosmetics and as a disinfectant for hard surfaces in agriculture and medical settings, the safety of benzalkonium chloride has also been reviewed by the Environmental Protection Agency and an industry review panel (Cosmetic Ingredient Review (CIR)) (Refs. 165 and 166) and found to be safe for disinfectant and cosmetic uses, respectively. Both these evaluations have been cited by the comments in support of the safety of benzalkonium chloride as an antiseptic wash active ingredient (Ref. 167).

Each of these evaluations cites findings from the type of studies necessary to support the safety of benzalkonium chloride for repeated daily use. However, the data that are the basis of these safety assessments are proprietary and are publicly available only in the form of summaries. Consequently, these studies are not available to FDA and are precluded from a complete evaluation by FDA. In addition, the submitted safety assessments with study summaries do not constitute an adequate record on which to base a GRAS classification (§ 330.10(a)(4)(i)). For FDA to evaluate the safety of benzalkonium chloride for this rulemaking, these studies must be submitted to the rulemaking or otherwise be publicly available.

a. *Summary of benzalkonium chloride safety data.*

Benzalkonium chloride carcinogenicity data. Currently, no oral or dermal carcinogenicity data are publicly available. We found one short-term dermal toxicity study (Ref. 168). Mice were treated with a single topical application of 0.8, 3, 13, or 50 percent benzalkonium chloride aqueous solution and monitored for 1 month. Treatment with either the 13 or 50 percent solution (concentrations well above the actual use concentrations of 0.1 to 5 percent) caused death in 9 of 48 and 20 of 48 mice in each group, respectively. The surviving mice developed skin lesions at the application site. The low-dose groups (0.8 or 3 percent solutions) showed slightly lower body weights and rates of growth than the control group, suggesting a slight detrimental effect from dermal exposure to these low concentrations. The available data are not adequate to assess the carcinogenic potential of benzalkonium chloride. We propose that both oral and dermal carcinogenicity studies are needed for benzalkonium chloride.

Benzalkonium chloride resistance data. Several gram-negative bacteria (GNB) (*Escherichia coli, Salmonella,* and *Pseudomonas*) have been shown to readily adapt when grown in the presence of subinhibitory levels of benzalkonium chloride in laboratory studies (Refs. 60, 68, 70, 72, 169, and 170). These bacteria also displayed reduced susceptibility to antibiotics compared to the nonadapted parental strain (Refs. 60, 70, 72, 169, and 170). Four studies showed an association between reduced susceptibility to benzalkonium chloride and the antibiotic chloramphenicol (Refs. 70, 72, 79, and 170). This association was shown in three different bacteria; however, no common mechanism has been identified to explain this finding. There are data available suggesting that efflux pumps may not play a major role in the reduced susceptibility of *Salmonella* to benzalkonium chloride (Ref. 170).

In a study by Lambert and colleagues (Ref. 69), human clinical and industrial isolates and standard culture collection strains of *P. aeruginosa* were examined for reduced susceptibility to benzalkonium chloride, chlorhexidine, and eight antibiotics. No statistically significant association between benzalkonium chloride and antibiotic susceptibility (i.e., cross-resistance) was found in the industrial isolates. In contrast, there was a highly significant correlation between benzalkonium chloride and gentamycin resistance in the clinical isolates. In other words, strains that were resistant to gentamycin also tended to have reduced benzalkonium chloride susceptibility. Although the authors suggest that the clinical environment is responsible for cross-resistance, this study is not large enough to provide sufficient support for this theory.

In a second study, Lambert and colleagues found a positive correlation between benzalkonium chloride and six antibiotics (ciprofloxacin, erythromycin, oxacillin, clindamycin, amoxicillin/clavulanic acid, and sodium cefazolin) in MRSA clinical isolates. However, most of the statistically significant correlations found in this study were between two antiseptics or two antibiotics, rather than between an antiseptic and an antibiotic. In addition, there was also a negative correlation between benzalkonium chloride and ciprofloxacin in *P. aeruginosa.* The authors suggest that there are no correlations in resistance to benzalkonium chloride and resistance to antibiotics but believe a larger study is needed to confirm or change that conclusion.

Similar to what has been observed with triclosan, exposure to benzalkonium chloride in the laboratory has resulted in changes to the antibiotic susceptibility profiles of some bacteria (Refs. 60, 70, 72, 79, 169, and 170). However, the data are limited in scope. The available studies have examined few bacterial species, provide no information on exposure levels, and are not adequate to define the potential for the development of resistance or cross-resistance. Additional laboratory studies are necessary to more clearly define the potential for the development of resistance to benzalkonium chloride. Depending on the results of the laboratory studies, additional data of the type described in section VII.C of this proposed rule may also be needed to assess the level of risk posed by benzalkonium chloride.

b. *Benzalkonium chloride safety data gaps.* In summary, our administrative record for the safety of benzalkonium chloride is incomplete with respect to the following:

- Human pharmacokinetic studies under maximal use conditions when applied topically, including documentation of validation of the methods used to measure benzalkonium chloride and its metabolites
- Animal ADME
- Data to help define the effect of formulation on dermal absorption
- Oral carcinogenicity
- Dermal carcinogenicity
- DART studies
- Potential hormonal effects
- Data from laboratory studies that assess the potential for the development of resistance to benzalkonium chloride and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule

5. Benzethonium Chloride

In the 1994 TFM, FDA classified benzethonium chloride as lacking sufficient evidence of safety for use as an antiseptic handwash (59 FR 31402 at 31435). Since FDA's proposed classification, two industry review panels (CIR and a second industry panel identified in a comment only as an ''industry expert panel'') and a European regulatory advisory board (Scientific Committee on Cosmetic Products and Non-food Products Intended for Consumers) have evaluated the safety of benzethonium chloride when used as a preservative in cosmetic preparations and as an active ingredient

in consumer hand soaps (Refs. 171, 172, and 173). These advisory bodies found benzethonium chloride to be safe for these uses. However, all of these safety determinations have largely relied on the findings of proprietary studies that are not publicly available. One of these evaluations, the findings of the unidentified industry expert panel, was submitted to the rulemaking to support the safety of benzethonium chloride (Ref. 174).

Some of the safety data reviewed by the unidentified industry expert panel represent the type of data that are needed to evaluate the safety of benzethonium chloride for use in consumer antiseptic wash products, e.g., ADME, DART, and oral carcinogenicity studies. The safety assessments used to support the unidentified industry expert panel's finding of safety, however, are publicly available only in the form of summaries. Consequently, these studies are not available to FDA and are precluded from a complete evaluation by FDA. Further, the submitted safety assessments with study summaries do not constitute an adequate record on which to base a GRAS classification (§ 330.10(a)(4)(i)). For FDA to include these studies in the administrative record for this rulemaking, they must be submitted to the rulemaking or otherwise publicly available.

a. *Summary of benzethonium chloride safety data.*

Benzethonium chloride ADME data. In 1988, NTP studied the extent of absorption following single and repeated once-daily dermal doses of benzethonium chloride and determined the pattern of tissue distribution and route of elimination of ^{14}C-labeled benzethonium chloride in rats (Ref. 175). They also determined the kinetics of distribution and excretion following intravenous administration. Under the conditions of the dermal studies, benzethonium chloride was readily absorbed following single or repeated dermal applications.

After a single application of ^{14}C-labeled benzethonium chloride in ethanol to skin that was covered by a nonocclusive patch, total urinary excretion was 1 to 2 percent of the applied dose, and fecal excretion accounted for about 45 percent of the dose. The radiolabel was below the detection limit in blood and most tissues during the study, but low levels were measured in the liver. Some residual radiolabel could be accounted for in the epidermis at the site of application. When similar studies were performed with repeated once-daily dermal dosing, the total amount of radiolabel excreted up to 10 days following the last dose was about 25 percent, suggesting some accumulation with repeated dermal administration.

More recent data submitted to support the safety of benzethonium chloride have shown a much lower level of absorption. In response to the 1994 TFM, a manufacturer provided data from a preliminary rat dermal absorption study and an in vitro dermal absorption study (Ref. 176). In the rat study, an aqueous 1 percent solution of ^{14}C-benzethonium chloride was applied to the shaved back of rats and covered with a nonocclusive patch. Blood, urine, and feces were collected for 48 hours after dosing. Little or no radioactivity was detected in blood or urine samples. Approximately 7 percent of the administered radioactivity was detected in the fecal samples. The remaining radioactivity was not accounted for.

The in vitro dermal absorption study compared the absorption of benzethonium chloride through rat and human skin (Ref. 176). Pieces of skin were obtained from rats and human plastic surgery patients. Total absorption was higher in rat compared to human skin. Under the conditions of this study, the total amount of benzethonium chloride maximally absorbed by human skin during 24 hours was 4.14 percent. Accumulation of benzethonium chloride in the skin was less than 1 percent in human skin but was about 5 percent in rat skin.

The available data demonstrate that there is absorption of benzethonium chloride following dermal exposure. However, the level of absorption is not clearly defined. These data also suggest that the amount of dermal absorption varies by species and with formulation. The currently available animal data also lack other pharmacokinetic determinations, i.e., distribution and metabolism. Subsequent to the 1994 TFM, FDA had numerous discussions with a manufacturer interested in attaining a GRAS classification for benzethonium chloride (Refs. 174, 177, and 178). Topics covered in these discussions included the need for pharmacokinetic studies in animals following dermal exposure (Refs. 177 and 178). The available data are not adequate and data from ADME studies in animals continue to be necessary because of highly variable results in the submitted studies, the need to clearly define the level of dermal absorption, the effect of formulation on dermal absorption, and the distribution and metabolism of benzethonium chloride in animals. In addition, we lack human pharmacokinetic studies under maximal use conditions, which are needed to define the level of systemic exposure following repeated use.

Benzethonium chloride carcinogenicity data. In 1995, the NTP conducted dermal carcinogenicity studies of benzethonium chloride in an ethanol vehicle in rats and mice (Ref. 175). There were no treatment-related differences from control animals in survival, clinical signs (e.g., reddening or crusting of the skin), body weights, organ weights, or neoplastic lesions in either rats or mice. Histological evaluation revealed dose-related (minimal in low dose, moderate in high dose) epithelial hyperplasia in both rats and mice at doses greater than 0.15 mg/kg/day. In rats, epidermal ulceration was frequent in high dose females and in one high dose male.

There was no systemic toxicity or carcinogenicity at any dose level in either species. The no observed effect level (NOEL) for systemic toxicity was 1.5 mg/kg/day based on systemic toxicity and carcinogenicity. While we agree with NTP's analysis of the systemic toxicity, we disagree with the NOEL for dermal toxicity because epithelial hyperplasia and reddening of the skin were noted at all doses greater than 0.15 mg/kg/day. Therefore, we consider the NOEL for dermal toxicity to be 0.15 mg/kg/day.

The submitted dermal carcinogenicity data are adequate and show that benzethonium chloride does not pose a risk of cancer after repeated dermal administration under the experimental conditions used; however, data from an oral carcinogenicity study are lacking.

Benzethonium chloride DART data. A manufacturer submitted summaries of four teratology studies (three rat and one rabbit) and one perinatal and postnatal study in rats (Ref. 174). In two of the rat teratology studies, the rats showed delayed bone tissue formation (ossification) and soft tissue and skeletal malformation at the high dose. Only delayed ossification was noted in the third rat study and in the rabbit study. These findings suggest that benzethonium chloride is a teratogen at high doses when administered orally. However, without the complete study reports, we are unable to fully assess the significance of these findings.

An embryo-fetal rat study with sufficient detail for evaluation was submitted (Ref. 174). In this study, pregnant female rats were administered benzethonium chloride on gestational days 6 through 15. Maternal toxicity was noted among the high dose-treated females. In the other dose groups, toxicity findings were sporadic and not dose-related. There were no treatment-related gross necropsy findings or

reproductive endpoint changes caused by the treatment. The incidence of delayed sternal ossification and/or nonossified sternal centrae was noted in all treatment groups and was statistically significant. However, this finding is not considered biologically significant as the incidence was not dose-related, the litter incidence values did not differ significantly, and the values were within the range of historical values. The maternal NOAEL is 100 mg/kg/day based on body weight changes and deaths at the dose of 170 mg/kg/day.

Overall, the DART data are not adequate to characterize all aspects of reproductive toxicity and we propose that studies are needed to assess the effect of benzethonium chloride on male and female fertility and on pre- and postnatal endpoints (e.g., the number of live or dead offspring, body weight at birth, physical growth and development, neurodevelopmental effects, and fertility of the pups).

Benzethonium chloride resistance data. We found two studies that examined bacterial susceptibility profiles for both benzethonium chloride and antibiotics. One study (Ref. 179) provided the data collectively, so no associations between reduced susceptibility to benzethonium chloride and specific antibiotics could be determined. The second study (Ref. 180) found a positive correlation between reduced susceptibility to benzethonium chloride and ciprofloxacin or oxacillin in clinical isolates of MRSA. There were no associations between benzethonium chloride and antibiotic resistance in the other tested organisms (methicillin-sensitive *S. aureus* or *P. aeruginosa*).

Overall, the available studies are limited in scope. They examine few bacterial species, provide no information on the level of benzethonium chloride exposure, and are not adequate to define the potential for the development of resistance and cross-resistance to antibiotics. Additional laboratory studies are necessary to more clearly define the potential for the development of resistance to benzethonium chloride. Depending on the results of the laboratory studies, additional data of the type described in section VII.C of this proposed rule may also be needed to assess the level of risk posed by benzethonium chloride.

b. *Benzethonium chloride safety data gaps.* In summary, our administrative record for the safety of benzethonium chloride is incomplete with respect to the following:

- Human pharmacokinetic studies under maximal use conditions when applied topically, including documentation of validation of the methods used to measure benzethonium chloride and its metabolites
- Animal ADME
- Data to help define the effect of formulation on dermal absorption
- Oral carcinogenicity
- DART studies (fertility and embryo-fetal testing)
- Potential hormonal effects
- Data from laboratory studies that assess the potential for the development of resistance to benzethonium chloride and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule

6. Chloroxylenol

There are limited safety data to support the long-term use of chloroxylenol in OTC consumer antiseptic hand and body wash products. Chloroxylenol is absorbed after topical application in both humans and animals. However, studies conducted in humans and animals are inadequate to fully characterize the extent of systemic absorption after repeated topical use or to demonstrate the effect of formulation on dermal absorption. The administrative record also lacks other important data to support a GRAS determination for this antiseptic active ingredient.

a. *Summary of chloroxylenol safety data.*

Chloroxylenol human pharmacokinetic data. The dermal absorption of chloroxylenol has been studied in humans following single and repeated bathing (10 minutes daily for 1 to 10 days) and following a single 30-minute percutaneous application to the back of one subject (Refs. 181 and 182). The studies were conducted with few subjects and a single formulation, and as shown in table 7 of this proposed rule, produced inconsistent results.

TABLE 7—RESULTS OF HUMAN ABSORPTION STUDIES OF CHLOROXYLENOL

Study	Number of subjects	Bath	Absorption [1]	
			Milligrams	Percent
Jordan, Nichols, and Rance, Preliminary Bathing Study (Ref. 181)	1	1st	5.74	0.5.
Jordan, B. J., et. al., Repeat Bathing Study (Ref. 182)	4	1st	2.4 to 4.4	0.2 to 0.37.
		10th	2.4 to 6.4	0.2 to 0.5.
Jordan, B. J., et. al., Dermal ADME under Occlusion Study (Ref. 182)	1	N/A	7.2	15.7.

[1] Based on amounts in urine.

The wide variation in the study findings may be due to the much lower concentration of chloroxylenol used in bathing studies (1:4,000 and 1:4,800 dilution of a 4.8 percent product versus 1 mL of the same product undiluted). However, the small sample size and disparate study results make it difficult to draw any meaningful conclusions on the level of dermal absorption following single or repeated use.

The percutaneous absorption study (Ref. 182) also provides some limited information on the elimination of chloroxylenol in humans. Assays of urine samples revealed that all chloroxylenol was excreted as conjugated metabolites. No unchanged chloroxylenol was found in the urine at any time point, and most of the drug was excreted in the first 8 hours after application.

Overall, the human pharmacokinetic studies are not adequate and we propose that human pharmacokinetic studies using dermal administration under maximal use conditions are still needed to define the level of systemic exposure following repeated use. In addition, data is needed to help define the effect of formulation on dermal absorption.

Chloroxylenol animal ADME data. Dermal ADME studies in rats and mice are available (Refs. 183 and 184). In a study conducted by Sved (Ref. 184), increasing doses of ^{14}C-labeled chloroxylenol were applied to the shaved backs of mice as a single or repeated dose (once daily for 14 or 28 days). Absorption was apparent at all time points and increased with increasing length of exposure. Approximately 50 percent of the applied dose was absorbed at 24 hours

after a single dose and approximately 65 percent at 24 hours after 14 and 28 days of daily dosing. The amount of chloroxylenol absorbed was proportional to the administered dose. The plasma half-life for chloroxylenol was 18, 22, and 12 hours for low, mid, and high dose males, respectively, and 70, 9, and 12 hours for low to high dose females, respectively. The half-life in skin was longer at lower doses of chloroxylenol.

After dermal application chloroxylenol has been found in the following tissues: Kidney, lung, liver, adrenal glands, skin, heart, ovary, ovarian fat, skeletal muscle, skull, spinal cord, spleen, eyes, femur, and brain (Refs. 183 and 184). Tissue concentrations increased with repeated dosing, up to 1.8-fold in the kidney, up to 3.8-fold in the liver, and up to 8.9-fold in the brain (Ref. 183). Concentrations in tissue also increased with dose. Unlike the concentrations in the liver and kidney, chloroxylenol levels in the brain did not appear to reach steady-state concentrations after 28 days of dosing, particularly at the lower chloroxylenol concentrations (Ref. 183). The relevance of these findings from a chronic use perspective cannot be evaluated without long-term animal studies.

The majority of chloroxylenol is excreted in the urine, and this is largely as polar conjugated metabolites. Only traces of unchanged chloroxylenol are present in urine. Havler identified a minor metabolite of chloroxylenol, hydroxylated chloroxylenol, which represents 10 to 15 percent of the metabolites found in urine (Ref. 183). Both chloroxylenol and the minor metabolite are excreted as a mixture of glucuronide and sulfate conjugates (Ref. 183). Excretion is largely complete 24 hours after a single dermal application.

Overall, these data demonstrate that absorption of chloroxylenol occurs after dermal application in humans and animals. However, the extent of this absorption and the resulting systemic exposure has not been adequately characterized. In the 1994 TFM, FDA stated that data from human studies characterizing the absorption, distribution, and metabolism of chloroxylenol conducted under maximal exposure conditions were needed (59 FR 31402 at 31415). The administrative record for this active ingredient still lacks data to characterize the rate and extent of systemic absorption, the similarities and differences between animal and human metabolism of chloroxylenol under maximal use conditions, and data to help establish the relevance of findings observed in animal toxicity studies to humans.

Chloroxylenol carcinogenicity data. In the 1994 TFM, FDA stated that a lifetime dermal carcinogenicity study (up to 2 years) in mice was needed to assess the dermal toxicity of chloroxylenol (59 FR 31402 at 31415). In response to this request, data from a 13-week dose ranging dermal toxicity study in mice were submitted (Ref. 185).

The study results show dose-related dermal adverse effects that may be indicative of dermal toxicity, such as erythema (skin redness), edema (swelling), and exfoliation (skin peeling). Microscopic changes consistent with a mild dermal irritant were also noted. These changes included hyperplasia (abnormal multiplication of skin cells) and hyperkeratosis of the epidermis (overgrowth of outermost layer of the skin) in all dosed animals, inflammation of the superficial dermis (a deeper layer of the skin) in most treated animals, crust formation, and necrosis (degradation) of epidermal cells. There were also dose-dependent lesions that increased in significance with dose. Hyperplasia of bone marrow and increased extramedullary hematopoiesis (formation of red blood cells outside the bone barrow) in the spleen consistent with an increasing inflammatory reaction were observed in the high dose group. The NOEL was 15 percent chloroxylenol and the NOAEL was less than 30 percent.

To adequately assess the significance of these study findings, a long-term dermal carcinogenicity study is needed. In addition, because of potential systemic exposure, an oral carcinogenicity study is also necessary to characterize the systemic effects from long-term exposure.

Chloroxylenol DART data. Data are available from a teratology study in rats that adequately characterizes chloroxylenol's potential effects on embryo and fetal development (Ref. 186). The maternal NOEL in this study was 100 mg/kg/day. The maternal lowest observed effect level was 500 mg/kg/day based on decreased food consumption and decreased body weight gain. The NOEL for developmental toxicity was 1,000 mg/kg/day. However, this study is not sufficient to characterize effects on other aspects of reproduction. Additional studies are necessary to assess the effect of chloroxylenol on fertility and early embryonic development and on pre- and postnatal development.

Chloroxylenol resistance data. We found no published studies that examine the changes in bacterial susceptibilities that may occur after exposure to nonlethal amounts of chloroxylenol. The few studies that are available assess antibiotic susceptibility in chloroxylenol-tolerant bacteria. In one study Lambert and colleagues determined the MICs of 8 antiseptics and at least 7 antibiotics for 256 clinical isolates of *S. aureus* (including MRSA) and 111 clinical isolates of *P. aeruginosa* (Ref. 180). Although most of the statistically significant correlations were between two antiseptics or between two antibiotics rather than between an antiseptic and an antibiotic, the authors found a significant positive correlation between chloroxylenol and gentamycin resistance in *P. aeruginosa,* but a negative correlation between chloroxylenol and ciprofloxacin resistance. They found no correlations between chloroxylenol and antibiotic resistance for *S. aureus.*

In a pair of studies (Refs. 79 and 80), Lear and colleagues collected, identified, and measured antimicrobial susceptibilities of bacteria from industrial sources. The authors saw no difference in the antibiotic susceptibility patterns of the industrial and standard strains of *P. aeruginosa.* Overall, there were few changes in antibiotic resistance patterns between the standard and industrial strains.

While these studies provide little evidence of cross-resistance to antibiotics, they are limited in scope. They examine few bacterial species, provide no information on the level of chloroxylenol exposure, and are not adequate to define the potential for the development of resistance to chloroxylenol and cross-resistance to antibiotics. If the data from initial laboratory studies indicate a potential for the development of chloroxylenol resistance and antibiotic cross-resistance, additional data such as the type described in section VII.C of this proposed rule will be necessary to assess the level of risk posed by chloroxylenol.

b. *Chloroxylenol safety data gaps.* In summary, our administrative record for the safety of chloroxylenol is incomplete with respect to the following:

- Human pharmacokinetic studies under maximal use conditions when applied topically that includes documentation of validation of the methods used to measure chloroxylenol and its metabolites
- Animal ADME at toxic exposure levels
- Data to help define the effect of formulation on dermal absorption
- Dermal carcinogenicity

- Oral carcinogenicity
- DART studies defining the effects of chloroxylenol on fertility and pre- and postnatal development
- Potential hormonal effects
- Data from laboratory studies that assess the potential for the development of resistance to chloroxylenol and cross-resistance to antibiotics in the types of organisms listed in section VII.C.3 of this proposed rule.

7. Triclosan

A large number of studies have been conducted to characterize the toxicological and metabolic profile of triclosan using animal models. Most of these studies have focused on understanding the fate of triclosan following exposure to a single source of triclosan via the oral route of administration. However, dermal studies in both humans and animals are also available. These studies show that triclosan is absorbed through the skin, but to a lesser extent than oral absorption.

a. *Summary of triclosan safety data.*

Triclosan human pharmacokinetics data. Although much of the human data relates to oral exposure, there are some human studies that examine triclosan pharmacokinetics after dermal exposure on the hands or body (Refs. 187, 188, and 189). The dermal absorption of triclosan has been estimated or characterized using a variety of formulations and techniques, as described in this subsection. The available data show that dermal absorption of triclosan is low. Consequently, additional human pharmacokinetic studies are not necessary.

In one multiple exposure handwash study (Ref. 187), 13 human subjects washed their hands 6 times a day with 1 percent triclosan liquid soap for 20 days. Dermal absorption of triclosan was demonstrated by an increase in the levels of triclosan in plasma after handwash use; however, the percentage of the applied dose that was absorbed through the skin was not provided or estimated. Steady-state levels of free and total triclosan were achieved within approximately 1 week (days 6–8). The highest plasma concentrations achieved by any subject during the study were 69.9 ng/mL for free triclosan and 229 ng/mL for total triclosan. Although this study provides a picture of the steady-state levels of triclosan from repeated handwash use, it does not provide Cmax, Tmax or AUC values for humans.

Despite the lack of individual concentration-time data, this study provides a basis on which to estimate the mean steady-state concentrations that would result if a multiple-application body wash study were to be conducted. From the reported study results, it is possible to calculate the cumulative amount of product used by each subject, and to relate this amount to the amount that would be used as a body wash. Assuming a concentration of 1 g triclosan/mL of soap, the mean of all subjects in the handwash study was 3.6 mL/wash. Multiplying this value by six washes per day gives a total mean volume of 21.6 mL/day.

Using a reported industry estimate (Ref. 190) that a 10 ounce (295.5 mL) bottle contains enough body wash for 29 washes, the estimated amount of body wash per use would be 10.2 mL (295.5 mL/29 washes = 10.2 mL/wash). Assuming that an individual bathes twice a day with a 1 percent triclosan-containing body wash, the total mean volume estimate would be approximately 20.4 mL. This is less than the mean amount used in the handwash study (21.6 mL/day). Based on the pharmacokinetic data provided, steady-state was achieved during the study, indicating that the study was of sufficient length to evaluate the pharmacokinetics of chronically administered triclosan.

Another of the available studies (Ref. 188) addresses triclosan exposure as a result of multiple product use. Two groups of 84 subjects were enrolled in this 13-week study. One group used triclosan toothpaste twice a day plus triclosan bar soap for face and handwashing twice a day plus triclosan deodorant once a day. The other group used triclosan toothpaste twice a day plus placebo soap and deodorant. Blood was drawn before product usage and at 3, 6, and 13 weeks.

At baseline, there was no significant difference in the mean triclosan plasma concentrations between groups. After product use, however, the mean triclosan plasma concentrations were significantly higher in the multiple triclosan-containing product group (highest achieved concentration: 31.04 ng/mL) than in the toothpaste only group (highest achieved concentration: 22.47 ng/mL) for all three time points. This suggests that the use of multiple triclosan-containing products can lead to higher triclosan exposure than from use of a single product. The concentrations observed in this study are substantially lower than the range of concentrations at steady-state that were observed in the handwashing study (Ref. 187). The substantial increase in triclosan concentration from baseline to 3 weeks indicates that the majority of the absorbed triclosan in this study was due to the use of the triclosan-containing toothpaste.

There have been several studies that attempted to estimate the absorption of triclosan following topical application in a variety of different formulations (Refs. 189, 191, 192, and 193). In theses studies triclosan was delivered as a solution, in toothpaste, as a mouthwash, or in a cream. Despite the different properties of the dosage forms and vehicles used, the estimated absorption was approximately in the range of 5 to 15 percent of the applied dose. Based on these data, the impact of different formulations on the dermal absorption of triclosan appears to be minimal.

In summary, human absorption of triclosan has been adequately characterized and no further human pharmacokinetic studies are needed.

Triclosan ADME data. Triclosan is readily metabolized in both humans and animals to two main parent conjugates, triclosan glucuronide and triclosan sulfate. Several other minor metabolites have been detected in animal studies (Refs. 194 through 197); however, the relevance of these minor metabolites to humans is unknown. In humans after oral or oral plus dermal triclosan exposure, triclosan glucuronide is the primary circulating metabolite in plasma (Ref. 188). After a single oral exposure to 4 mg of triclosan, the triclosan levels in human plasma increased rapidly and reached maximum concentration within 1 to 3 hours (Ref. 198). In this study, the majority of the triclosan in plasma was conjugated; the unconjugated fraction of triclosan in plasma was 30 to 35 percent. Triclosan was cleared from the plasma at a rate of 2.9 L/hour.

There also are some data to suggest that triclosan is metabolized during passage through the skin. Moss, Howes, and Williams (Ref. 191) examined dermal metabolism of triclosan in vivo in the rat and in vitro using rat or human skin in flow-through diffusion cells. In both species, triclosan was metabolized during passage through the skin to triclosan glucuronide and triclosan sulfate. Triclosan was more readily metabolized to the glucuronide conjugate, which was also more readily removed from the skin than the sulfate conjugate.

The elimination pattern of triclosan varies depending on the species. Triclosan is excreted mainly via urine in humans (Ref. 198) and hamsters (Ref. 195), while it is eliminated mainly through feces in mice (Ref. 196) and rats (Ref. 199). After a single oral administration of 4 mg of triclosan to human subjects, the majority of the triclosan was excreted in urine within

the first 24 hours (Ref. 198). There was considerable variability among subjects; between 24 and 83 percent of the dose was excreted within 4 days after exposure. The urinary excretion half-life ranged from 7 to 17 hours, and excretion approached baseline levels by 8 days after exposure.

In the multiple exposure handwash study (previously described in this section (Ref. 187)), the mean elimination half-life for total triclosan after multiple dermal exposures was 33 hours. This is longer than the elimination half-life calculated after a single oral exposure (12 hours). The authors suggest the reason for this difference is that absorption through the skin takes longer than absorption from the gastrointestinal tract.

It is well documented that triclosan in aqueous solution can be degraded into 2,8-dichlorodibenzo-p-dioxin and other degradation products by heat or ultraviolet irradiation (i.e., photodegradation) (Refs. 200 through 206). Although the data support photodegradation in aqueous solution, we found no data regarding whether photodegradation of triclosan can occur on human skin. It is not known whether photodegradation products would be formed on human skin after topical application of triclosan-containing antiseptics and, if so, whether they would be absorbed or affect the skin. Because of this new information regarding photodegradation of triclosan, we propose that data are needed regarding the potential for formation of triclosan photodegradation products on human skin as a result of consumer antiseptic use and, if present, their effects on the skin.

Overall, the animal ADME data are not adequate and additional pharmacokinetic data (e.g., AUC, Tmax, and Cmax) at steady-state levels continue to be necessary to bridge animal data to humans. In addition, data regarding the potential for formation of photodegradation products on human skin and their effects on the skin are needed.

New triclosan findings. A recent study evaluated the physiological effects of triclosan treatment on muscle function in mice and fish (Ref. 207). The authors observed a negative effect on both cardiac and skeletal muscle function as a result of a single triclosan treatment and identified a mechanism to explain the observed effect. While this finding suggests a previously unidentified toxicity of triclosan, it is a preliminary finding that has not been duplicated. Further, the mice were treated by injecting triclosan into the abdomen (i.e., intraperitoneal administration), rather than through a more relevant route of administration, such as the oral or dermal route. We invite comment on what these findings tell us about triclosan's potential impact on human health and the submission of additional data on this subject.

Triclosan carcinogenicity data. A 2-year oral carcinogenicity study in hamsters was submitted to the rulemaking (Ref. 208). The study was conducted in Syrian hamsters because the elimination pattern of triclosan is similar in hamsters and humans. Although some treatment-related noncancerous lesions were seen in the kidneys, epididymides, testes, and stomach, there were no tumor findings in any of the organs examined. The NOAEL for triclosan in this hamster study is 75 mg/kg/day. The study included additional (satellite) groups to assess triclosan plasma levels at week 53 and at study termination (Ref. 209). At both time points, plasma levels increased with increasing doses and significantly higher triclosan plasma levels were seen in males compared to females ($p < 0.001$). This increase over time suggests that triclosan is accumulating in the animals; however, the effect of this accumulation is unknown.

In contrast to the oral data, there are little data regarding dermal toxicity of triclosan. Short-term dermal toxicity studies in rats (Ref. 210) and mice (Refs. 211 and 212) show dose-related dermal adverse effects following a 14-day treatment period. Similar dermal effects were seen in a 90-day subchronic dermal toxicity study in rats (Ref. 213). A long-term dermal carcinogenicity study could be used to assess the relevance of the short-term dermal toxicity findings to a chronic use situation; however, currently no long-term dermal carcinogenicity data are available. Because these data are not available but are needed to fully evaluate the safety of triclosan, FDA nominated triclosan to NTP for toxicological evaluation (Ref. 214). The NTP studies will evaluate the dermal carcinogenicity potential following chronic dermal exposure to triclosan (Refs. 215 and 216). These studies are ongoing; however, results of these studies are not expected to be available for several years, and we do not intend to delay the antiseptic rulemaking to wait for these study results.

The submitted oral carcinogenicity data are adequate and show that triclosan does not pose a risk of cancer after repeated oral administration under the experimental conditions used; however, data from a dermal carcinogenicity study are still needed.

Triclosan DART data. In the 1994 TFM, we stated that we were evaluating the data from a two-generation study of the reproductive toxicity of triclosan in rats (Ref. 217). In this study, rats that were exposed to a high dose (3,000 ppm) of triclosan in utero showed lower neonatal survival and lower mean body weights compared to untreated controls. The offspring of these rats (i.e., F2 pups) had a lower rate of survival to weaning compared to untreated controls. Based on the findings from this two-generation study, we recommended that a segment II study should be conducted to address the decreased survival among the high dose-treated litters.

Since that time, additional segment II reproductive toxicity studies have been submitted showing that triclosan is not teratogenic in mice, rats, or rabbits (Ref. 218). No treatment-related mortality was observed, and pregnancy rates and the number of litters for treated animals were comparable to controls. The oral NOAELs from these studies are listed in table 8 of this proposed rule.

TABLE 8—ORAL NO OBSERVED ADVERSE EFFECT LEVELS (NOAEL) FROM REPRODUCTIVE TOXICITY STUDIES OF TRICLOSAN

Species	Oral NOAEL (mg/kg/day)	
	Maternal toxicity	Developmental toxicity
Mouse	25	25
Rat	50	50
Rabbit	50	150

Overall, the triclosan DART data are adequate and additional traditional DART studies are not necessary. However, as discussed in the subsection of this proposed rule on drug-induced hormonal effects, we propose that additional reproductive and developmental testing will be needed to address concerns about these effects.

Triclosan data on hormonal effects. Recent studies have demonstrated that triclosan has effects on the thyroid, estrogen, and testosterone systems in several animal species, including mammals (Refs. 41, 43 through 47, 50, and 219). In addition, effects were also seen in the hamster carcinogenicity study (e.g., a reduction or absence of spermatozoa, abnormal spermatogenic cells, and partial depletion of one or more generations of germ cells in male testes in the high dose-treated group) (Ref. 220). The implications of these findings on human health, especially for children, are still not well understood.

At this time, no adequate long-term (i.e., more than 30 days) in vivo animal

studies have been conducted to address the consequences of these hormonal effects on functional endpoints of growth and development (e.g., link of preputial separation to sexual differentiation and fertility, link of decreased thyroxine/triiodothyronine to growth and neurobehavioral development) in exposed fetuses or pups. Studies in juvenile animals (of the type described in section VII.C.2 of this proposed rule) could address the consequences of short-term thyroid and reproductive findings on the fertility, growth, and development of triclosan-exposed litters.

Triclosan resistance data. Much of the recent data looking at cross-resistance between antiseptic active ingredients and antibiotics involve an evaluation of triclosan. Several bacterial species that showed reduced susceptibility to triclosan were also resistant to one or more of the tested antibiotics (Refs. 60 through 66, 71, and 73 through 77). This trend was seen for both gram-negative (*E. coli, Pseudomonas aeruginosa, Salmonella enterica, Stenotrophomonas maltophilia, Acinetobacter,* and *Campylobacter*) and gram-positive (*Staphylococcus aureus,* including MRSA) organisms. Although the clinical relevance of these studies is not clear, the possibility that triclosan contributes to changes in antibiotic susceptibility warrants further evaluation.

One of our concerns stems from the observation that triclosan exposure can lead to changes in bacterial efflux pump activity. Several studies (Refs. 62, 64, 66, and 102) suggest that an efflux mechanism is responsible for the observed reduced triclosan susceptibility. In addition, overexpression of efflux pump regulatory genes also leads to reduced triclosan susceptibility in *E. coli* (Ref. 101).

In addition to bacterial efflux activity, other mechanisms have been documented that may also contribute to reduced antiseptic susceptibility and cross-resistance, e.g., changes in bacterial membrane (Ref. 67). This type of nonspecific mechanism, in theory, could work against multiple antibiotics or antiseptics.

Other data suggest that different mechanisms of action may occur at different triclosan concentrations. In the laboratory, at low concentrations triclosan has a specific action against a bacterial enzyme (FabI), while high concentrations act against less specific targets, such as the cell membrane (Ref. 109). Currently, there is not enough information to know which scenarios, if any, could occur under actual use conditions.

Although numerous studies have evaluated the antiseptic and antibiotic susceptibility profiles of clinical or culture collection strains, there are few studies that evaluate the susceptibility profiles of bacterial isolates from nonhospital or consumer settings. In a pair of studies (Refs. 79 and 80), Lear and colleagues collected, identified, and measured antimicrobial susceptibilities of bacteria from industrial sources. Samples were taken from a factory and laboratories of companies that manufacture products containing triclosan, where it was likely that the organisms were exposed to this ingredient. Of approximately 100 industrial isolates, two triclosan-tolerant isolates were chosen for further study (*Acinetobacter johnsonii* and *Citrobacter freundii*).

The authors then determined the antibiotic susceptibility profiles of the two industrial isolates compared to standard culture collection strains (Ref. 79). The authors saw no difference in the antibiotic susceptibility patterns of the industrial and standard strains of *A. johnsonii.* In contrast, the *C. freundii* industrial isolate was more resistant to 12 of 14 antibiotics tested. These changes in antibiotic susceptibility were quite modest, however. While this industrial isolate showed only modest changes in susceptibility for most of the tested antibiotics, it still demonstrates a change in the antibiotic susceptibility pattern after triclosan exposure. Unfortunately, the number of sites that were sampled was low (50 total sites), only two isolates were studied, and the time and extent of triclosan exposure is unknown.

In addition to laboratory data, there are also a few studies that examined the potential for development of cross-resistance in bacterial isolates taken from the skin of consumer antiseptic users. Cole et al. (Ref. 78) described antibiotic and antiseptic susceptibilities of staphylococci isolated from the skin of consumers who used antiseptic or nonantibacterial body washes. This study also evaluated triclocarban and is described in detail in section VII.D.3.a of this proposed rule.

When CNS susceptibility to antiseptics was examined, the maximum MIC value was the same for all three groups (2.020 (no units provided)); however, the minimum MIC value differed between triclosan users (0.008) and non-users (0.120). Because antiseptic MICs do not correlate with clinical endpoints, it is not clear what this difference in MIC means. No patterns emerged when the data were analyzed for cross-resistance between triclosan or triclocarban and antibiotics.

The authors conclude that this study shows no increase in antibiotic resistance from the regular use of antiseptic body washes. But, this study was not adequately designed to determine whether use of antiseptic body washes leads to changes in antibiotic or antiseptic susceptibilities. Given the limited number of isolates examined, it is not clear that the study was adequately powered to detect a difference in resistance patterns. Furthermore, the amount of antiseptic exposure was not defined. The length of time subjects had used antiseptic body washes (beyond the specified 30 days), the frequency of bathing, and the volume of antiseptic wash used per bath or shower was not reported. Finally, few bacterial isolates were examined. It is reasonable to examine the susceptibilities of *Staphylococcus* species; however, an average of only 1.5 isolates was obtained from each subject.

Aiello et al. (Ref. 81) looked for a possible association between antibiotic and triclosan susceptibilities among staphylococci and GNB isolated from the hands of consumers who used nonantibacterial or 0.2 percent triclosan-containing antiseptic handwashes for 1 year. Two hundred twenty-four inner city households were randomized to use soap and cleaning products with or without antibacterial ingredients. The products were blinded and were delivered to each household monthly. During the study period, the households were required to use only the assigned home hygiene products and were asked not to change any of their other normal hygiene practices. To assess prior exposure to antimicrobials, including antiseptics, a survey of the antibacterial cleaning and hygiene products used within the home was conducted at baseline.

The hands of the primary caregiver in the home were sampled for bacteria at baseline and 1 year later. Only the most commonly isolated bacterial species, defined as at least 38 isolates of a single species from all samples, were analyzed further. A total of 628 isolates were examined for their triclosan MICs and susceptibilities to selected antibiotics. Staphylococci were tested against oxacillin to determine methicillin resistance. The GNB were tested against three to six antibiotics, based on clinical relevance. There were no significant differences in the observed proportions of isolates that were antibiotic resistant at baseline versus the end of the year except for *Enterobacter cloacae,* which was significantly higher at baseline (36 percent) than at the end of the year (0 percent) ($p = 0.016$).

The MICs of triclosan ranged from 0.03 to 4.00 µg/mL; however, two thirds of the isolates had triclosan MICs over 1 µg/mL. The median triclosan MICs for the gram negative species varied widely. In contrast, the staphylococcus median values were very similar, except for *S. aureus,* which was 2 µg/mL at baseline and 0.03 µg/mL at the end of the year. There was no statistically significant association between triclosan MICs and susceptibility to antibiotics.

A randomly chosen subset of seven GNB organisms with triclosan MICs of at least 32 µg/mL was retested with agar containing triclosan concentrations in the range of 64 to 1,024 µg/mL. The subset contained *Klebsiella pneumoniae, Acinetobacter baumannii, Enterobacter cloacae,* and *P. fluorescens* isolates. All of the isolates grew on agar containing 1,024 µg/mL triclosan, suggesting that they may survive the triclosan concentrations used in some consumer products.

This study did not show an association between high triclosan MICs and antibiotic resistance after 1 year of triclosan handwash use. However, the authors note that the triclosan MICs seen for many of the isolates in this study are higher than those reported previously. They suggest that general levels of decreased susceptibility to triclosan seem to be increasing in the community, regardless of whether triclosan-containing products are used in the home or not. The authors also concluded that the absence of a statistically significant association between elevated triclosan MICs and reduced antibiotic susceptibility may indicate that such a correlation does not exist or that it is relatively small among the isolates that were studied. Still, they theorized that a relationship may emerge after longer term or higher dose exposure of bacteria to triclosan in the community setting.

Overall, the administrative record for triclosan is complete on the following aspects of the resistance issue:

- Laboratory studies demonstrate triclosan's ability to alter antibiotic susceptibilities (Refs. 60 through 66, 71, and 73 through 77)
- Data define triclosan's mechanisms of action and demonstrate that these mechanisms are dose dependent (Ref. 109)
- Data demonstrate that exposure to triclosan changes efflux pump activity, a common nonspecific bacterial resistance mechanism (Refs. 62, 64, 66, and 102)
- Data show that low levels of triclosan may persist in the environment (Refs. 85, 113, 114, 115, and 221 through 224)

However, the administrative record is not complete with respect to data that would clarify the potential public health impact of the currently available data. Examples of the type of information that could be submitted to complete the record include the following:

- Data to characterize the concentrations and antimicrobial activity of triclosan in various biological and environmental compartments (e.g., on the skin, in the gut, and in environmental matrices)
- Data to characterize the antiseptic and antibiotic susceptibility levels of environmental isolates in areas of prevalent antiseptic use, e.g., in the home, health care, food handler, and veterinary settings and
- Data to characterize the potential for the reduced antiseptic susceptibility caused by triclosan to be transferred to other bacteria that are still sensitive to triclosan

b. *Triclosan safety data gaps.* In summary, our administrative record for the safety of triclosan is incomplete with respect to the following:

- Animal ADME
- Dermal carcinogenicity
- Data regarding the potential for formation of photodegradation products on human skin and their effects on the skin
- Potential hormonal effects
- Data to clarify the relevance of antimicrobial resistance laboratory findings to the consumer setting

VIII. Proposed Effective Date

Based on the currently available data, this proposed rule finds that consumer antiseptic wash active ingredients can be considered neither safe nor effective for use in OTC consumer antiseptic wash drug products. Accordingly, consumer antiseptic wash active ingredients would be nonmonograph in any final rule based on this proposed rule. We recognize, based on the scope of products subject to this monograph, that manufacturers will need time to comply with a final rule based on this proposed rule. However, because of the potential safety considerations raised by the data for some antiseptic active ingredients evaluated, we believe that an effective date later than 1 year after publication of the final rule would not be appropriate or necessary. Consequently, any final rule that results from this proposed rule will be effective 1 year after the date of the final rule's publication in the **Federal Register**. On or after that date, any OTC consumer antiseptic wash drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not GRAS/GRAE or to be misbranded, could not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application or abbreviated new drug application. Any OTC consumer antiseptic wash drug product subject to the final rule that is repackaged or relabeled after the effective date of the final rule would be required to be in compliance with the final rule, regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce.

IX. Summary of Preliminary Regulatory Impact Analysis

The summary analysis of benefits and costs included in this proposed rule is drawn from the detailed Preliminary Regulatory Impact Analysis (PRIA) that is available at *http://www.regulations.gov,* Docket No. FDA–1975–N–0012 (formerly Docket No. 1975N–0183H).

A. Introduction

FDA has examined the impacts of the proposed 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). This proposed rule would be an economically significant regulatory action as defined by 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. This proposed rule would 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 expects this proposed rule to result in a 1-year expenditure that would meet or exceed this amount.

B. Summary of Costs and Benefits

The costs and benefits of the proposed rule are summarized in table 9 of this proposed rule entitled ''Economic Data: Costs and Benefits Statement.'' As table 9 shows, the primary estimated benefits come from reduced exposure to antiseptic active ingredients by 2.2 million pounds per year. Using the primary estimates, the combined total consists of a reduction in triclosan exposure by 799,426 pounds per year, triclocarban exposure by 1.4 million pounds per year, chloroxylenol exposure by 231.9 pounds per year, and benzalkonium chloride by 63.8 pounds per year. Limitations in the available data characterizing the health effects resulting from widespread long-term exposure to such ingredients prevent us from translating the estimated reduced exposure into monetary equivalents of health effects.

The primary estimate of costs annualized over 10 years is approximately $23.6 million at a 3 percent discount rate and $28.6 million at a 7 percent discount rate. These costs consist of total one-time costs of relabeling and reformulation ranging from $112.2 to $368.8 million. Estimates of the cost of relabeling and reformulating may be overstated if manufacturers produce data consistent with the monograph changes in this proposed rule and do not need to relabel or reformulate. In such a scenario, the costs of producing the data would be incurred instead. Under the proposed rule, we estimate that each pound of reduced exposure to antiseptic active ingredients would cost $3.86 to $43.67 at a 3 percent discount rate and $4.69 to $53.04 at a 7 percent discount rate.

Manufacturers are expected to incur most product reformulation and relabeling costs with the impact to relabelers, repackers, and distributors being considerably less. The impact on a manufacturer can vary considerably depending on the number and type of products it produces. For the estimated 707 affected establishments that would qualify as small,[1] our estimate of the average one-time cost of compliance ranges from $0.10 million to $0.33 million, which would be approximately 0.33 percent to 1.10 percent of the average annual value of shipments for a small business. In its Initial Regulatory Flexibility Analysis, the Agency assesses a pair of regulatory options that would reduce the proposed rule's burden on small entities: (1) Exempting small businesses from the rule and (2) longer compliance period, allowing 18 months (rather than 12 months).

TABLE 9—ECONOMIC DATA: COSTS AND BENEFITS STATEMENT

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate	Period covered	
Benefits							
Annualized Monetized $millions/year	.....	.....	.....	.....	7% 3%	Annual. Annual.	
Annualized Quantified	2,198,033 2,198,033	989,922 989,922	3,406,145 3,406,145	.....	7% 3%	Annual. Annual.	Reduced antiseptic active ingredient exposure (in pounds).
Qualitative							
Costs							
Annualized Monetized $millions/year	$28.6 $23.6	$16.0 $13.2	$52.5 $43.2	2010 2010	7% 3%	Annual. Annual.	Annualized costs of relabeling and reformulation. Range of estimates captures uncertainty.
Annualized Quantified	.....	.....	.....	.....	7% 3%		
Qualitative							
Transfers							
Federal Annualized Monetized $millions/year.	.....	.....	.....	.....	7% 3%	.....	None.
From/To	From:			To:			
Other Annualized Monetized $millions/year.	.....	.....	.....	.....	7% 3%		
From/To	From:			To:			
Effects State, Local, or Tribal Government: Not applicable.							
Small Business Annual cost per affected small entity estimated as $0.01–$0.04 million, which would represent 0.04–0.13 percent of annual shipments.							
Wages: No estimated effect.							
Growth: No estimated effect.							

[1] FDA notes that the analysis was conducted using data at the establishment level rather than at the firm level. This makes the implicit assumption that the typical manufacturing establishment is roughly equivalent to the typical small manufacturing firm. However, if market is dominated by a few large firms with a large number of small establishments, our estimated number of small entities, may be an overestimate of the actual number of businesses with fewer than 750 employees.

X. Paperwork Reduction Act of 1995

This proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Environmental Impact

We have determined under 21 CFR 25.31(a) 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.

XII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would have a preemptive effect on State law. Section 4(a) of the Executive order requires Agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 751 of the Federal Food, Drug and Cosmetic Act (the FD&C Act) (21 U.S.C. 379r) is an express preemption provision. Section 751(a) of the FD&C Act (21 U.S.C. 379r(a)) provides that ''no State or political subdivision of a State may establish or continue in effect any requirement—(1) that relates to the regulation of a drug that is not subject to the requirements of section 503(b)(1) or 503(f)(1)(A); and (2) that is different from or in addition to, or that is otherwise not identical with, a requirement under this Act, the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*), or the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*).'' Currently, this provision operates to preempt States from imposing requirements related to the regulation of nonprescription drug products. (See section 751(b) through (e) of the FD&C Act for the scope of the express preemption provision, the exemption procedures, and the exceptions to the provision.)

This proposed rule, if finalized as proposed, would require data from clinical outcome studies to demonstrate the effectiveness of consumer antiseptic active ingredients. Any final rule would have a preemptive effect in that it would preclude States from issuing requirements related to OTC consumer antiseptics that are different from, in addition to, or not otherwise identical with a requirement in the final rule. This preemptive effect is consistent with what Congress set forth in section 751 of the FD&C Act. Section 751(a) of the FD&C Act displaces both State legislative requirements and State common law duties. We also note that even where the express preemption provision is not applicable, implied preemption may arise (see *Geier* v. *American Honda Co.,* 529 U.S. 861 (2000)).

FDA believes that the preemptive effect of the proposed rule, if finalized, would be consistent with Executive Order 13132. Section 4(e) of the Executive order provides that ''when an agency proposed to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' FDA is providing an opportunity for State and local officials to comment on this rulemaking.

XIII. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) under Docket No. FDA–1975–N–0012 (formerly 1975N–0183H) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified all Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this proposed rule publishes in the **Federal Register**.)

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2. Transcript of the January 22, 1997, Meeting of the Joint Nonprescription Drugs and Anti-Infective Drugs Advisory Committees, OTC Vol. 02CAWASHTFM.
3. Transcript of the March 23, 2005, Meeting of the Nonprescription Drugs Advisory Committee, *http://www.fda.gov/ohrms/dockets/ac/05/transcripts/2005-4098T1.pdf,* 2005.
4. Transcript of the October 20, 2005, Meeting of the Nonprescription Drugs Advisory Committee, *http://www.fda.gov/ohrms/dockets/ac/05/transcripts/2005-4184T1.pdf,* 2005.
5. Summary Minutes of the November 14, 2008, Feedback Meeting with Personal Care Products Council and Soap and Detergent Association, OTC Vol. 02CAWASHTFM.
6. Comment Nos. C7, C10, C11, C12, C14, C18, C22, C25, C32, C34, C35, C36, C40, C43, C44, C45, C47, C48, C53, C54, C55, C56, C57, C60, C61, C63, C64, C77, C80, C81, C82, C83, C85, C89, CP3, CP4, CP6, CP7, CP11, CP14, CP15, CP16, LET11, LET13, LET15, LET18, LET43, RPT3, RPT5, SUP1, SUP2, SUP3, SUP5, SUP6, and SUP7 in Docket No. 1975N–0183H.
7. Comment Nos. C1, C8, C11, C14, C18, C19, C20, C23, C32, C34, C35, C36, C38, C42, C43, C45, C48, C50, C51, C52, C58, C60, C61, C70, C76, C79, C82, C84, C85, C89, C93, CP1, CP3, CP4, CP7, CP9, CP12, CP14, CP17, LET1, LET12, LET13, LET16, LET17, LET43, PR1, PR3, PR4, PR5, PR6, PR7, PR9, RPT4, SUP3, SUP4, SUP5, SUP7, SUP12, and SUP13 in Docket No. 1975N–0183H.
8. Comment Nos. C171, C172, C173, LET98, LET99, PR2, and SUP47 in Docket No. 1975N–0183H.
9. Comment Nos. DRAFT–1044, DRAFT–1045, DRAFT–1046, DRAFT–1047, DRAFT–1048 in Docket No. FDA–1975–N–0012.
10. Comment No. CP1 in Docket No. 2005P–0432.
11. Comment No. C4 in Docket No. 1975N–0183H.
12. Comment No. C42 in Docket No. 1975N–0183H.
13. Comment No. C20 in Docket No. 1975N–0183H.
14. Comment No. CP8 in Docket No. 1975N–0183H.
15. Comment No. CP1 in Docket No. 1996P–0312.
16. Comment No. CP1 in Docket No. 1975N–0183H.
17. Comment No. C30 in Docket No. 1975N–0183H.
18. Comment No. LET23 in Docket No. 1975N–0183H.
19. Product labels in OTC Vol. 02CAWASHTFM.
20. Briefing Material for the November 14, 2008, Feedback Meeting with Personal Care Products Council and Soap and Detergent Association, OTC Vol. 02CAWASHTFM.
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List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 333

Labeling, Over-the-counter drugs, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 310 and 333 be amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Amend § 310.545 by removing from paragraph (d) introductory text the number ''(d)(39)'' and adding in its place the number ''(d)(40)''; and by adding paragraphs (a)(27)(iii), (a)(27)(iv), and (d)(41) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(27) * * *

(iii) *Consumer antiseptic handwash drug products.* Approved as of [*DATE 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE* ***Federal Register***].

Benzalkonium chloride
Benzethonium chloride
Chloroxylenol
Cloflucarban
Fluorosalan
Hexachlorophene
Hexylresorcinol
Iodine complex (ammonium ether sulfate and polyoxyethylene sorbitan monolaurate)
Iodine complex (phosphate ester of alkylaryloxy polyethylene glycol)
Methylbenzethonium chloride
Nonylphenoxypoly (ethyleneoxy) ethanoliodine
Phenol
Poloxamer iodine complex
Povidone-iodine
Secondary amyltricresols
Sodium oxychlorosene
Tribromsalan
Triclocarban
Triclosan
Undecoylium chloride iodine complex

(iv) *Consumer antiseptic body wash drug products.* Approved as of [*DATE 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE* ***Federal Register***].

Benzalkonium chloride
Benzethonium chloride
Cloflucarban
Fluorosalan
Hexachlorophene
Hexylresorcinol
Iodine complex (phosphate ester of alkylaryloxy polyethylene glycol)
Iodine tincture
Methylbenzethonium chloride
Nonylphenoxypoly (ethyleneoxy) ethanoliodine
Parachlorometaxylenol (chloroxylenol)

Phenol
Poloxamer iodine complex
Povidone-iodine
Tribromsalan
Triclocarban
Triclosan
Undecoylium chloride iodine complex

* * * * *

(d) * * *

(41) [*DATE 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE* ***Federal Register***], for products subject to paragraph (a)(27)(iii) or (a)(27)(iv) of this section.

PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 3. The authority citation for 21 CFR part 333 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 333.403 [Amended]

■ 4. As proposed to be added June 17, 1994 (59 FR 31442), § 333.403 is further amended in paragraph (c)(1) by removing the phrase ''Antiseptic handwash or health-care'' from the paragraph heading and adding in its place ''Health-care''.

§ 333.410 [Amended]

■ 5. As proposed to be added June 17, 1994 (59 FR 31442), § 333.410 is further amended by removing the phrase ''Antiseptic handwash or health-care'' from the section heading and adding in its place ''Health-care''.

§ 333.455 [Amended]

■ 6. As proposed to be added June 17, 1994 (59 FR 31443), § 333.455 is further amended by:

■ a. Removing from the section heading the phrase ''antiseptic handwash or'';

■ b. Removing from paragraph (a) the phrase '' 'antiseptic handwash,' or'';

■ c. Removing and reserving paragraph (b)(2);

■ d. Removing from the paragraph (b)(3) paragraph heading the phrase ''either antiseptic or'' and adding in its place the word ''a'';

■ e. Removing from paragraph (c)(1) the paragraph designation and paragraph heading; and

■ f. Removing paragraph (c)(2).

§ 333.470 [Amended]

■ 7. As proposed to be added June 17, 1994 (59 FR 31444), § 333.470 is further amended in paragraph (a) introductory text and paragraph (b)(2) heading and introductory text by removing the phrase ''an antiseptic handwash or'' and adding in its place the word ''a''; and in paragraph (b)(2)(iii) introductory text by removing the phrase ''antiseptic or''.

■ 8. Add and reserve subpart F to read as follows:

Subpart F—Consumer Antiseptic Drug Products [Reserved]

Dated: December 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–29814 Filed 12–16–13; 8:45 am]

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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Business Combination Involving BATS Global Markets, Inc. and Direct Edge Holdings LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71045; File No. SR–EDGX–2013–43]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, in Connection With the Proposed Business Combination Involving BATS Global Markets, Inc. and Direct Edge Holdings LLC

December 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2013, EDGX Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 9, 2013, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposed rule change (the ''Proposed Rule Change'') in connection with the proposed business combination (the ''Combination''), as described in more detail below, involving its indirect parent company, Direct Edge Holdings LLC (''DE Holdings''), and BATS Global Markets, Inc., the parent company of BATS Exchange, Inc. (''BATS'') and BATS Y-Exchange, Inc. (''BYX'') (collectively, ''BATS Exchanges''), each a national securities exchange registered with the Commission.

Upon completion of the Combination (the ''Closing''), DE Holdings and BATS Global Markets, Inc. each become intermediate holding companies, held under a single new holding company. The new holding company, currently named ''BATS Global Markets Holdings, Inc.,'' will at that time change its name to ''BATS Global Markets, Inc.'' In addition, the current parent company of the BATS Exchanges, BATS Global Markets, Inc., will at that time change its name to ''BATS Global Markets Holdings, Inc.''

For ease of reference, this Proposed Rule Change will refer to the current parent company of the BATS Exchanges as ''Current BGM'' when referring to the entity prior to the Closing, and as ''BGM Holdings'' when referring to that entity after the Closing. The entity that will become the new top-level holding company that will, after Closing, own BGM Holdings and DE Holdings, will be referred to as ''New BGM.''

To effectuate the Combination, the Exchange seeks to obtain the Commission's approval of (i) the proposed Resolutions of the DE Holdings Board of Managers regarding the Combination (the ''Resolutions'') making certain determinations regarding New BGM and the impact of the Combination on the Exchange; (ii) the proposed Amended and Restated Certificate of Incorporation of New BGM[3] (the ''New BGM Charter''); (iii) the proposed Amended and Restated Bylaws of New BGM (the ''New BGM Bylaws''); (iv) the replacement of the Fourth Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC[4] (''Fourth DE Holdings LLC Agreement'') in its entirety with the proposed Seventh Amended and Restated Limited Liability Company Operating Agreement of Direct Edge Holdings LLC (the ''New DE Holdings LLC Agreement''); (v) the proposed amendments to the Direct Edge, Inc. (''DEI'') Certificate of Incorporation (the ''DEI Certificate of Incorporation''); (vi) the proposed amendments to the Bylaws of Direct Edge, Inc. (the ''DEI Bylaws''); (vii) the proposed amendments to the Certificate of Incorporation of the Exchange (the ''Exchange Certificate of Incorporation''); (viii) the proposed amendments to the Bylaws of the Exchange (the ''Exchange Bylaws''); (ix) the proposed amendments to Exchange Rule 2.3 to reflect the affiliation between the Exchange and two additional registered national securities exchanges; (x) the proposed amendments to Exchange Rule 2.10 to reflect the new affiliated entities of the Exchange; (xi) the proposed amendments to Exchange Rule 2.12 to reflect the affiliation between the Exchange and the routing broker for BATS and BYX; and (xii) the indirect acquisition by an affiliate of the Exchange of a Member[5] of the Exchange and the resulting affiliation between the Exchange and the Member of the Exchange, as required under Exchange Rule 2.10.

The text of the proposed rule change is available at the Exchange's Web site at *www.directedge.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange submits this Proposed Rule Change to seek the Commission's approval of various changes to the organizational and governance documents of the Exchange and the Exchange's current and proposed future direct and indirect parent companies, changes to Exchange Rules,[6] and related actions that are necessary in connection

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

[2] 17 CFR 240.19b–4.

[3] The title of the New BGM Charter is the ''Amended and Restated Certificate of Incorporation of BATS Global Markets Holdings, Inc.'' The name, however, will change to BATS Global Markets Inc. at Closing. Therefore, to avoid confusion we will refer to it as the ''Amended and Restated Certificate of Incorporation of BATS Global Markets, Inc.''

[4] With their applications to register as national securities exchanges, the Exchange and EDGA Exchange, Inc. (''EDGA'') filed with, and received approval for, the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement. *See* Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010). Since that time, DE Holdings amended the Agreement twice, creating the Fifth Amended and Restated Limited Liability Company Operating Agreement (''Fifth DE Holdings LLC Agreement'') and the Sixth Amended and Restated Limited Liability Company Operating Agreement (''Sixth DE Holdings LLC Agreement''). As required by Article 15, Section 15.2 of such Agreements, DE Holdings submitted its proposed amendments to the Boards of Directors of the Exchange and EDGA, which determined that the proposed amendments were not required to be filed with, or filed with and approved by, the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder. 15 U.S.C. 78s(b). DE Holdings currently operates pursuant to the Sixth DE Holdings LLC Agreement.

[5] The term ''Member'' is defined in Exchange Rule 1.5(n) as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' To avoid confusion, the Exchange will refer to members of any other national securities exchanges, including members of EDGA or the BATS Exchanges as ''members,'' rather than as ''Members.''

[6] The term ''Exchange Rules'' refers to the rules of the Exchange.

with the Closing of the Combination, as described below.

Other than as described herein and set forth in the attached Exhibits 5A through 5K, the Exchange will continue to conduct its regulated activities (including operating and regulating its market and Members) in the manner currently conducted, and will not make any changes to its regulated activities in connection with the Combination. Except as set forth in this Proposed Rule Change, the Exchange is not proposing any amendments to its trading and regulatory rules at this time. If the Exchange determines to make any such changes, it will seek the approval of the Commission to the extent required by the Act, the Commission's rules thereunder, and the Exchange Rules.

1. Current Corporate Structures

The Exchange and EDGA (collectively, the ''DE Exchanges'') are each Delaware corporations that are national securities exchanges registered [7] with the Commission pursuant to Section 6(a) of the Act.[8] Each DE Exchange is a direct, wholly owned subsidiary of DEI, a Delaware corporation. DEI is a direct, wholly owned subsidiary of DE Holdings, a Delaware limited liability company. In addition, DE Holdings owns 100 percent of the equity interest in Direct Edge ECN LLC d/b/a DE Route, a Delaware limited liability company and the routing broker-dealer for the DE Exchanges (''DE Route'').

As a limited liability company, ownership in DE Holdings is represented by units held by members of DE Holdings (''LLC Members'').[9] Certain of the DE Holdings LLC Members are Members or affiliates of Members of the Exchange. International Securities Exchange Holdings, Inc. (''ISE Holdings'') is the only LLC Member of DE Holdings to beneficially own greater than 20 percent of the equity interest in DE Holdings. Other than ISE Holdings, the only firms beneficially owning ten percent or greater of DE Holdings (but in each case less than 20 percent) are Citadel Securities LLC, The Goldman Sachs Group, Inc., and Knight Capital Holdings LLC, an affiliate of KCG Holdings, Inc. No LLC Member beneficially owns five percent or greater but less than ten percent of DE Holdings. Five other firms each beneficially own less than five percent of DE Holdings.

BATS and BYX are each Delaware corporations that are national securities exchanges registered [10] with the Commission pursuant to Section 6(a) of the Act.[11] Each BATS Exchange is a direct, wholly owned subsidiary of Current BGM, a Delaware corporation. Current BGM also owns 100 percent of the equity interest in BATS Trading, Inc. (''BATS Trading''), a Delaware corporation that is a broker-dealer registered with the Commission that provides routing services outbound from and, in certain instances inbound to, each BATS Exchange.[12] In contemplation of the Combination, several new entities have been formed: New BGM, a Delaware corporation, is currently a wholly owned subsidiary of Current BGM, and is currently a shell company with no material assets or operations. New BGM, in turn, owns 100 percent of the equity interest in each of Blue Merger Sub Inc., a Delaware corporation (''Blue Merger Sub''), and Delta Merger Sub LLC, a Delaware limited liability company (''Delta Merger Sub''). Each of Blue Merger Sub and Delta Merger Sub is currently a shell company with no material assets or operations.

Current BGM is beneficially owned primarily by a consortium of several unaffiliated firms, including members or affiliates of members of the BATS Exchanges. No firm beneficially owns 20 percent or greater of Current BGM, and the only firms beneficially owning ten percent or greater of Current BGM are (i) GETCO Investments LLC, an affiliate of KCG Holdings, Inc., (ii) BGM Holding, L.P., a holding company itself owned by entities affiliated with the Spectrum Equity Investors and TA Associates Management private investment funds, and (iii) Strategic Investments I, Inc., an affiliate of Morgan Stanley.[13] Seven other firms each beneficially own five percent or greater but less than ten percent of Current BGM, while seven other firms as well as various individuals each beneficially own less than five percent of Current BGM.

2. The Combination

On August 23, 2013, an Agreement and Plan of Merger (the ''Merger Agreement'') was entered into among Current BGM, New BGM, DE Holdings, Blue Merger Sub, Delta Merger Sub, and Cole, Schotz, Meisel, Forman & Leonard, P.A., solely in its capacity as representative of the LLC Members. Pursuant to and subject to the terms of the Merger Agreement, at the Closing, among other things:

(i) Blue Merger Sub will be merged with and into Current BGM, whereupon the separate existence of Blue Merger Sub will cease and Current BGM will be the surviving company (the ''BATS Merger'');

(ii) Delta Merger Sub will be merged with and into DE Holdings, whereupon the separate existence of Delta Merger Sub will cease and DE Holdings will be the surviving company (the ''Direct Edge Merger'');

(iii) by virtue of the BATS Merger and without any action required on the part of Current BGM, New BGM, Blue Merger Sub or any holder of Current BGM stock, each outstanding share of Current BGM stock issued and outstanding will be converted into the right to receive shares of New BGM stock and the right to receive from New BGM cash consideration, if any, payable pursuant to the Merger Agreement, and each outstanding share of Blue Merger Sub issued and outstanding will be converted into one share of Current BGM, such that Current BGM will become a wholly owned subsidiary of New BGM; and

(iv) by virtue of the Direct Edge Merger and without any action required on the part of DE Holdings, New BGM, Delta Merger Sub, or any LLC Member, each LLC Member's membership interests in DE Holdings will be converted into the right to receive shares of New BGM stock and the right to receive from New BGM cash consideration, if any, payable pursuant

[7] Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010).

[8] 15 U.S.C. 78f(a).

[9] A ''Member'' is defined in Article I of the Sixth DE Holdings LLC Agreement as ''any Person (i) executing this Agreement as a member of the Company as of the Effective Date, (ii) admitted as a Member of the Company as of the Merger Date upon the effectiveness of the Merger pursuant to Sections 18–301(b)(3) and 18–101(7) of the Act, or (iii) hereafter admitted to the Company as an additional or substitute member of the Company as provided in this Agreement, each in its capacity as a member of the Company, and shall have the same meaning as the term ''member'' under the Act, but does not include any Person who has ceased to be a member of the Company.'' The definition of ''Member'' is the same in the Fourth DE Holdings LLC Agreement. To avoid confusion with the term ''Member'' as defined in Exchange Rule 1.5(n), the Exchange will refer to a ''Member'' of DE Holdings as an ''LLC Member'' in this rule filing.

[10] Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[11] 15 U.S.C. 78f(a).

[12] Current BGM also directly owns Omicron Intermediate Holdings Corp., a Delaware corporation, directly and indirectly (through Omicron Intermediate Holdings Corp.) owns Omicron Holdings Corp., a Delaware corporation, and indirectly owns Omicron Acquisition Corp., a Delaware corporation, BATS Trading Limited, a limited company organized under the laws of England and Wales, and Chi-X Europe Limited, a limited company organized under the laws of England and Wales.

[13] For purposes of this Proposed Rule Change, references to the beneficial ownership of a ''firm'' refers to the aggregate beneficial ownership of the firm and its affiliated entities.

to the Merger Agreement, and each unit of ownership interest of Delta Merger Sub issued and outstanding will be converted into one unit of ownership of DE Holdings, such that DE Holdings will become a wholly owned subsidiary of New BGM.

Upon the Closing, each of Current BGM and New BGM will amend and restate their respective certificates of incorporation to, among other things, change their names such that New BGM will be renamed ''BATS Global Markets, Inc.'' and Current BGM will be renamed ''BATS Global Markets Holdings, Inc.''

3. Post-Closing Corporate Structure

As a result of the Combination, New BGM will own (i) 100 percent of the equity interest in BGM Holdings (the entity previously referred to as ''Current BGM''), and (ii) 100 percent of the LLC membership interests in DE Holdings. BGM Holdings will continue to own 100 percent of the equity interest in each BATS Exchange and BATS Trading. DE Holdings will continue to own 100 percent of the equity interest in DE Route [14] and DEI. DEI will, in turn, continue to own 100 percent of the equity interest in each DE Exchange. Each of the BATS Exchanges and BATS Trading, on the one hand, and the DE Exchanges and DE Route, on the other hand, will continue to operate separately.

New BGM, as the new top-level holding company for the combined businesses, will have widely dispersed ownership, divided among the several firms and individuals that previously held equity interests in each of Current BGM and DE Holdings. Of the firms and individuals that are expected to hold equity interests in New BGM after the Closing, none will beneficially own 20 percent or greater of New BGM and only an affiliate of KCG Holdings, Inc. will beneficially own ten percent or greater. Seven firms will beneficially own five percent or greater but less than ten percent, while 12 other firms as well as various individuals will each beneficially own less than five percent of New BGM.[15]

4. Voting and Ownership Limitations of DE Holdings: Resolutions

The Sixth DE Holdings LLC Agreement [16] states that (i) no person, other than ISE Holdings, either alone or together with its Related Persons,[17] may own, directly or indirectly, of record or beneficially, Units [18] representing in the aggregate a Percentage Interest [19] of more than 40% in DE Holdings, and no person, either alone or together with its Related Persons, who is a Member, may own, directly or indirectly, of record of beneficially, Units representing in the aggregate a Percentage Interest of more than 20% (collectively, the ''DE Holdings Ownership Limitation''),[20] and (ii) subject to certain exceptions, no person, other than ISE Holdings, either alone or together with its Related Persons, may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units representing a Percentage Interest of more than 20% in DE Holdings (the ''DE Holdings Voting Limitation'').[21]

However, the Sixth DE Holdings LLC Agreement provides that each of the DE

[14] As described above, the Combination will result in a change of ownership of both BATS Trading and DE Route, each of which is a member of the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange understands that, pursuant to NASD Rule 1017, each of BATS Trading and DE Route is seeking approval for this change of ownership from FINRA.

[15] ISE Holdings, which will beneficially own greater than five percent but less than ten percent of New BGM, will receive common stock of New BGM designated as Class A Non-Voting Common Stock. As set forth in the proposed New BGM Charter and described below, shares of Class A Non-Voting Common Stock are generally non-voting, except with respect to certain actions that would adversely affect the preferences, rights or powers of the holders of Class A Non-Voting Common Stock disproportionately relative to Voting Common Stock or the Class B Non-Voting Common Stock. *See* New BGM Charter, Art. FOURTH, para. (b)(ii). Pursuant to the New BGM Charter and the Investor Rights Agreement expected to be entered into at Closing and attached as Exhibit A to the New BGM Bylaws (the ''Investor Rights Agreement''), ISE Holdings' shares of Class A Non-Voting Common Stock may convert to Voting Common Stock (i) automatically with respect to any shares transferred to persons other than Related Persons of ISE Holdings; (ii) upon the termination of the Investor Rights Agreement; and (iii) automatically with respect to any shares of Class A Non-Voting Common Stock sold by ISE Holdings in any public offering of the stock of New BGM. *See* New BGM Charter, Art. FOURTH, para. (c); Investor Rights Agreement, Section 2.2(j).

[16] DE Holdings is currently operating pursuant to the Sixth DE Holdings LLC Agreement. As a result, the Resolutions discussed herein were adopted pursuant to the Sixth DE Holdings LLC Agreement. Therefore, the Sixth DE Holdings LLC Agreement, rather than the Fourth DE Holdings LLC Agreement, is the operative governing document for this Section 4 of the Proposed Rule Change, notwithstanding the fact that Exhibit 5D is marked to show changes from the Fourth DE Holdings LLC Agreement.

[17] A ''Related Person'' is defined in Article I of the Sixth DE Holdings LLC Agreement as the following: ''with respect to any Person: (A) any Affiliate of such Person; (B) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (C) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (D) in the case of any Exchange Member, any Person that is associated with the Exchange Member (as determined using the definition of 'person associated with a member' as defined under Section 3(a)(21) of the Exchange Act); (E) in the case of a Person that is a natural person and an Exchange Member, any broker or dealer that is also an Exchange Member with which such Person is associated; (F) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a director or officer of [DE Holdings] or any of its parents or subsidiaries; (G) in the case of a Person that is an executive officer (as defined under Rule 3b–7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (H) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable.'' Pursuant to Article I of the Sixth DE Holdings LLC Agreement, ''Affiliate'' has the meaning set forth in Rule 12b–2 under the Act; ''Person'' is defined as any individual, partnership, joint stock company, corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department or agency or political subdivision of any government; and ''Exchange Member'' is defined as (i) any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act and that has been admitted to membership in the national securities exchange operated by a Company-Related SRO, or (ii) any associated person of any registered broker or dealer (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Act) that has been admitted to membership in the national securities exchange operated by a Company-Related SRO. A ''Company-Related SRO'' is defined in Article I as any Exchange Subsidiary of the DE Holdings that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act, and an ''Exchange Subsidiary'' is defined in Article I as the Exchange, EDGA, and any subsidiary of DE Holdings that is registered with the Commission as a national securities exchange. The Exchange notes that these definitions are substantively the same as the definitions contained in the Fourth DE Holdings LLC Agreement.

[18] Units are defined in Article I of the Sixth DE Holdings LLC Agreement as ''units of interest in the ownership and profits and losses of [DE Holdings] and such [LLC Member's] right to receive distributions in its capacity as a [LLC Member].'' This is the same definition of ''Units'' as set forth in the Fourth DE Holdings LLC Agreement.

[19] ''Percentage Interest'' is defined to mean, with respect to an LLC Member, the ratio of the number of Units held by the Member to the total of all of the issued and outstanding Units, expressed as a percentage. For purposes of Article XII and any references to Article XII, Percentage Interest also includes Units owned, directly or indirectly, of record or beneficially, by a Person, either alone or together with its Related Persons. Sixth DE Holdings LLC Agreement, Art. I, Section 1.1. This definition of Percentage Interest is the same definition as set forth in the Fourth DE Holdings LLC Agreement.

[20] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(1) and 12.1(a)(2). The DE Holdings Ownership Limitation is the same as the comparable provisions set forth in the Fourth DE Holdings LLC Agreement. *See* Fourth DE Holdings LLC Agreement, Art. XII, Sections 12.1(a)(1) and 12.1(a)(2).

[21] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(3). The DE Holdings Ownership Limitation is substantively the same as the comparable provision set forth in the Fourth DE Holdings LLC Agreement. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(a)(3).

Holdings Ownership Limitation and the DE Holdings Voting Limitation may be waived (except with respect to Members and their Related Persons) pursuant to an amendment to the Sixth DE Holdings LLC Agreement and a resolution duly adopted by the Board of Managers of DE Holdings if, in connection with taking such action, the Board of Managers states in such resolution that it is its determination that the waiver:

- Will not impair the ability of either DE Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder;
- is otherwise in the best interests of DE Holdings, its LLC Members, and each DE Exchange;
- will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder; [22]

Such an amendment shall not be effective until it is filed with and approved by the Commission.[23]

In granting such a waiver, the DE Holdings Board of Managers has the discretion to impose on the person and its Related Persons such conditions and restrictions that it deems necessary, appropriate or desirable in furtherance of the objectives of the Act and the rules and regulations promulgated thereunder, and the governance of each DE Exchange.[24]

In addition, notwithstanding the above, the Sixth DE Holdings LLC Agreement provides [25] that in any case where a person, either alone or with its Related Persons, would own or vote more than the DE Holdings Ownership Limitation or DE Holdings Voting Limitation, respectively, upon consummation of any proposed Transfer [26] of Units, such a transaction will not become effective until the DE Holdings Board of Managers determines, by resolution, that such person and its Related Persons are not subject to any ''statutory disqualification,'' as defined in Section 3(a)(39) of the Act.[27]

As described above, upon Closing of the proposed Combination, New BGM will become the sole owner of DE Holdings. Additionally as discussed in more detail below, the Exchange is also seeking the Commission's approval for DE Holdings [sic] proposal to, contemporaneously with the Closing, replace the Sixth DE Holdings LLC Agreement with the New DE Holdings LLC Agreement. Unlike the Sixth DE Holdings LLC Agreement, the New DE Holdings LLC Agreement will not contain the DE Holdings Ownership Limitation or the DE Holdings Voting Limitation. While the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation will not be contained in the New DE Holdings LLC Agreement, the New DE Holdings LLC Agreement specifies that DE Holdings' only LLC Member will be New BGM,[28] and the New BGM Charter will contain substantively identical ownership and voting limitation provisions, which will also become effective contemporaneously with the Closing.[29]

As a result, New BGM's acquisition of ownership and voting rights in DE Holdings upon Closing would not cause New BGM to contravene the DE Holdings Ownership Limitation or DE Holdings Voting Limitation, because the Sixth DE Holdings LLC Agreement will be contemporaneously amended to eliminate the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation, and the New BGM Charter will be contemporaneously amended with respect to New BGM's stockholders.

Nevertheless, because the Combination will result in a change of ownership of DE Holdings (in that New BGM will become the sole owner of DE Holdings), the Exchange and the Board of Managers of DE Holdings each believe that it is appropriate for the Board of Managers of DE Holdings to adopt the Resolutions, attached as Exhibit 5A, making certain determinations with respect to New BGM and the Combination similar to those that would be necessary to waive the DE Holdings Ownership Limitation and DE Holdings Voting Limitation.[30]

Specifically, the Board of Managers of DE Holdings determined that:

- The acquisition of the proposed ownership by New BGM in DE Holdings will not impair the ability of the DE Exchanges to carry out their functions and responsibilities under the Act and the rules and regulations promulgated thereunder, is in the best interests of DE Holdings and its LLC Members and the DE Exchanges, and will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;
- the acquisition or exercise of the proposed voting rights by New BGM in DE Holdings will not impair the ability of each DE Exchange to carry out its functions and responsibilities as an ''exchange'' under the Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of DE Holdings, its LLC Members and the DE Exchanges, and that it will not impair the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder;
- neither New BGM, nor any of its Related Persons, is subject to ''statutory disqualification'' within the meaning of Section 3(a)(39) of the Act; [31] and
- neither New BGM, nor any of its Related Persons (excluding BATS Trading, which is an Exchange Member) [32] is an Exchange Member.[33]

The Board of Managers of DE Holdings also has determined that it has given due regard to the preservation of the independence of the self-regulatory function of each DE Exchange and to its obligations to investors and the general public, and determined that the actions to be taken pursuant to the Resolutions do not interfere with the effectuation of decisions by the board of each DE Exchange relating to its regulatory functions (including disciplinary

[22] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(b). Article XII, Section 12.1(b) of the Sixth DE Holdings LLC Agreement and of the Fourth DE Holdings LLC Agreement are substantively the same. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(b).

[23] *Id.*

[24] *Id.*

[25] *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(c). Section 12.1(c) are the same for both the Fourth and the Sixth DE Holdings LLC Agreements. *See* Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(c).

[26] ''Transfer'' is defined in the Sixth DE Holdings LLC Agreement, Article I, Section 1.1 to mean, (i) when used as a verb, to sell, transfer, assign, encumber or otherwise dispose of, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and (ii) when used as a noun, a direct or indirect, voluntary or involuntary, sale, transfer, assignment, encumbrance or other disposition by operation of law or otherwise. The same definition of ''Transfer'' is set forth in Article I, Section 1.1 of the Fourth DE Holdings LLC Agreement.

[27] 15 U.S.C. 78c(a)(39).

[28] *See* New DE Holdings LLC Agreement, Art. II, Section 2.01.

[29] *See* New BGM Charter, Art. FIFTH, para. (b)(i).

[30] The waiver process for the DE Holdings Ownership Limitation and DE Holdings Voting Limitation is substantively the same in the Fourth DE Holdings LLC Agreement and in the Sixth DE Holdings LLC Agreement. *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(b) and Fourth DE Holdings LLC Agreement, Art. XII, Section 12.1(b).

[31] 15 U.S.C. 78c(a)(39).

[32] As noted above, BATS Trading is a routing broker-dealer and an Exchange Member that is affiliated with the BATS Exchanges, and a direct subsidiary of Current BGM. The same structure will continue to be in place following the Closing and BATS Trading will remain a direct subsidiary of BGM Holdings.

[33] In addition, the Resolutions contain a determination that the execution and delivery of the Merger Agreement by New BGM constituted notice of New BGM's intention to acquire ownership and voting rights in excess of the DE Holdings Ownership Limitation and DE Holdings Voting Limitation, respectively, in writing and not less than 45 days before the Closing. *See* Sixth DE Holdings LLC Agreement, Art. XII, Section 12.1(d), which is the same provision as set forth in Art. XII, Section 12.1(d) of the Fourth DE Holdings LLC Agreement.

matters) or would not otherwise interfere with each DE Exchange's ability to carry out its responsibilities under the Act.

The Exchange has reviewed such Resolutions and requests that the Commission approve such Resolutions. The Exchange believes that the Commission should approve the Resolutions, as the Combination will not impair the ability of either DE Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder, or the ability of the Commission to enforce the Act and the rules and regulations promulgated thereunder. The DE Exchanges will continue to operate and regulate their markets and Members as they have done prior to the Combination. Thus, each DE Exchange will continue to enforce the Act, the Commission's rules thereunder, and each Exchange's own rules, in the manner it does today. Further, the Commission will continue to have plenary regulatory authority over the DE Exchanges, as is currently the case with these entities.

The Exchange also notes that the Resolutions reflect the determination by the DE Holdings Board of Managers that the Combination and New BGM's resulting ownership and voting rights in DE Holdings are otherwise in the best interests of DE Holdings, its LLC Members, and the DE Exchanges.

In addition, the Exchange notes that notwithstanding the Resolutions and the Combination, the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation will remain in place with respect to potential future transactions involving the ultimate parent company of the DE Exchanges, New BGM. As described in more detail below, the Exchange is also proposing the adoption of the New BGM Charter and the New BGM Bylaws, which are modeled in large part on the Current BGM Charter and the Current BGM Bylaws (and include provisions substantially identical to the DE Holdings Ownership Limitation and the DE Holdings Voting Limitation), creating an ownership structure that will continue to provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities, and its directors, officers, employees and agents to the extent they are involved in the activities of the Exchange, and protect the independence of the Exchange's self-regulatory activities.

The Exchange therefore requests that the Commission approve the Resolutions, attached as Exhibit 5A.

5. Adoption of New BGM Charter and New BGM Bylaws

New BGM was incorporated on August 22, 2013, under the name BATS Global Markets Holdings, Inc., by filing a certificate of incorporation with the Secretary of State of Delaware. Upon incorporation, New BGM also adopted bylaws. New BGM is currently a shell company, with no material assets or operations. Therefore, neither its certificate of incorporation nor bylaws currently need or contain any provisions that would be appropriate for an entity that has direct or indirect ownership in a registered national securities exchange.

However, in connection with the Combination, upon Closing, New BGM will become (i) the indirect owner (through BGM Holdings) of each of the BATS Exchanges and BATS Trading, (ii) the indirect owner (through DE Holdings and DEI) of each of the DE Exchanges, and (iii) the indirect owner (through DE Holdings) of DE Route. As a result, the Exchange is proposing that in connection with New BGM's acquisition of indirect ownership in the Exchange, New BGM would amend and restate each of its certificate of incorporation and bylaws to adopt provisions designed to protect and maintain the integrity of the self-regulatory functions of the Exchange and to facilitate the ability of the Exchange and the Commission to carry out their regulatory and oversight obligations under the Act. Each of the New BGM Charter and the New BGM Bylaws is modeled on, and substantially similar to, the Current BGM Charter and Current BGM Bylaws, respectively, except with respect to the differences described below. The Exchange is filing with the Commission the New BGM Charter and New BGM Bylaws because, after the Combination, New BGM will be the ultimate parent company of the Exchange, and, as such, the New BGM Charter and New BGM Bylaws will be considered rules of the Exchange under Section 19(b)(1) of the Act.[34]

a. New BGM Charter

The New BGM Charter is proposed to be adopted as the Amended and Restated Certificate of Incorporation of BATS Global Markets Holdings, Inc. However, the New BGM Charter will effect an amendment to the name of the corporation upon Closing such that it will be renamed ''BATS Global Markets, Inc.'' [35] The change of name is intended to reflect the fact that New BGM is succeeding to the business of Current BGM in all respects, notwithstanding the technical change of corporate entity that will result from the structure of the Combination.

The New BGM Charter, which is attached as Exhibit 5B, is substantially similar to the Current BGM Charter, which the Commission has previously found to be consistent with the Act.[36] The Current BGM Charter provides that (i) no person, either alone or together with its Related Persons,[37] may own, directly or indirectly, of record or beneficially, shares constituting more than 40 percent of any class of its capital stock (the ''BGM Ownership Limitation'') and (ii) subject to certain exceptions, no person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any of various

[34] 15 U.S.C. 78s(b)(1).

[35] *See* New BGM Charter, Art. FIRST.

[36] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[37] The Current BGM Charter generally defines a ''Related Person'' as, with respect to any person, (i) any ''affiliate'' of such person (as defined in Rule 12b–2 under the Act), (ii) any other person with which such first person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of Current BGM (provided no person is deemed a Related Person pursuant to clause (ii) solely as a result of such person's being or becoming a party to the Investor Rights Agreement entered into by and among Current BGM and the stockholders named therein on January 1, 2008), (iii) in the case of a person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b–7 under the Act) or director of such person and, in the case of a person that is a partnership or limited liability company, any general partner, managing member or manager of such person, as applicable; (iv) in the case of any person that is a registered broker or dealer that has been admitted to membership in either of the BATS Exchanges (for purposes of this definition of ''Related Person,'' each such national securities exchange shall be referred to generally as an ''Exchange'' and any member of such Exchange, an ''Exchange Member''), any person that is associated with the Exchange Member (as determined using the definition of ''person associated with a member'' as defined under Section 3(a)(21) of the Act); (v) in the case of a person that is a natural person and Exchange Member, any broker or dealer that is also an Exchange Member with which such person is associated; (vi) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse who has the same home as such person or who is a director or officer of Current BGM or any of its parents or subsidiaries; (vii) in the case of a person that is an executive office (as defined under Rule 3b–7 under the Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; and (viii) in the case of a person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable. *See* Current BGM Charter, Art. FIFTH, para. (a)(ii).

arrangements, vote or cause the voting of shares representing more than 20 percent of the voting power of its then issued and outstanding capital stock (the ''BGM Voting Limitation'').[38] The New BGM Charter also will contain provisions imposing the BGM Ownership Limitation and the BGM Voting Limitation on any owners or prospective owners of New BGM.[39] In addition, similar to the Current BGM Charter, the New BGM Charter prohibits a member of any of New BGM's registered national securities exchange subsidiaries, either alone or together with such member's Related Persons,[40] from owning, directly or indirectly, of record or beneficially, more than 20 percent of shares of any class of capital stock of New BGM.[41] As in the Current BGM Charter, purported sales, transfers, assignments, pledges or ownership that would result in a violation of the BGM Ownership Limitation will not be recognized by New BGM to the extent of any ownership in excess of the limitation, and New BGM shall have the right to redeem the shares in excess of the applicable ownership limit for their fair market value. In addition, in contrast to the Current BGM Charter, the New BGM Charter would clarify that these same non-recognition and redemption rights apply in the case of a purported conversion of shares resulting in a violation of the BGM Ownership Limitation, as apply to purported sales, transfers, assignments, pledges or ownership that result in such a violation.[42] Similarly, as in the Current BGM Charter, purported voting or voting arrangements in violation of the BGM Voting Limitation will not be honored by New BGM to the extent of any voting in excess of the limitation.[43]

These provisions are designed to prevent any stockholder from exercising undue control over the operation of the BATS Exchanges or the DE Exchanges (together, the ''Exchange Subsidiaries''), each of which New BGM will indirectly own following the Combination, and to assure that each Exchange Subsidiary and the Commission are able to carry out their regulatory obligations under the Act.

Further, consistent with the Current BGM Charter, the New BGM Charter provides that, for so long as New BGM controls, directly or indirectly, a registered national securities exchange, before any amendment to the New BGM Charter may be effective, those changes must be submitted to the board of directors of each such exchange, and if the amendment is required to be filed with, or filed with and approved by, the Commission pursuant to Section 19(b) of the Act,[44] such change shall not be effective until filed with, or filed with and approved by, the Commission.[45] The Exchange believes that these provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The provisions of the New BGM Charter differ from those of the Current BGM Charter in certain limited respects:

• The total number of shares of common stock that New BGM will have authority to issue is 75,000,000, divided between 55,000,000 shares designated as Voting Common Stock, 10,000,000 shares designated as Class A Non-Voting Common Stock, and 10,000,000 shares designated as Class B Non-Voting Common Stock.[46] This represents an increase from the 25,000,000 shares that Current BGM is authorized to issue (divided between 24,500,000 shares designated as Voting Common Stock and 500,000 shares designated as Non-Voting Common Stock). The increase in authorized shares is due to the greater number of stockholders that New BGM will have following the Combination, as compared to Current BGM, as well as to provide an adequate number of authorized shares to allow for potential future issuances. The rights and preferences of the Class A Non-Voting Common Stock and Class B Non-Voting Common Stock are identical in all respects, except for conversion rights. Class A Non-Voting Common Stock converts into Voting Common Stock automatically upon transfer to a person other than a Related Person of such holder, upon termination of the Investor Rights Agreement, and may be converted into Voting Common Stock at any time at the option of the holder.[47] Class B Non-Voting Common Stock, however, may only be converted into Voting Common Stock following a ''Qualified Transfer.''[48] The term ''Qualified Transfer'' means a sale or other transfer of Class B Non-Voting Common Stock by a holder of such shares: (a) in a widely distributed public offering registered pursuant to the Securities Act of 1933;[49] (b) in a private sale or transfer in which the relevant transferee (together with its Affiliates, as defined below, and other transferees acting in concert with it) acquires no more than two percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3) and determined by giving effect to any such permitted conversion of transferred shares of Class B Non-Voting Common Stock upon such transfer pursuant to Article FOURTH of the New BGM Charter); (c) to a transferee that (together with its Affiliates and other transferees acting in concert with it) owns or controls more than 50 percent of any class of voting shares (as defined in 12 CFR 225.2(q)(3)) of New BGM without regard to any transfer of shares from the transferring holder of shares of Class B Non-Voting Common Stock; or (d) to New BGM. As used above, the term ''Affiliate'' means, with respect to any person, any other person directly or indirectly controlling, controlled by or under common control with such person, and ''control'' (including, with correlative meanings, the terms ''controlled by'' and ''under common control with'') has the meaning set forth in 12 CFR 225.2(e)(1).[50] The Exchange understands that certain persons that will become stockholders

[38] *See* Current BGM Charter, Art. FIFTH, para. (b).

[39] *See* New BGM Charter, Art. FIFTH, paras. (b)(i)(A) and (C).

[40] The New BGM Charter defines ''Related Persons'' consistent with the definition in the Current BGM Charter, except that (i) the definition of ''Exchange'' for purposes of such definition is expanded to refer to any national securities exchange that is a direct or indirect subsidiary of New BGM, and (ii) the reference to the ''Investor Rights Agreement'' has been revised to refer to the Investor Rights Agreement to be entered into upon Closing.

[41] *See* New BGM Charter, Art. FIFTH, para. (b)(i)(B).

[42] *See* New BGM Charter, Art. FIFTH, paras. (d)–(e).

[43] *See* New BGM Charter, Art. FIFTH, para. (d).

[44] 15 U.S.C. 78s(b).

[45] *See* New BGM Charter, Art. TWELFTH.

[46] *See* New BGM Charter, Art. FOURTH, para. (a).

[47] *See* New BGM Charter, Art. FOURTH, para. (c). In addition, Class A Non-Voting Common Stock held by ISE Holdings will convert automatically if ISE Holdings includes any such shares in any public offering of stock of New BGM.

[48] The Exchange notes that, notwithstanding the conversion features, neither Class A Non-Voting Common Stock nor Class B Non-Voting Common Stock may convert into Voting Common Stock if such a conversion would cause the stockholder to own, alone or with its Related Persons, directly or indirectly, of record or beneficially (i) more than 40% of any class of capital stock of New BGM in contravention of the BGM Ownership Limitation (unless a waiver is granted by the board of directors of New BGM and approved by the Commission), or (ii) in the case of an Exchange Member stockholder, more than 20% of any class of capital stock of New BGM. *See* New BGM Charter, Art. FIFTH, para. (b)(i)(A) and (B). In addition, to the extent that any Class A Non-Voting Common Stock or Class B Non-Voting Common Stock is converted into Voting Common Stock, the stockholder owning the converted Voting Common Stock would be subject to the BGM Voting Limitation and not permitted, either alone or together with its Related Persons, at any time, directly, indirectly or pursuant to any of various arrangements, to vote or cause the voting of shares or give any consent or proxy with respect to shares representing more than 20 percent of the voting power of the then issued and outstanding capital stock of New BGM (unless a waiver is granted by the board of directors of New BGM and approved by the Commission). *See* New BGM Charter, Art. FIFTH, para. (b)(i)(C).

[49] 15 U.S.C. 77a.

[50] *See* New BGM Charter, Art. FOURTH, para. (d)(i).

of New BGM as of the Closing may be, or may become, subject to restrictions under the Bank Holding Company Act of 1956 [51] on the extent to which they are permitted to own voting stock of New BGM or certain types of non-voting stock convertible into voting stock of New BGM. The Exchange understands that New BGM's Class B Non-Voting Common Stock is designed to permit a stockholder that may be subject to such restrictions to maintain an economic interest in New BGM, through ownership of Class B Non-Voting Common Stock, in excess of its voting interest and in compliance with such restrictions, for purposes of the Bank Holding Company Act of 1956.

• The term ''Exchange,'' as used in the New BGM Charter, is defined to refer to ''any national securities exchange registered under Section 6 of the Act with the [Commission] that is a direct or indirect subsidiary'' of New BGM.[52] The term ''Exchange'' is used throughout the New BGM Charter to refer to subsidiaries of New BGM that are registered as national securities exchanges. This definition differs from the definition contained in the Current BGM Charter, which defines ''Exchange'' by specific reference to the names of the BATS Exchanges. Because, following the Combination, the DE Exchanges will also become indirect subsidiaries of New BGM, the definition in the New BGM Charter has been expanded so as to capture the DE Exchanges in addition to the BATS Exchanges.

• The New BGM Charter reflects certain non-substantive differences and typographical corrections, including conforming the spelling of ''Bylaws'' throughout the organizational documents of New BGM and its proposed subsidiaries.

b. New BGM Bylaws

As with the New BGM Charter, the New BGM Bylaws, which are set forth in Exhibit 5C, contain provisions substantially similar to those of the Current BGM Bylaws, which the Commission has previously found to be consistent with the Act.[53] This includes provisions that are designed to maintain the independence of the self-regulatory functions of the Exchange Subsidiaries. Consistent with the Current BGM Bylaws, the New BGM Bylaws provide that New BGM and its officers, directors, employees and agents by virtue of their acceptance of such positions, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each Exchange Subsidiary for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of the Exchange Subsidiary, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, the Commission or the Exchange Subsidiary, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[54] In addition, for so long as New BGM controls, directly or indirectly, such Exchange Subsidiary, New BGM's books and records shall be subject at all times to inspection and copying by the Commission and each Exchange Subsidiary, provided that such books and records are related to the operation or administration of the Exchange Subsidiary.[55] In addition, to the extent they are related to the operation or administration of an Exchange Subsidiary, the books, records, premises, officers, directors, agents, and employees of New BGM shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Exchange Subsidiary for the purposes of, and subject to oversight pursuant to, the Act.[56]

The New BGM Bylaws also provide that all books and records of an Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of the Exchange Subsidiary (including but not limited to disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of New BGM shall not be made available other than to those officers, directors, employees and agents of New BGM that have a reasonable need to know the contents thereof, and shall be retained in confidence by New BGM, the members of its board of directors, its officers, employees and agents, and not be used for any non-regulatory purposes.[57] The New BGM Bylaws, however, specify that the New BGM Bylaws (including these confidentiality provisions) shall not be interpreted so as to limit or impede the rights of the Commission or an Exchange Subsidiary to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any officers, directors, employees or agents of New BGM to disclose such confidential information to the Commission or an Exchange Subsidiary.[58]

In addition, for so long as New BGM, directly or indirectly, controls an Exchange Subsidiary, the directors, officers, employees, and agents of New BGM are required to give due regard to the preservation of the independence of each Exchange Subsidiary's self-regulatory functions, and to its obligations to investors and the general public, and shall not take any actions which would interfere with the effectuation of decisions by the board of directors of such Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with such Exchange Subsidiary's ability to carry out its responsibilities under the Act.[59] Further, the New BGM Bylaws require that, for so long as New BGM controls, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of the New BGM Bylaws may be effective, those changes must be submitted to the board of directors of each Exchange Subsidiary, and, if such amendment is required to be filed with, or filed with and approved by, the Commission before the changes may be effective under Section 19 of the Act, and the rules promulgated thereunder by the Commission or otherwise, then the proposed changes to the New BGM Bylaws shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.[60] The Exchange believes that these provisions will assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Act.

The provisions of the New BGM Bylaws differ from those of the Current BGM Bylaws in certain limited respects:

• The New BGM Bylaws provide for two separate corporate officer positions, one known as the Chief Executive

[51] 12 U.S.C. 1841 *et seq.*

[52] *See* New BGM Charter, Art. FIFTH, para. (a)(ii).

[53] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[54] *See* New BGM Bylaws, Art. XIV, Section 14.05.

[55] *See* New BGM Bylaws, Art. XIV, Section 14.03.

[56] *Id.*

[57] *See* New BGM Bylaws, Art. XIV, Section 14.02.

[58] *See id.*

[59] *See* New BGM Bylaws, Art. XIV, Section 14.01.

[60] *See* New BGM Bylaws, Art. XII.

Officer and another known as the President. The Current BGM Bylaws, in contrast, provide for a combined position known as the President and Chief Executive Officer.[61] Under the New BGM Bylaws, the Chief Executive Officer will be the chief executive officer of New BGM and subject to the control of the board of directors of New BGM, has general supervision, direction and control of the business and affairs of New BGM,[62] while the President will be a senior executive officer with certain designated powers, among other things, to serve as the chief executive officer in the absence or disability of the Chief Executive Officer.[63] References to corporate officers throughout the New BGM Bylaws reflect this difference. The difference in corporate officer designations is intended to facilitate the anticipated executive leadership of New BGM following the Combination. It is anticipated that, following the Combination, the current President and Chief Executive Officer of Current BGM will become the Chief Executive Officer of New BGM, while the current Chief Executive Officer of DE Holdings will become the President of New BGM.

• The New BGM Bylaws provide for a board of directors consisting of 15 members, or such other number of members as the Board of Directors determines from time to time. The Current BGM Bylaws provide that the Board of Directors will consist of one or more members, as determined by resolution of the Board of Directors.[64] The size of the New BGM Board is proposed initially to be set at 15 in order to reflect the anticipated initial membership of the Board of Directors of New BGM. The Current BGM Board of Directors currently has 13 members. After the Closing, it is anticipated that the New BGM Board of Directors will consist of the same members as the Current BGM Board, except that the New BGM Board will be expanded by two members, to include representatives of two additional firms that are currently LLC Members of DE Holdings but will, by virtue of the Combination, become stockholders of New BGM.

• Article V, Section 5.02(a) of the Current BGM Bylaws sets forth the process for representatives of Current BGM to attend meetings of, and vote the shares of, any corporation, partnership or other entity (including each BATS Exchange) in which Current BGM may hold stock, partnership, or other equity interests. This provision parenthetically refers to the BATS Exchanges to reflect the fact that Current BGM is the direct owner of each of the BATS Exchanges. However, following the Combination, New BGM will instead be the direct owner of each of BGM Holdings and DE Holdings. The corresponding provision in the New BGM Bylaws therefore contains a similar parenthetical reference to its ownership of BGM Holdings and DE Holdings, rather than the BATS Exchanges.[65] In addition, the New BGM Bylaws include a reference to meetings of ''members'' of any ''limited liability company'' in which New BGM holds equity interests, which terms are not included in the corresponding provision in the Current BGM Bylaws.[66] This is intended to reflect the fact that New BGM will, following the Closing, be the sole member of DE Holdings, a limited liability company, while Current BGM does not hold equity in any limited liability companies.[67] In addition, the Current BGM Bylaws contain provisions that relate to Current BGM's voting of shares in the election of directors, and members of the Member Nominating Committees, of the BATS Exchanges.[68] These provisions will not be applicable to New BGM and are not included in the New BGM Bylaws, as the BATS Exchanges will be directly owned by BGM Holdings, rather than New BGM.[69]

• The term ''Exchange,'' as used in the New BGM Bylaws, is defined to refer to ''any national securities exchange registered with the [Commission] under Section 6 of the 1934 Act that is a direct or indirect subsidiary'' of New BGM.[70] The term ''Exchange'' is used throughout the New BGM Bylaws to refer to subsidiaries of New BGM that are registered as national securities exchanges. The Current BGM Bylaws either refer to each BATS Exchange by name or define ''Exchange'' by specific reference to the BATS Exchanges. Because, following the Combination, the DE Exchanges will also become indirect subsidiaries of New BGM, the definition in the New BGM Bylaws has been expanded so as to capture the DE Exchanges in addition to the BATS Exchanges.

• The New BGM Bylaws reflect certain non-substantive updates to dates of agreements and cross-references, as well as typographical corrections, including conforming the spelling of ''Bylaws'' throughout the organizational documents of New BGM and its proposed subsidiaries.

6. New DE Holdings LLC Agreement

After Closing, DE Holdings will continue to hold direct ownership of DEI and indirect ownership of the DE Exchanges, but it will no longer be the ultimate holding company of the corporate structure with a number of LLC Members. Instead, DE Holdings will be a wholly owned subsidiary of New BGM, and, as a result, New BGM will be the only LLC member of DE Holdings (the ''Sole LLC Member''). Accordingly, the Sixth DE Holdings LLC Agreement would no longer be appropriate.[71] Therefore, DE Holdings proposes to restate the Sixth DE Holdings LLC Agreement in its entirety and rename it as the Seventh Amended and Restated Limited Liability Company Operating Agreement.[72] The New DE Holdings LLC Agreement, which is set forth in Exhibit 5D, is drafted to reflect DE Holdings' new status as an intermediate holding company. As required by Article 15, Section 15.2 of

[61] *Compare* New BGM Bylaws, Art. IV, Section 4.01 and 4.02 *with* Current BGM Bylaws, Art. IV, Section 4.01 and 4.02(c) and (d).

[62] *See* New BGM Bylaws, Art. IV, Section 4.02(c).

[63] *See* New BGM Bylaws, Art. IV, Section 4.02(d).

[64] *Compare* New BGM Bylaws, Art. III, Section 3.01 *with* Current BGM Bylaws, Art. III, Section 3.01.

[65] *See* New BGM Bylaws, Art. V, Section 5.02(a).

[66] *Id.*

[67] *Compare* New BGM Bylaws, Art. V, Section 5.02 *with* Current BGM Bylaws, Art. V, Section 5.02(a).

[68] *See* Current BGM Bylaws, Art. V, Sections 5.02(b) and (c).

[69] The Exchange understands that substantially identical provisions are instead included in the BGM Holdings Bylaws.

[70] *See* New BGM Bylaws, Art. X, Section 10.02.

[71] As noted previously, DE Holdings currently operates pursuant to the Sixth DE Holdings LLC Agreement. The Fourth DE Holdings LLC Agreement was the last version filed with and approved by the Commission. The Exchange and EDGA Boards determined that a rule filing was unnecessary to reflect the changes made to the Fourth DE Holdings LLC Agreement and the Fifth DE Holdings LLC Agreement. Specifically, the Fourth DE Holdings LLC Agreement or Fifth DE Holdings LLC Agreement was amended to reflect that (i) DE Holdings could issue options to purchase equity interests in DE Holdings to officers and employees in conjunction with an approved equity plan; (ii) because the DE Exchanges became national securities exchanges, a facility of ISE Stock Exchange LLC (''ISE Exchange'') ceased operations; (iii) the Commission had approved DEI as a wholly-owned subsidiary of DE Holdings and direct parent company of the DE Exchanges; (iv) certain rights and obligations related to the transaction in which ISE Holdings became an LLC Member of DE Holdings expired on December 23, 2010; (v) service agreements with certain LLC Members had been updated, and (vi) that Units of DE Holdings were held by Knight Capital Holdings LLC and not Knight Trimark, Inc., and Citadel Securities LLC and not Citadel Derivatives Group LLC. Therefore, to ensure regulatory continuity, the Exchange will discuss the changes it proposes to make to the Fourth DE Holdings LLC Agreement, rather than the Sixth DE Holdings LLC Agreement, to create the New DE Holdings LLC Agreement. As necessary, the Exchange notes where the Fourth DE Holdings LLC Agreement and the Sixth LLC Agreement differ as a result of one or more of the above categories of changes.

[72] The Exchange is not proposing any changes to the Certificate of Formation of DE Holdings.

the Sixth DE Holdings LLC Agreement, DE Holdings submitted its proposed amendments to the Sixth DE Holdings LLC Agreement to the Board of Directors of the Exchange.[73] The Board of Directors of the Exchange determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder.[74] Therefore, the Exchange requests the Commission's approval of the New DE Holdings LLC Agreement pursuant to this Proposed Rule Change. The Exchange believes that the proposed changes to the Sixth DE Holdings LLC Agreement are consistent with the requirements of the Act.

Following the Closing, DE Holdings will continue to be the sole stockholder of DEI, which, in turn, holds 100% of the equity of the DE Exchanges. Although DE Holdings will not carry out any regulatory functions, the Exchange notes that its activities with respect to the operation of the DE Exchanges must be consistent with, and must not interfere with, the self-regulatory obligations of each DE Exchange.[75] The New DE Holdings LLC Agreement therefore continues to include the provisions in the Fourth DE Holdings LLC Agreement that are designed to maintain the independence of the Exchange's self-regulatory functions, enable the Exchange to operate in a manner that complies with the federal securities laws, including the objectives of Sections 6(b)[76] and 19(g)[77] of the Act, and facilitate the ability of the Exchange and the Commission to fulfill their regulatory and oversight obligations under the Act. Specifically, the New DE Holdings LLC Agreement would contain the following provisions which are substantially similar to the comparable provisions in the Fourth DE Holdings LLC Agreement.

The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, would require that, for so long as DE Holdings, directly or indirectly, controls an Exchange Subsidiary,[78] DE Holdings' LLC Member, officers, employees and agents give due regard to the preservation of the independence of the self-regulatory function of such Exchange Subsidiary, as well as to its obligations to investors and the general public, and not take any actions that would interfere with the effectuation of any decisions by a board of directors of an Exchange Subsidiary relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of such Exchange Subsidiary to carry out its responsibilities under the Act.[79] The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, would require that DE Holdings comply with the U.S. federal securities laws and rules and regulations thereunder and cooperate with the Commission and each Exchange Subsidiary, as applicable, pursuant to and to the extent of their respective regulatory authority.[80] Pursuant to the New DE Holdings LLC Agreement, DE Holdings' officers, employees and agents, by virtue of their acceptance of such positions, shall be deemed to agree (x) to comply with the U.S. federal securities laws and the rules and regulations thereunder; and (y) to cooperate with the Commission and each Exchange Subsidiary in respect of the Commission's oversight responsibilities regarding the Exchange Subsidiaries and the self-regulatory functions and responsibilities of the Exchange Subsidiaries, and DE Holdings will take reasonable steps to cause its officers, employees and agents to so cooperate.[81]

Furthermore, to the fullest extent permitted by law, DE Holdings and its officers, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and each Exchange Subsidiary, as applicable, for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder arising out of, or relating to, the activities of an Exchange Subsidiary.[82] By virtue of their acceptance of any such position, DE Holdings and its officers, employees and agents also will be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the U.S. federal courts, the Commission and the Exchange Subsidiaries that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[83]

The New DE Holdings LLC Agreement, like the Fourth DE Holdings LLC Agreement, also would contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DE Holdings. Pursuant to the New DE Holdings LLC Agreement, to the extent they are related to the operation or administration of the Exchange Subsidiary, the books, records, premises, officers, agents, and employees of DE Holdings are deemed to be the books, records, premises, officers, agents and employees of such Exchange Subsidiary for purposes of, and subject to oversight pursuant to, the Act.[84] In addition, for as long as DE Holdings controls, directly or indirectly, an Exchange Subsidiary, DE Holdings' books and records shall be subject at all times to inspection and copying by the Commission and the applicable Exchange Subsidiary, provided that such books and records are related to the operation or administration of an Exchange Subsidiary.[85]

The New DE Holdings LLC Agreement, similar to the Fourth DE Holdings LLC Agreement, also would provide that, to the fullest extent permitted by applicable law, all books and records of an Exchange Subsidiary reflecting confidential information

[73] DE Holdings also submitted its proposed amendments to the Sixth DE Holdings LLC Agreement to the EDGA Board of Directors. As discussed in EDGA's companion rule filing, the EDGA Board of Directors also determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder. *See* SR–EDGA–2013–34.

[74] 15 U.S.C. 78s(b).

[75] The Exchange notes that the proposed Combination will not affect the explicit agreement between the Exchange and DE Holdings which requires DE Holdings to provide adequate funding for the Exchange's operations, including the regulation of the Exchange. *See* Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010).

[76] 15 U.S.C. 78f(b).

[77] 15 U.S.C. 78s(g).

[78] For the purposes of the New DE Holdings LLC Agreement, the term ''Exchange Subsidiary'' is defined to include the Exchange and EDGA. Section 3.04(b) of the New DE Holdings LLC Agreement.

[79] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.1 *with* New DE Holdings LLC Agreement, Art. X, Section 10.01(a). These two provisions are substantively identical. Obsolete references to the ISE Exchange and to International Securities Exchange, LLC (''ISE LLC'') have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement.

[80] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.2 *with* New DE Holdings LLC Agreement, Art. X, Section 10.02(a).

[81] *Id.*

[82] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.3 *with* New DE Holdings LLC Agreement, Art. X, Section 10.03(a).

[83] *Id.*

[84] *Compare* Fourth DE Holdings LLC Agreement, Art. XI, Section 11.2(b) *with* New DE Holdings LLC Agreement, Art. XI, Section 11.02(b). These two provisions are the same except obsolete references to the ISE Exchange and to ISE LLC have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement. References to managers and directors have also been deleted because DE Holdings will be managed by its Sole LLC Member, new BGM, and will not be managed by managers or directors.

[85] *Id.*

pertaining to the self-regulatory function of an Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of DE Holdings, and the information contained in those books and records shall (i) be retained in confidence by DE Holdings, its Sole LLC Member, and its officers, employees and agents, and (ii) not be used for any non-regulatory purposes.[86] The New DE Holdings LLC Agreement provides, however, that the foregoing shall not be interpreted so as to limit or impede the rights of the Commission or an Exchange Subsidiary to access and examine such confidential information pursuant to the U.S. federal securities laws and the rules and regulations thereunder, or limit or impede the ability of the Sole LLC Member, or any of DE Holdings' officers, directors, employees or agents to disclose such information to the Commission or an Exchange Subsidiary.[87]

Furthermore, the New DE Holdings LLC Agreement would require that DE Holdings take reasonable steps necessary to cause its current officers, employees and agents and prospective officers, employees and agents, prior to the commencement of such Person's employment, appointment or other service, to consent in writing to the applicability of Section 11.02, and Article X, of the New DE Holdings LLC Agreement with respect to activities related to an Exchange Subsidiary.[88]

In addition, the New DE Holdings LLC Agreement would provide that, for so long as DE Holdings, directly or indirectly, controls an Exchange Subsidiary, before any amendment to or repeal of any provision of the New DE Holdings LLC Agreement shall be effective, those changes must be submitted to the board of directors of each Exchange Subsidiary, and if the same must be filed with or filed with and approved by the SEC before the changes may be effective, under Section 19 of the Act and the rules and regulations promulgated thereunder by the SEC or otherwise,[89] then the proposed changes to the New DE Holdings LLC Agreement shall not be effective until filed with or filed with and approved by the Commission, as the case may be.[90]

The Exchange also proposes that certain provisions of the Fourth DE Holdings LLC Agreement be deleted in their entirety or revised and simplified to reflect the transfer of ownership of DE Holdings to New BGM from the existing LLC Members. First, in light of the change in ownership, the Exchange proposes to eliminate the DE Holdings Ownership and Voting Limitations set forth in the Fourth DE Holdings LLC Agreement and replace them with a provision that identifies New BGM as the Sole LLC Member.[91] The identification of the Sole LLC Member of DE Holdings is designed to assure that any change to the indirect ownership or control of the DE Exchanges occurs through a change in the ownership or control of New BGM, or in accordance with the rule filing process described above. If the change of control occurs through a change in the ownership or control of New BGM, any purported change of such ownership or control would need to comply with the New BGM Charter and New BGM Bylaws, including the BGM Ownership Limitation and the BGM Voting Limitation (or a Commission-approved waiver therefrom).

In addition, the Exchange proposes to delete various other provisions that are applicable to a limited liability company with multiple LLC Members, but not to one with a Sole LLC Member. The more significant changes include the following:[92]

- The Exchange proposes that DE Holdings delete Article IV of the Fourth DE Holdings LLC Agreement regarding equity interests of DE Holdings. Article IV, among other things, provides that equity interests in DE Holdings are represented by Units,[93] authorizes DE Holdings to issue certificates evidencing the Units, and requires the maintenance of books for the purpose of registering the Transfer of Units. In contrast, Section 4.01 of the New DE Holdings LLC Agreement, which describes the capital structure of DE Holdings, states that the capital structure of DE Holdings consists of one class of common interests. All such common interests are identical with each other in every respect, and the LLC Member owns all of the common interests issued and outstanding.
- The Exchange proposes that DE Holdings delete Article V of the Fourth DE Holdings LLC Agreement regarding the capital contributions of the LLC Members, and replace it with Section 4.02 of the New DE Holdings LLC Agreement. Article V of the Fourth DE Holdings LLC Agreement describes each LLC Member's capital contribution, including its valuation,[94] and the terms of any additional capital contributions required of LLC Members.[95] In contrast, Section 4.02 of the New DE Holdings LLC Agreement states that a capital contributions account shall be maintained for the LLC Member, to which contributions shall be credited and against which distributions of capital contributions shall be charged. From time to time, the LLC Member may determine that DE Holdings requires capital and may make capital contributions in an amount determined by the LLC Member, and such contributions shall be credited to the LLC Member's capital contributions account.
- The Exchange proposes to delete Article VI of the Fourth DE Holdings LLC Agreement, which describes (i) the rights of LLC Members in the event of a Transfer[96] of Units, including the right of first refusal, drag-along rights and pre-emptive rights,[97] (ii) the general restrictions on Transfers of Units and the admission of new LLC Members; and (iii) the requirement for the Board to keep a list of LLC Members and the

[86] *Compare* Fourth DE Holdings LLC Agreement, Art. XI, Section 11.2(a) *with* New DE Holdings LLC Agreement, Art. XI, Section 11.02(a).

[87] *Id.*

[88] *Compare* Fourth DE Holdings LLC Agreement, Art. XIV, Section 14.4 *with* New DE Holdings LLC Agreement, Art. X, Section 10.04.

[89] 15 U.S.C. 78s.

[90] *Compare* Fourth DE Holdings LLC Agreement, Art. XV, Section 15.2(b) *with* New DE Holdings LLC Agreement, Art. XII, Section 12.02(b). These two provisions are the same except obsolete references to the ISE Exchange and to ISE LLC have been deleted from the version set forth in the Fourth DE Holdings LLC Agreement. In addition, this provision has been revised to reflect changes in the amendment process, as described above, and to reflect additional non-material changes.

[91] *See* New DE Holdings LLC Agreement, Art. II, Section 2.01.

[92] The Exchange also proposes a variety of other changes, including, but not limited to, (1) replacing the existing Recitals with a description of the Combination; (2) deleting Article I, which includes the Definitions section, because the definitions are generally applicable to deleted provisions; and (3) deleting Sections 7.17 (Tax Matters Partner), 7.18 (Restrictions on Foreign Operations) and 7.19 (Conversion to Corporation; Registration Rights; Initial Public Offering); 10.7 (Other Activities of Members); and 10.8 (Use of Trade Name and Trademarks), among others.

[93] ''Units'' are defined as the units of interest in the ownership and profits and losses of DE Holdings and such LLC Member's right to receive distributions in its capacity as a LLC Member. *See* Fourth DE Holdings LLC Agreement, Art. I, Section 1.1.

[94] *See* Fourth DE Holdings LLC Agreement, Art. V, Section 5.1.

[95] *See* Fourth DE Holdings LLC Agreement, Art. V, Section 5.2.

[96] A ''Transfer'' means (i) when used as a verb, to sell, transfer, assign, encumber or otherwise dispose of, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and (ii) when used as a noun, a direct or indirect, voluntary or involuntary, sale, transfer, assignment, encumbrance or other disposition by operation of law or otherwise. *See* Fourth DE Holdings LLC Agreement, Art. I, Section 1.1.

[97] *See* Fourth DE Holdings LLC Agreement, Art. VI, Sections 6.2, 6.3 and 6.4, respectively.

number of Units and Percentage Interest of each LLC Member. In contrast, Article VII of the New DE Holdings LLC Agreement states that the Sole LLC Member may not sell, assign, transfer, convey, gift, exchange or otherwise dispose of any or all of its common interests except pursuant to an amendment to the New DE Holdings LLC Agreement, which shall not be effective until filed with and approved by the Commission under Section 19 of the Act and the rules and regulations promulgated thereunder by the Commission or otherwise, as the case may be. After such amendment is effective and, upon receipt by DE Holdings of a written agreement executed by the person or entity to whom such common interests are to be transferred agreeing to be bound by the terms of the New DE Holdings LLC Agreement, such person shall be admitted as an LLC Member of DE Holdings. In addition, Section 2.05 of the New DE Holdings LLC Agreement states that new LLC Members of DE Holdings shall be admitted only upon the approval of the Sole LLC Member and pursuant to an amendment to the New DE Holdings LLC Agreement, which shall not be effective until filed with and approved by the Commission under Section 19 of the Act and the rules and regulations promulgated thereunder by the SEC or otherwise.[98]

• The Exchange proposes that DE Holdings delete Sections 7.1, 7.2, 7.3(c), 7.3(e), 7.4–7.9, and 7.14–7.19 of the Fourth DE Holdings LLC Agreement regarding the governance of DE Holdings.[99] Section 7.1 and 7.2(a) provide for the governance of DE Holdings by a Board of Managers, which is populated by representatives of various LLC Members. Section 7.2(b) permits the Board to designate committees subject to certain requirements, including the representation of certain significant LLC Members on the committee. Section 7.3(c) addresses matters related to Owner Directors of the Exchange and EDGA. As discussed below in Section 8 of this Proposed Rule Change, the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange and of EDGA, thereby making this provision unnecessary. Section 7.3(e) addresses meetings of equity holders of subsidiaries that are not exchanges. Sections 7.4 and 7.5 set forth requirements for board and committee meetings, and Section 7.6 permits the election of a Chairman of the Board. Section 7.7 sets forth the circumstances under which certain actions require supermajority board approval, majority board approval and/or the approval of a majority of all or a subset of LLC Members. Under the New DE Holdings LLC Agreement, DE Holdings will be managed by New BGM, as the Sole LLC Member, rather than a board.[100] Section 7.8 prohibits LLC Members from entering into voting trusts. Section 7.9 describes how Managers are agents of DE Holdings. Because DE Holdings will not have a Board of Managers or multiple LLC Members after Closing, these provisions would no longer be relevant.[101] The Exchange also proposes to delete Sections 7.14 through 7.19, which address, respectively, the powers of members, non-solicitation and confidentiality, reliance by third parties, the tax matters partner, restrictions on foreign operations, and the conversion to a corporation, registration rights and an initial public offering.

• The Exchange proposes to replace Article VIII of the Fourth DE Holdings LLC Agreement regarding distributions with the more simplified version as set forth in Article V, Section 5.02 of the New DE Holdings LLC Agreement. For example, Article VIII of the Fourth DE Holdings LLC Agreement addresses tax distributions to LLC Members and explains how withholdings on behalf of LLC Members are treated as distributions. Article V, Section 5.02 of the New Holdings LLC Agreement does not address these issues.

• The Exchange proposes to replace Article IX of the Fourth DE Holdings LLC Agreement with the more simplified version in Article V, Section 5.01 of the New DE Holdings LLC Agreement. Article IX of the Fourth DE Holdings LLC Agreement provides, among other things, for the calculation and allocation of profits and losses among LLC Members in order to determine distributions to LLC Members. In contrast, Article V, Section 5.01 does not address such issues because all allocations of profits and losses are made to the Sole LLC Member.

7. Amendments to DEI Certificate of Incorporation and DEI Bylaws

After Closing, DEI will continue to be a wholly owned subsidiary of DE Holdings and will continue to hold direct ownership of the DE Exchanges. DEI, however, will have a new ultimate parent company, New BGM. Therefore, the Exchange proposes that DEI make minor revisions to its Certificate of Incorporation and Bylaws to reflect certain aspects of the Combination.

As required by Article EIGHTH, Paragraph 3 of the current DEI Certificate of Incorporation and Article VI, Section 6.4 of the current DEI Bylaws, DEI submitted its proposed amendments to the DEI Certificate of Incorporation and DEI Bylaws to the Board of Directors of the Exchange. The Board of Directors of the Exchange determined that the proposed amendments were required to be filed with and approved by the Commission pursuant to Section 19 of the Act and the rules promulgated thereunder.[102] Therefore, the Exchange requests the Commission's approval of the proposed amendments to the DEI Certificate of Incorporation and DEI Bylaws pursuant to this Proposed Rule Change. The Exchange believes that the proposed changes to the DEI Certificate of Incorporation and DEI Bylaws are consistent with the requirements of the Act.

a. DEI Certificate of Incorporation

In connection with the Combination, the Exchange proposes that DEI amend and restate its Certificate of Incorporation. The DEI Certificate of Incorporation, as revised, is set forth in Exhibit 5E. DEI proposes to make the following amendments to its Certificate of Incorporation:

• Deleting as outdated Article FIFTH regarding the name and address of the sole incorporator.

• Deleting paragraphs 1 and 2 of Article SIXTH (renumbered Article FIFTH). Paragraph 1 of Article SIXTH states that the business and affairs of DEI shall be managed by or under the direction of the board of directors of DEI (''DEI board of directors''), provided that any action that specifically requires the approval of the Board of Managers and/or LLC Members of DE Holdings pursuant to Section 7.7 of the Fourth DE Holdings LLC Agreement, by and among the LLC Members of DE Holdings, as such agreement may be amended from time to time, shall require the approval of the stockholders of DEI. Paragraph 2 of Article SIXTH generally states that,

[98] Article VI of the Fourth DE Holdings LLC Agreement was amended to delete obsolete provisions, including provisions related to ISE Holdings and for dated actions for which the date had passed.

[99] Provisions comparable to the remaining provisions of Article 7 of the Fourth DE Holdings LLC Agreement have been incorporated into the New DE Holdings LLC Agreement.

[100] *See* New DE Holdings LLC Agreement, Art. III, Section 3.01.

[101] Article VII of the Fourth DE Holdings LLC Agreement was amended to reflect the various categories of changes described above in paragraph (ii) through (vi) in footnote 71.

[102] 15 U.S.C. 78s.

notwithstanding paragraph 1 of Article SIXTH, nothing in Section 7.7 of the Fourth DE Holdings LLC Agreement shall be applicable where the application of such provision(s) would interfere with the effectuation of any decisions by the DEI board of directors relating to regulatory functions of each Exchange Subsidiary (including disciplinary matters) or the structure of the market that each Exchange Subsidiary [103] regulates, or would interfere with the ability of each Exchange Subsidiary to carry out its responsibilities under the Act or to oversee the structure of the market that each Exchange Subsidiary regulates, in each case as determined by the DEI board of directors, which functions or responsibilities shall include the ability of the Exchange Subsidiary as a self-regulatory organization to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. Both paragraph 1 and 2 of Article SIXTH address the application of Section 7.7 of the Fourth DE Holdings LLC Agreement to the actions of DEI. As discussed above in Section 6 of this Proposed Rule Change, the Exchange proposes to delete Section 7.7 of the Fourth DE Holdings LLC Agreement because it describes certain circumstances that require the majority or supermajority vote of the DE Holdings Board of Managers or the LLC Members. However, such majority and supermajority voting requirements are unnecessary when, upon Closing, there will be only one LLC Member of DE Holdings and when DE Holdings will no longer have a Board of Managers. Therefore, paragraphs 1 and 2 of Article SIXTH would no longer be necessary.

• Moving the current definition of ''Exchange Subsidiary'' from current Article SIXTH to Article SEVENTH (renumbered Article SIXTH). Currently, the definition of ''Exchange Subsidiary'' is set forth in Article SIXTH. However, with the deletion of paragraphs 1 and 2 of Article SIXTH, the definition of ''Exchange Subsidiary'' also would be deleted. As a result, the Exchange proposes to move the definition to Article SEVENTH (renumbered as Article SIXTH).

• Changing the reference to ''DE Holdings'' in paragraph 4 of Article EIGHTH (renumbered as Article SEVENTH) from the abbreviated ''DE Holdings'' to ''Direct Edge Holdings LLC.'' Currently, Direct Edge Holdings LLC is defined as ''DE Holdings'' in paragraph 1 of Article SIXTH. However, with the deletion of paragraph 1, the definition of the abbreviated name also would be deleted. Therefore, it is necessary to use the full name, rather than the abbreviated version.

• Paragraph 3 of the Article SEVENTH, as re-numbered from Article EIGHTH, is proposed to be amended to make minor revisions to it so that it would read as follows: ''For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, those changes shall be submitted to the board of directors of each Exchange Subsidiary and if the same must be filed with, or filed with and approved by, the Securities and Exchange Commission (the ''SEC'') before the changes may be effective under Section 19 of the Exchange Act and the rules promulgated thereunder by the SEC or otherwise, then the proposed changes to this Certificate of Incorporation of this Corporation shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.'' [104]

• Making corresponding administrative changes to the DEI Certificate of Incorporation, including revising numbering and certain cross-references to reflect the above changes. The Exchanges notes that it is not deleting Article EIGHTH, paragraph 4 (to be renumbered Article SEVENTH, paragraph 4), which identifies DE Holdings as the sole stockholder of DEI.

b. Amended and Restated Bylaws of DEI

In connection with the Combination, the Exchange proposes that DEI amend its Bylaws and adopt the amended Bylaws as its Amended and Restated Bylaws. The DEI Bylaws, as revised, are set forth in Exhibit 5F. The Exchange proposes that DEI make the following amendments to its Bylaws:

• Deleting the following phrase from Section 2.15(b): ''and other than 'Owner Directors' [105] as defined in the governance documents of EDGA and EDGX, as applicable.'' Section 2.15(b) states, among other things, that, at any meeting of the equity holders of an Exchange Subsidiary [106] held for the purpose of electing directors (other than the chief executive officer of the Exchange or EDGA, as applicable and other than Owner Directors), DEI shall cause all outstanding equity of such Exchange Subsidiary to be voted in favor of the election of certain directors. As discussed below in Section 8 of this Proposed Rule Change in more detail, the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange. Therefore, the provisions in the DEI Bylaws related to such Owner Directors are no longer applicable.

• Deleting Section 2.15(c) in its entirety. Section 2.15(c) states that DEI shall take all actions in its capacity as a stockholder of the Exchange and EDGA, as applicable, to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant LLC Member of DE Holdings that is entitled to nominate such Owner Director. Section 2.15(c) further states that, without limiting the generality of the foregoing, at any meeting of the stockholders of the Exchange or EDGA held for the purpose of electing or removing and/or replacing Owner Directors of such Exchange Subsidiary, or in the event written consents are solicited or otherwise sought from the stockholders of the Exchange or EDGA with respect thereto, DEI shall cause all outstanding shares of such Exchange Subsidiary owned by DEI and entitled to vote to be voted, or, in the event written consents are solicited or otherwise sought from the equity holders of an Exchange Subsidiary, shall cause to be validly

[103] For purposes of the DEI Certificate of Incorporation, ''Exchange Subsidiary'' means any subsidiary of DEI that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act. Article SIXTH, para. 2 of the current DEI Certificate of Incorporation.

[104] *See* Amendment No. 1 to the Form 19b–4 filed by the Exchange.

[105] ''Owner Directors'' are defined in the current Exchange Bylaws as a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) of the Exchange Bylaws and elected by the stockholders of the Exchange. Exchange Bylaws, Art. I, Paragraph (w). Correspondingly, a ''Designating Owner'' means an LLC Member of DE Holdings that holds (together with its Affiliates) at least 15% Percentage Interest (as defined in the Fourth DE Holdings LLC Agreement) in DE Holdings. A ''Percentage Interest'' is defined in the Article I of the Fourth DE Holdings LLC Agreement as, with respect to an LLC Member, the ratio of the number of Units held by the LLC Member to the total of all of the issued and outstanding Units, expressed as a percentage. For purposes of Article XII and any references to Article XII in the Fourth DE Holdings LLC Agreement, Percentage Interest also includes Units owned, directly or indirectly, of record or beneficially, by a Person, either alone or together with its Related Persons.

[106] An ''Exchange Subsidiary'' is defined in Section 2.15(b) of the DEI Bylaws as the Exchange, EDGA or any other subsidiary of DEI that is registered with the Commission as a national securities exchange, as provided in Section 6 of the Act.

executed only such written consents, (i) electing each Owner Director nominated by the Designating Owner or (ii) removing and/or replacing each Owner Director who had been nominated by the Designating Owner in accordance with the governance documents of such Exchange Subsidiary. Section 2.15(c) also states that DEI shall not vote or execute a consent to effectuate the matters in clauses (i) or (ii) unless and until the Designating Owner has provided written notice to DEI of such Designating Owner's designation of an individual to serve as an Owner Director, to be removed as an Owner Director or to replace another individual as an Owner Director, as applicable. Because the Exchange proposes to eliminate the category of Owner Directors from the Board of the Exchange, Section 2.15(c) would no longer be applicable.[107]

• Eliminating Section 2.15(e) regarding the election, removal or replacement of directors designated by LLC Members of DE Holdings for any non-exchange subsidiaries of DEI entitled to make such designation under the governing documents of such subsidiary. Specifically, Section 2.15(e) states that, at any meeting of the equity holders of a subsidiary, other than an Exchange Subsidiary, held for the purpose of electing or removing and/or replacing any director designated by any DE Holdings LLC Member who is entitled to designate or remove one or more directors of such subsidiary in accordance with the governance documents of such subsidiary, or, in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, DEI shall cause all outstanding equity of such subsidiary owned by DEI and entitled to vote to be voted, or in the event written consents are solicited or otherwise sought from the equity holders of such subsidiary, shall cause to be validly executed only such written consents, (i) electing each director nominated by such DE Holdings LLC Member or (ii) removing and/or replacing such director who had been nominated by such DE Holdings LLC Member in accordance with the governance documents of such subsidiary. This provision is unnecessary going forward because, after Closing, there will be no non-exchange subsidiary of DEI.

• Changing the term ''Exchange Member Nominating Committee'' to ''Member Nominating Committee'' in Section 2.15(b). As discussed in more detail below in Section 8 of this Proposed Rule Change, the Exchange proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee'' to conform the term with the bylaws of the BATS Exchanges.[108] Therefore, this change is intended to conform the name of this committee with the name as set forth in the revised version of the Exchange Bylaws.

• Changing the term ''Exchange Member Director'' to ''Member Representative Director'' in Section 2.15(d) (to be renumbered Section 2.15(c)). As discussed in more detail below in Section 8 of this Proposed Rule Change, the Exchange proposes to change the name of the ''Exchange Member Director'' to ''Member Representative Director'' to conform the term with the bylaws of the BATS Exchanges.[109] Therefore, this change is intended to conform the name of this director with the name as set forth in the revised version of the Exchange Bylaws.

• Deleting Section 4.6(b) of the DEI Bylaws, which states that DEI shall not make a dividend payment to any stockholder of DEI if, and to the extent, such dividend payment would violate the General Corporation Law of the State of Delaware or other applicable law, or would come from any Regulatory Funds. ''Regulatory Funds'' is defined as ''any fees, fines or penalties derived from the regulatory operations of an Exchange Subsidiary (as defined herein), provided that Regulatory Funds shall not include revenues derived from listing fees, market data revenue, transaction revenues or any other aspect of the commercial operations of such Exchange Subsidiary, even if a portion of such revenues are used to pay costs associated with the regulatory operations of such Exchange Subsidiary.'' [110] The Exchange Bylaws and the bylaws of EDGA each prohibit the Exchange and EDGA, respectively, from distributing any such funds to its stockholder, instead requiring that such funds only be applied to fund the legal and regulatory operations of the respective exchange or pay restitution and disgorgement of funds intended for customers.[111] As a result, DEI will not be permitted to come into possession of regulatory funds, as they will remain at the respective exchange and used only for permitted purposes. The Exchange therefore believes that a provision in the DEI Bylaws relating to the handling by DEI of such funds is unnecessary and potentially confusing.[112]

• Revising Section 5.8(a) to state that, to the fullest extent permitted by law, all books and records of an Exchange Subsidiary reflecting confidential information pertaining to the self-regulatory function of such Exchange Subsidiary (including disciplinary matters, trading data, trading practices and audit information) that shall come into the possession of DEI, and the information contained in those books and records, ''shall not be made available to any persons (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof.'' The Commission has previously approved such language.[113]

• Making minor revisions to the language in Section 6.4 to be fully consistent with the proposed language in Article XII of the New BGM Bylaws and in Section 12.02(b) of the New DE Holdings LLC Agreement. Revised Section 6.4 would read as follows: ''For so long as the Corporation shall control, directly or indirectly, an Exchange Subsidiary, before any amendment to or repeal of any provision of these Bylaws shall be effective, those changes shall be submitted to the board of directors of each Exchange Subsidiary and if the same must be filed with or filed with and approved by the SEC before the changes may be effective, under Section 19 of the Exchange Act and the rules and regulations promulgated thereunder by the SEC or otherwise, then the proposed changes to these Bylaws shall not be effective until filed with or filed with and approved by the SEC, as the case may be.'' The Commission has previously approved this provision as proposed.[114]

[107] With the elimination of paragraph (c) of Section 2.15, the Exchange also proposes to renumber the current paragraph (d) of Section 2.15 as paragraph (c).

[108] *Compare* Art. I, para. (q) of the Current Exchange Bylaws *with* Art. I, para. (r) of the revised Exchange Bylaws.

[109] *Compare* Art. I, para. (p) of the Current Exchange Bylaws *with* Art., I, para. (s) of the revised Exchange Bylaws.

[110] DEI Bylaws, Section 4.6(b).

[111] *See* Exchange Bylaws, Art. X, Section 4; and EDGA Bylaws, Art. X, Section 4.

[112] The Exchange understands that the proposed BGM Holdings Bylaws do not contain a provision relating to BGM Holdings' handling of funds derived from the regulatory operations of its exchange subsidiaries, such as regulatory fees, fines and penalties. *See* SR–BATS–2013–059 and SR–BYX–2013–039. Similarly, the Exchange does not propose to add such a provision to the New DE Holdings LLC Agreement.

[113] *See, e.g.,* Securities Exchange Act Release No. 66171 (Jan. 17, 2013), 77 FR 3297 (Jan. 23, 2012).

[114] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

• Replacing the term ''Company'' with ''Corporation'' in Section 7.5 to make the terminology referring to DEI consistent throughout the Bylaws.

• Making non-substantive changes to correct typographical errors, such as deletions to unnecessary spaces.

8. Amendments to Exchange Certificate of Incorporation and Exchange Bylaws

In connection with the Combination, the Exchange proposes to make various revisions to its Certificate of Incorporation and Bylaws. Upon Closing, the Exchange's corporate family will include four separate exchanges, the two DE Exchanges and the two BATS Exchanges. Accordingly, the Exchange believes that it is important for each of the four exchanges to have a consistent, uniform approach to corporate governance. Therefore, to simplify and unify the governance and corporate practices of these four exchanges, the Exchange proposes to revise its Certificate of Incorporation and Bylaws to conform them with the certificates of incorporation and bylaws of the BATS Exchanges. In addition, the Exchange proposes several amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their bylaws as a result of the Combination.[115] These additional changes to the Exchange Bylaws would reconcile and conform the Exchange Bylaws and the bylaws of the BATS Exchanges going forward. The Exchange believes that the proposed changes to the Exchange Certificate of Incorporation and Exchange Bylaws are consistent with the requirements of the Act. Finally, in proposing these revisions to the Exchange Certificate of Incorporation and the Exchange Bylaws, the Exchange emphasizes that it believes that the Proposed Rule Change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on October 13, 2011.[116] Set forth below are the proposed changes to the Exchange Certificate of Incorporation and Exchange Bylaws.[117]

a. Exchange Certificate of Incorporation

The Exchange proposes to amend and restate its Certificate of Incorporation and rename it the Restated Certificate of Incorporation of the Exchange. The revised Exchange Certificate of Incorporation, which is set forth in Exhibit 5G, is modeled on, and substantially similar to, the current certificates of incorporation of the BATS Exchanges. The Commission has previously found the certificates of incorporation of the BATS Exchanges to be consistent with the Act.[118] Therefore, by making the Exchange Certificate consistent with the certificates of incorporation of the BATS Exchanges, the Exchange believes that, like the BATS Exchanges, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[119]

Specifically, to conform the Exchange Certificate of Incorporation with those of the BATS Exchanges, the Exchange proposes to make the following amendments:

• Delete as outdated Article FIFTH setting forth the name and mailing address of the sole incorporator.

• Delete Article SIXTH, which includes paragraphs one through five, in its entirety. Paragraph 1 provides that the business and affairs of the Exchange shall be managed by or under the direction of the Board; provided, that, any action that specifically requires the approval of the Board of Managers and/or LLC Members of DE Holdings pursuant to Section 7.7 of the Third Amended and Restated Limited Liability Company Operating Agreement of DE Holdings, dated as of December 23, 2008, by and among the LLC Members of DE Holdings, as such agreement may be amended from time to time, shall require the approval of the stockholders of the Exchange.[120] Paragraph 2 states that the election of directors need not be by written ballot. Paragraph 3 states that the Board of Directors of the Exchange is expressly authorized to adopt, amend, alter or repeal the Exchange Bylaws. Paragraph 4 states that the Bylaws may also be amended, altered or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Exchange. Paragraph 5 states that any Director may be removed with or without cause by a majority vote of the stockholders.[121] The Exchange proposes to delete this Article SIXTH because the certificates of incorporation of the BATS Exchanges do not contain these provisions, and the Exchange intends to conform the Exchange Certificate of Incorporation with the certificates of incorporation of the BATS Exchanges.

• Delete Article SEVENTH, which addresses liability of Directors to the Exchange or its stockholders for monetary damages for any breach of fiduciary duty. Specifically, Article SEVENTH states that, except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Exchange shall be personally liable to the Exchange or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of Article SEVENTH shall apply to or have any effect on the liability or alleged liability of any director of the Exchange for or with respect to any acts or omissions of such director occurring prior to such amendment. The Exchange proposes to delete this Article SEVENTH because the certificates of incorporation of the BATS Exchanges do not contain this provision. The deletion of this provision would not be expected to materially

[115] The BATS Exchanges describe these proposed revisions in the BATS Exchanges' companion rule filings related to the Combination. *See* SR–BATS–2013–059 and SR–BYX–2013–039.

[116] *See* Securities Exchange Act Release No. 65556 (Oct. 13, 2011).

[117] In addition to the substantive changes discussed below, the revised Certificate of Incorporation and Bylaws of the Exchange also reflect certain non-substantive differences, including, but not limited to, various conforming changes to terminology, renumbering and typographical changes.

[118] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[119] 15 U.S.C. 78f(b)(1).

[120] The Exchange also notes that paragraph 1 of Article SIXTH would be obsolete after the Closing. As discussed above in Section 7 of this Proposed Rule Change, Section 7.7 of the Fourth DE Holdings LLC Agreement sets forth the circumstances under which certain actions require supermajority board approval, majority board approval and/or the approval of a majority of all or a subset of LLC Members. Under the New DE Holdings LLC Agreement, DE Holdings will be managed by New BGM, as the Sole LLC Member, rather than a board. Because DE Holdings will only have one LLC Member after Closing, the provisions regarding majority and supermajority approval would be unnecessary. Accordingly, the Exchange proposes that DE Holdings delete Section 7.7 of the Fourth DE Holdings LLC Agreement. Correspondingly, the Exchange proposes to delete paragraph 1 of Article SIXTH as it would refer to provisions that no longer exists in the New DE Holdings LLC Agreement.

[121] The Exchange also notes that Article III, Section 4, Article IX, Section 1, and Article III, Section 7 of the Exchange Bylaws address the election of Directors, the amendment, alteration and repeal of the Exchange Bylaws and the removal of Directors, respectively. Therefore, the Exchange believes that the proposed deletions from Article SIXTH of the Exchange Certificate do not leave these areas unaddressed. Moreover, as discussed in Section 8(b) of this Proposed Rule Change, these provisions of the Exchange Bylaws also will be consistent with the bylaws of the BATS Exchanges.

affect the Exchange as it removes a provision limiting the personal liability of its Directors.

• Delete Article EIGHTH, which provides that the Exchange reserves the right to amend, alter, change or repeal any provision contained in the Exchange Certificate of Incorporation, in the manner now or hereafter prescribed by statute and the Exchange Certificate of Incorporation, and all rights conferred upon stockholders in the Exchange Certificate of Incorporation are granted subject to this reservation. The Exchange proposes to delete Article EIGHTH because the certificates of incorporation of the BATS Exchanges do not contain this provision.[122]

b. Exchange Bylaws

In connection with the Combination, the Exchange proposes to amend and restate its Second Amended and Restated Bylaws to adopt the amended Exchange Bylaws as its Third Amended and Restated Bylaws. The new Exchange Bylaws, which are set forth in Exhibit 5H, are modeled on, and substantially similar to, the current bylaws of the BATS Exchanges, as proposed to reflect the Combination. The Commission has previously found the current bylaws of the BATS Exchanges to be consistent with the Act.[123] Section (i) of this Section 8(b) summarizes the changes that the Exchange proposes to make to the Exchange Bylaws to conform them with the current bylaws of the BATS Exchanges. In addition, in Section (ii) of this Section 8(b) of this Proposed Rule Change, the Exchange summarizes its proposed amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their bylaws as a result of the Combination. The Exchange believes that, with these proposed changes, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[124]

(i) Changes To Conform to Existing Bylaws of BATS Exchanges

(I) Board of Directors

Article III of the Exchange Bylaws describes the powers, composition and selection of Directors. The Exchange proposes to amend various provisions in this Article to conform them to the bylaws of the BATS Exchanges.

First, the Exchange proposes to amend the size and composition of the Board, as set forth in Article III, Section 2. Currently, Section 2(a) states that, subject to Article III, Section 2(b), 4(g) and 6(a), the Board will consist of nineteen Directors, a majority of which must be Independent Directors.[125] In addition, the Board must be comprised initially of the following: the Chief Executive Officer, four Owner Directors,[126] 10 Independent Directors and four Exchange Member Directors.[127] The Owner Directors are subject to increase pursuant to Article III, Section 2(b) and 4(g), and Independent Directors and Exchange Member Directors are subject to increase pursuant to Article III, Section 2(b). Each Director will serve until his or her term expires as provided in Article III, Section 3. Furthermore, Section 2(b) states that the Board may, by resolution, add or remove Director positions to the Board, provided that (i) the number of Director positions will not be fewer than seven nor more than 25; (ii) no removal of a Director position will have the effect of shortening the term of an incumbent Director and (iii) the Board at all times will include a directorship for the Chief Executive Officer, a majority of Independent Directors, at least twenty percent Exchange Member Directors, and a number of Owner Director positions that equals the number of Owner Directors that the Designating Owners are entitle to nominate and that the stockholders of the Exchange have elected.

The Exchange proposes to revise these provisions to state that the Board would consist of four or more Directors, with the number thereof to be determined from time to time by the resolution of the Board, subject to the compositional requirements of the Board set forth in Article III, Section 2(b) of the revised Exchange Bylaws. At all times, the Board would consist of the Chief Executive Officer and sufficient numbers of Non-Industry[128] (including Independent,[129]) Industry[130] and Member Representative Directors,[131] as those terms are defined in BATS Exchanges' current bylaws, to satisfy the following composition requirements: (i) the number of Non-Industry Directors, including at least one Independent Director, shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors elected pursuant to Article III, Section 4; and (ii) the number of Member Representative Directors shall be at least twenty percent of the Board.

With the introduction of the terms Industry and Non-Industry Directors to the Exchange Bylaws, the Exchange proposes to add definitions of these terms to Article I. Specifically, an Industry Director would be defined in Article I(o) as a

> Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the

[122] The Exchange also notes that the deletion of this provision does not change the manner in which provisions in the Exchange Certificate may be amended, altered, changed or repealed, as Article EIGHTH merely refers back to statutory rights in that regard and does not further elaborate on the means for amending the Exchange Certificate.

[123] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010); Securities Exchange Act Release No. 69884 (Jun. 27, 2013), 78 FR 40255 (Jul. 3, 2013).

[124] 15 U.S.C. 78f(b)(1).

[125] The term ''Independent Director'' is defined in Article I, paragraph (t) of the current Exchange Bylaws.

[126] The term ''Owner Director'' is defined in Article I, paragraph (w) of the current Exchange Bylaws.

[127] The term ''Exchange Member Director'' is defined in Article I, paragraph (p) of the current Exchange Bylaws.

[128] *See* Art. I(v) of the revised Exchange Bylaws. Because the Exchange proposes to introduce the new Non-Industry Director classification, the Exchange proposes to require that the Secretary collect information as is reasonably necessary to serve as a basis for determining the nominee's classification as a Non-Industry Director. *See* Art. III, Section 2(c) of the revised Exchange Bylaws.

[129] *See* Art. I(m) of the revised Exchange Bylaws.

[130] *See* Art. I(o) of the revised Exchange Bylaws.

[131] *See* Art. I(s) of the revised Exchange Bylaws.

Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

Correspondingly, the term ''Non-Industry Director'' would be defined in Article I(v) as a Director who is (i) an Independent Director; or (ii) any other individual who would not be an Industry Director.

With the proposed change in composition of the Board, the Exchange will now use the term ''Non-Industry Directors,'' as opposed to just ''Independent Directors.'' These two terms are comparable, although not identical. Article I(t) of the current Exchange Bylaws generally defines the term ''Independent Director'' as a Director who has no material relationship with the Exchange, an Affiliate [132] of the Exchange, a Member of the Exchange or an Affiliate of a Member of the Exchange, provided that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Exchange, DEI, DE Holdings or EDGA. In contrast, a Non-Industry Director is defined as an Independent Director or any other Director that does not satisfy one of the specific scenarios in the definition of Industry Director. Therefore, the Non-Industry Director may be somewhat broader than the definition of an Independent Director because it may include an individual with a material relationship with the Exchange, its Affiliate, or a Member of the Exchange or its Affiliate, provided that it does not satisfy the definition of an Industry Director.

In addition, the Exchange proposes to eliminate the category of Owner Directors from its Board. An Owner Director is currently defined in Article I(w) as ''a Director nominated by a Designating Owner pursuant to Article III, Section 4(g) and elected by the stockholders of the Company.'' A ''Designating Owner,'' in turn, is defined in Article I(i) as ''a member of Direct Edge Holdings that holds (together with its Affiliates) at least a 15% Percentage Interest [133] (as defined in the [the Fourth DE Holdings LLC Agreement]) in Direct Edge Holdings.'' DE Holdings will only have one LLC Member after the Combination. Accordingly, the Exchange proposes to delete the definitions of ''Owner Director'' and ''Designating Owner'' from Article I, as well as all references to and provisions related to Owner Directors throughout the Bylaws.[134]

Furthermore, the Exchange proposes to replace the term ''Exchange Member Director'' with the term ''Member Representative Director,'' and replace the existing definition of ''Exchange Member Director'' with the definition of ''Member Representative Director,'' as set forth in the bylaws of the BATS Exchanges. Although worded differently, the definitions of ''Exchange Member Director'' and ''Member Representative Director'' are substantively similar. Specifically, an Exchange Member Director is currently defined as an officer, director, employee or agent of an Exchange Member, other than an Owner Exchange Member, who is elected as a Director in accordance with the Bylaws. The Exchange proposes to define ''Member Representative Director'' as ''a Director who has been appointed as such to the initial Board of Directors pursuant to Article III, Section 4(g) of these Bylaws, or elected by stockholders after having been nominated by the Member Nominating Committee or by an Exchange Member pursuant to these Bylaws and confirmed as the nominee of Exchange Members after majority vote of Exchange Members, if applicable. A Member Representative Director must be an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.'' [135]

Second, the Exchange proposes to amend the manner in which the Board is divided into classes. Specifically, Section 3(b) currently states that ''The Board shall be divided into three (3) classes.'' The Exchange proposes to provide additional clarity, by revising this provision to states that ''Each of the Non-Industry and Industry Directors (excluding the Chief Executive Officer, but including Member Representative Directors) shall be divided into three (3) classes.'' In addition, the Exchange proposes to clarify in Section 3(b) that Directors—other than the Chief Executive Officer—will serve staggered three year terms.

Third, the Exchange proposes to amend Section 5 of Article III regarding the Chairman of the Board to state that the Chief Executive Officer shall be the Chairman of the Board. Currently, the Chief Executive Officer may be, but is not required to be, the Chairman of the Board.

Fourth, the Exchange proposes to revise the process for filling Board vacancies as set forth in Section 6 of Article III. Currently, under Sections 6(a) and (b), a majority of Directors then in office, though less than a quorum or a sole remaining Director, are required to elect the new Director that has been nominated by the Nominating and Governance Committee. The Exchange proposes to amend this provision to require the stockholder to elect the nominee. In addition, Section 6(b), which addresses vacancies for Member Representative Directors, would be revised to permit the Member Nominating Committee to recommend an individual or list of individuals to the stockholders from which the stockholders shall elect the new Director, rather than nominating a person for the vacancies. In addition, the Exchange proposes to delete the provisos in Section 6(a) and (b) that state that any vacancy resulting from the removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs. Without these two provisos, the Director vacancies must be filled in accordance with the procedures set forth in Section 6(a) and (b). That is, the Nominating Committee must nominate, and the stockholders must elect, a person satisfying the classification (Industry, Non-Industry, or Independent Director), if applicable, for the directorship to fill such vacancy until the expiration of the remaining term or to fill such newly-created Director position until the expiration of such position's designated term. The revised Exchange Bylaws would not specifically address whether or not the removal and new election may occur in the same meeting. The Exchange believes that, with these proposed changes, the Exchange will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[136]

Fifth, the Exchange Bylaws currently state in Section 2(d) of Article III that a Director will no longer qualify to be a Director upon a determination by the Board (i) that the Director no longer satisfies the classification for which the

[132] The term ''Affiliate'' is defined in Article I(b) of the current Exchange Bylaws.

[133] *See* Fourth DE Holdings LLC Agreement, Art. I.

[134] The following provisions in the current Exchange Bylaws related to Owner Directors will be deleted: Article III, Sections 2(a) and (b), 4(a), 4(g), 6(a), 6(c) and 7(a); Article VI, Section 2; and Article IX, Section 1.

[135] The Exchange also proposes to replace the term ''Owner Exchange Member'' with the new term ''Stockholder Exchange Member'' in Article I. The definitions of these two terms are identical.

[136] 15 U.S.C. 78f(b)(1).

Director was elected; and (ii) that the Director's continued service would violate the compositional requirements of the Board set forth in Article III, Section 2(b). The Exchange proposes to move this provision to new Section 7(b) and to revise the language to clarify that, under these two scenarios, the Director will be removed immediately upon determination of the Board by a majority vote of the remaining Directors.

Sixth, the Exchange proposes to amend Section 7(b) (to be renumbered Section 7(c)) to permit a Director to resign upon notice of resignation to the Chairman, the President or Secretary, rather than the Chairman, Chief Executive Officer or Secretary, as the Proposed Rule Change would require that the Chairman and Chief Executive Officer be the same person.

Seventh, the Exchange proposes to amend Section 10(a) of Article III regarding special meetings to permit the President to call a special meeting. Under the current Bylaws, the Chairman and Chief Executive Officer are authorized to do so. However, with the revisions pursuant to this Proposed Rule Change, the Chairman and Chief Executive Officer will be the same person. To continue to ensure that at least two different persons may call a special meeting, the Exchange proposes to permit the President in addition to the Chairman to call such meetings. The Commission has previously found this consistent with the Act as it is part of the current bylaws of the BATS Exchanges. Furthermore, the Exchange proposes to add language to paragraph (b) of Section 10 to describe the process for providing notice of special meetings to each Director. Specifically, Section 10 would state that notice of any special meeting shall be given to each Director at his or her business address or such other address as he or she may have advised the Secretary to use for such purpose. If delivered, notice shall be deemed to be given when delivered to such address or to the Director to be notified. If mailed, such notice shall be deemed to be given five business days after deposit in the United States mail, postage prepaid, of a letter addressed to the appropriate location. Notice may also be given by telephone, electronic transmission or other means not specified in this section, and in each such case shall be deemed to be given when actually received by the Director to be notified.

Eighth, current Section 12 of Article III defines a quorum for the transaction of business as a majority of the number of Directors then in office, but in no event less than ⅓ of the total number of Directors. The Exchange proposes to eliminate from the quorum calculation the minimum requirement of ⅓ of the total number of Directors.

Ninth, the Exchange also proposes to add to Article III a new Section 13, entitled ''Presumption of Assent.'' It would state that a Director of the Exchange who is present at a duly convened meeting of the Board or of a committee of the Board at which action on any corporate matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent or election to abstain shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent or election to abstain to such action with the person acting as the secretary of the meeting before the adjournment of the meeting or shall forward such dissent or election to abstain by registered or certified mail to the Secretary of the Exchange immediately after the adjournment of the meeting. Such right to dissent or abstain shall apply to a Director who voted in favor of such action.

Tenth, the Exchange proposes to add to Article III a new Section 17,[137] which would state that the Board shall have the power to interpret the Exchange Bylaws and any interpretation made by it shall be final and conclusive.

Finally, the Exchange proposes several amendments to current Section 16, entitled Conflicts of Interest; Contracts and Transactions Involving Directors, and to renumber it as Section 18. Section 16(a) currently states that, to the fullest extent permitted by law, a Director or a member of any committee may not participate in consideration or decision of any matter relating to a particular Member or Person if such Director or committee member has a material interest in, or a professional, business or personal relationship with, that Member or other Person, or if such participation shall create an appearance of impropriety. The Exchange proposes to add to this provision the statement that ''[i]n any such case, the Director or committee member shall recuse himself or herself or shall be disqualified. If a member of the Board or any committee is recused from consideration of a matter, any decision on the matter shall be by a vote of a majority of the remaining members of the Board or applicable committee.'' In addition, the Exchange proposes to delete the following statement from this paragraph: ''Exchange Member Directors shall not be deemed to be personally interested in the determination of matters that may affect the Exchange Members as a whole or certain groups of Exchange Members, and Exchange Member Directors shall not be prohibited from participating in such determinations in the normal course of conducting the Exchange's business.''

In addition, paragraph (b) of this Section addresses Exchange contracts and transactions involving Directors and officers. Specifically, this paragraph currently states that:

> No contract or transaction between the [Exchange] and one or more of its Directors or officers, or between the [Exchange] and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contracts or transaction, or solely because any such Director's or officer's votes are counted for such purpose, if (i) the material facts pertaining to such Director's or officer's relationship or interest and as to the contract or transactions are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the [Exchange] as of the time it is authorized, approved or ratified, by the Board, a committee or the stockholders.

The Exchange proposes to delete the phrase ''or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contracts or transaction, or solely because any such Director's or officer's votes are counted for such purpose,'' as well as clause (iii). In addition, the Exchange proposes to amend clause (ii) to state ''the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of disinterested Directors, even though the disinterested Directors be less than a quorum.'' With these changes, paragraph (b) will be consistent with the bylaws of the BATS Exchanges.

The changes to these provisions of the Exchange Bylaws relating to the Board of Directors will permit the Exchange to continue to be so organized and have

[137] As a result, the Exchange is proposing corresponding amendments to renumber current Section 16 as Section 18, as described below.

the capacity to be able to carry out the purpose of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[138]

(II) Stockholders

The Exchange proposes several minor changes to Article IV of the Exchange Bylaws, which describes matters related to the stockholders of the Exchange.

- The Exchange proposes to amend Section 2 to permit the Chairman, Board or the President to call a special meeting of the stockholders, rather than the Chairman, Board or Chief Executive Officer.
- The Exchange proposes to amend Section 3 to require the list of the stockholders to be open to examination by any stockholder at a place within the city where the meeting is to be held, or at the place where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held, rather than at the principal place of business of the Exchange.
- The Exchange proposes to add Section 7, which states that the stockholder may not transfer or assign, in whole or in part, its ownership interest(s) in the Exchange.

(III) Committees of the Board

The Exchange proposes the following amendments to Article V of the Exchange Bylaws, which sets forth various requirements regarding committees of the Board.

- Section 1 would no longer require the formation of an Executive Committee, although such a Committee would be permissible.
- The Exchange proposes to eliminate the requirement that Board committees other than those listed in this section be formed ''for a specific and limited purpose'' as set forth in Section 1.
- The Exchange proposes to amend the process for the appointment and removal of committee members, as well as the committee composition, as set forth in Section 2(a). The existing Bylaws require the Board, after consultation with the Chairman, to appoint committee members, and the Board to remove committee members. The Exchange proposes to require the Chairman, with the approval of the Board, to appoint committee members, and to permit the Chairman, with the approval of the Board, to remove committee members.[139] Correspondingly, the Chairman, rather than the Board, would be responsible for determining whether committees meet the applicable compositional requirements. In addition, under Article V, Section 2(a) of the current Exchange Bylaws, each committee must be comprised of at least three members of the Board, with a majority of Independent Directors (although Article V, Section 5(a) and (c) of the current Exchange Bylaws additionally require that the Regulatory Oversight Committee and Compensation Committee consist solely of Independent Directors). The Exchange proposes to require that each committee be comprised of at least three people and may include persons who are not members of the Board. Other proposed provisions of Article V would provide additional requirements for the composition of the various committees. For example, proposed Article V, Section 6(a) would require each voting member of the Compensation Committee to be a Non-Industry Director, and proposed Article V, Section 6(c) would require that each member of the Regulatory Oversight Committee be a Non-Industry Director. Furthermore, the revised Bylaws would clarify that committee members who are not also Board members shall only participate in committee actions to the extent permitted by law. Finally, the Exchange proposes to eliminate the statement that ''[t]he Board, after consultation with the Chairman, may designate one or more Directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee. Except as otherwise set forth in these Bylaws, the Board, after consultation with the Chairman, may have non-voting observers attend committee meetings.''
- The Exchange proposes to add as new Section 2(b) a requirement that, upon request of the Secretary, each prospective committee member who is not a Director provide the Secretary such information as is reasonably necessary to serve as a basis for determining the prospective member's classification as an Industry, Non-Industry or Independent member. In addition, the Secretary would be required to certify to the Board each prospective committee member's classification. Such committee members must update the information submitted under new Section 2(b) at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.[140]
- With the introduction of the terms ''Industry member'', ''Non-Industry member'', ''Independent member'' and ''Member Representative member'' with respect to committees, the Exchange proposes to add definitions of each of these terms to Article I. Specifically, the Exchange proposes to define an Independent member as ''a member of any committee who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member, other than as a committee member. The term Independent member may, but is not required to, refer to an Independent Director who serves on a committee.'' In addition, the Exchange proposes to define an Industry member in Article I(p) as ''a member of any committee or hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional

[138] 15 U.S.C. 78f(b)(1).

[139] Note that the Exchange also proposes to revise Section 2(a) of the Exchange Bylaws to state that the Chairman, with the approval of the Board, shall appoint the chair of each committee. This change is discussed below in Section 8(b)(ii), as a new change to the Exchange Bylaws as well as to the bylaws of the BATS Exchanges.

[140] Note that comparable language to this provision is currently set forth in Article VI, Section 3. The Exchange proposes to delete the language in Article VI and move it to this Article.

revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.''

• In addition, the Exchange proposes to add the following definition of Non-Industry member as Article I(w): ''a member of any committee who is (i) an Independent member; or (ii) any other individual who would not be an Industry member.'' Finally, the Exchange proposes to define a ''Member Representative member'' in Article I(t) as ''a member of any committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that is not a Stockholder Exchange Member.''

• The Exchange proposes to revise current Article V, Section 2(c) (renumbered as Section 2(d)) to state that the Chairman, with approval of the Board, instead of the Board, after consultation with the Chairman, will fill committee vacancies.

• The Exchange proposes to add as Article V, Section 3 a provision stating that, to the extent provided in the resolution of the Board of Directors of the Exchange, any committee that consists solely of one or more Directors shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange.

• The Exchange proposes to amend the provisions regarding the appointment, composition and responsibilities of the Compensation Committee in Section 5(a) (to be renumbered as Section 6(a)). Specifically, the Chairman, with the approval of the Board, would appoint a Compensation Committee, rather than the Board, after consultation with the Chairman. In addition, each member of the Compensation Committee would be a Non-Industry Director, rather than an Independent Director. Moreover, the Exchange would eliminate (1) the requirement that the committee have three members; (2) the requirement that the Compensation Committee assist the Board in fulfilling its responsibilities to ensure the structures of compensation systems of the Exchange do not interfere with the Exchange's ability to fulfill its responsibilities as an SRO; and (3) the statement that the Board, after consultation with the Chairman, may designate non-voting observers who shall be permitted to attend and participate in committee meetings.

• The Exchange proposes to amend the provisions regarding the appointment, composition and responsibilities of the Audit Committee in Section 5(b) (to be renumbered as Section 6(b)). Specifically, the Chairman, with the approval of the Board, would appoint the Audit Committee, rather than the Board, after consultation with the Chairman. In addition, a majority of the members of the Audit Committee would be Non-Industry Directors, rather than Independent Directors. A Non-Industry Director, rather than an Independent Director, would serve as the Chairman of the Audit Committee. Moreover, the Exchange proposes to eliminate the following Audit Committee responsibilities: (1) Assist the Board in fulfilling its responsibilities to oversee the financial soundness and compliance resources and the effectiveness of financial and compliance control processes related to the operation of the Exchange; (2) take appropriate actions to oversee overall corporate policy for quality activities and reporting of a SRO, sound business risk management practices and ethical behavior; (3) provide oversight over the technology and information integrity established by management and the Board; (4) selecting and replacing and determining the compensation of the head of the Internal Audit Department (or if such position is outsourced, of the third party service provider) in consultation with management; and (5) overseeing enterprise risk and technology operations, including security and business continuity measures. The Exchange also proposes to add the parenthetical ''(or nominate the independent auditors to be proposed for ratification by stockholders)'' to the function of selecting, evaluating, and where appropriate, replacing the Company's independent auditor. The Exchange also would clarify that the Audit Committee had ''exclusive'' authority to perform certain functions, including hiring the Exchange's Internal Audit Department, determining the compensation of the head of the Internal Audit Department and determining the budget for the Internal Audit Department. Finally, the Exchange would eliminate the statement in this Section that nothing in this Section shall prohibit or be deemed to be in conflict with the ability of the Exchange to retain a third party to perform all or a portion of its audit function, provided that the Exchange shall supervise and have primary responsibility for any action undertaken by a third party auditor retained to perform such audit functions.

• The Exchange proposes to amend the provisions regarding the appointment and composition of the Regulatory Oversight Committee in Section 5(c) (to be renumbered as Section 6(c)). Specifically, the Chairman, with the approval of the Board, would appoint the Regulatory Oversight Committee, rather than the Board, after consultation with the Chairman. In addition, each member of the Regulatory Oversight Committee would be a Non-Industry Director, rather than an Independent Director.

• The Exchange proposes to amend the provisions regarding the appointment and composition of the Appeals Committee in Section 5(d) (to be renumbered as Section 6(d)). Specifically, the Chairman, with the approval of the Board, would appoint the Appeals Committee, rather than the Board, after consultation with the Chairman. In addition, the Appeals Committee would no longer consist of two Independent Directors and one Exchange Member Director. Instead, the Appeals Committee would consist of one Independent Director, one Industry Director, and one Member Representative Director. If the Independent Director recuses himself or herself from an appeal, due to a conflict of interest or otherwise, such Independent Director may be replaced by a Non-Industry Director for purposes of the applicable appeal if there is no other Independent Director able to serve as a replacement.

• The Exchange proposes to amend Section 5(e) (to be renumbered as Section 6(e)) regarding the Executive Committee in two ways. Specifically, the Chairman, with the approval of the Board, would appoint the Executive Committee, rather than the Board, after consultation with the Chairman. In addition, the Exchange would add the requirement that the number of Non-Industry Directors on the Executive Committee equal or exceed the number of Industry Directors on the Executive Committee.

• The Exchange proposes to add Section 6(f), stating that the Chairman, with the approval of the Board, may appoint a Finance Committee. If appointed, the Finance Committee will advise the Board with respect to the oversight of the financial operations and conditions of the Exchange, including recommendations for the Exchange's annual operating and capital budgets.

The changes to these provisions of the Exchange Bylaws relating to committees of the Board will permit the Exchange

to continue to be so organized and have the capacity to be able to carry out the purpose of the Act and to comply and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange Rules, as required by Section 6(b)(1) of the Act.[141]

(IV) Nominating Committees

The Exchange also proposes to amend Article VI regarding the Nominating Committees of the Exchange.[142] To conform the requirements regarding the Exchange's Nominating and Governance Committee with that of the BATS Exchanges, the Exchange proposes to rename the Nominating and Governance Committee the ''Nominating Committee.'' [143] In addition, the Exchange would change the composition of this Committee from a committee of three Independent Directors, to a committee in which the number of Non-Industry members equals or exceeds the number of Industry members. The Exchange also proposes to streamline the responsibilities of this Committee by eliminating the following responsibilities from the Committee's purview: (1) Developing and recommending governance policies to the Board; (2) nominating chairpersons to serve on committees of the Board; (3) overseeing an annual self-evaluation of the independent Directors and Board committees; (4) overseeing the implementation and effectiveness of the Bylaws, committee charters, policies and other governance documents as needed; (5) reviewing and recommending best practices in corporate governance; and (6) overseeing an orientation for new Directors. Finally, the Exchange proposes to add to Section 2 that a Nominating Committee member may simultaneously serve on the Nominating Committee and the Board, unless the Nominating Committee is nominating Director candidates for the Director's class. Notwithstanding the prior sentence, a Director may serve on the Nominating Committee in his or her final year of service on the Board. Following that year, that member may not stand for election to the Board until such time as he or she is no longer a member of the Nominating Committee.

The Exchange also proposes to amend the description of the Exchange Member Nominating Committee, as set forth in Section 3 of Article VI. First, the Exchange proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee.'' [144] Second, the Member Nominating Committee will continue to nominate candidates for Exchange Member Directors (to be renamed the ''Member Representative Director'') position on the Board that is to be elected by Exchange Member or stockholders, but will no longer be tasked with the obligation to nominate candidates for ''all other vacant or new Exchange Member Director positions on the Board.'' Third, the Exchange would amend the description of the composition of this Committee by changing the committee member qualification requirement from ''an Exchange Member Director, except that such committee member is not required to be a Director'' to ''a Member Representative member.'' Fourth, the Exchange proposes to delete the provisions regarding the process for confirming whether a prospective committee member satisfies such member's classification requirements, and move such provisions to Article V, Section 2(b).

(V) Officers, Agents and Employees

The Exchange proposes the following amendments to Article VII of the Exchange Bylaws, which sets forth various requirements regarding the officers, agents and employees of the Exchange.

- The Exchange proposes to revise Section 1 to require that the Exchange have a President, Secretary and Treasurer in addition to the currently required Chief Executive Officer and Chief Regulatory Officer. In addition, the Exchange proposes to prohibit the same person from holding the offices of both the President and the Secretary. Currently, this prohibition applies to the offices of the Chief Executive Officer and the Secretary.
- The Exchange proposes to amend Section 3(a) of Article VII to permit an officer to provide his or her resignation to the President in addition to the Chairman, Chief Executive Officer or the Secretary. The Exchange also proposes the corresponding amendment to Section 3(a) to provide that an officer could no longer provide such resignation to a designee of the Board, if no such officers are then appointed. In addition, the Exchange proposes to add Section 3(c), which would state that vacancies in any office of the Exchange may be filled for the unexpired term by the Board.
- The Exchange proposes to amend Section 4 of Article VII regarding officer compensation to reflect the proposed change to Article V, Section 6(c) of the Exchange Bylaws regarding the compensation of the Chief Regulatory Officer. Specifically, the Exchange proposes to add the phrase ''Except as otherwise provided in Article V, Section 6(c) of these Bylaws,'' to the statement that the salaries of all other officers and agents of the Company shall be fixed by the Chief Executive Officer, in consultation with the Compensation Committee.
- The Exchange proposes to amend Section 6 of Article VII regarding the Chief Executive Officer to state that the Chief Executive Officer shall be the Chairman of the Board and ''shall preside at all meetings of the Board at which the Chief Executive Officer is present; provided, however, that he or she shall not participate in executive sessions'' of the Board.
- Section 7 of Article VII (to be renumbered Section 9) regarding the Chief Regulatory Officer would be revised to require the Chief Regulatory Officer to be an officer of the Exchange with the position of Executive Vice President or Senior Vice President.
- Section 8 of Article VII (to be renumbered Section 10) regarding the Secretary would be revised to state that the President, in addition to the Board and Chief Executive Officer, may assign duties to the Secretary. The President's ability to do so comports with the responsibilities as set forth in new proposed Section 7, as discussed below.
- The Exchange proposes to add new Sections 7, 8, 11, 12 and 13 to Article VII of the Exchange Bylaws describing the responsibilities of the President, Vice President, Assistant Secretary, Treasurer and Assistant Treasurer, respectively. Specifically, Section 7 would state the following: ''The President shall, in the absence of the Chairman and Chief Executive Officer, preside at all meetings of the Board at which the President is present. The

[141] 15 U.S.C. 78f(b)(1).

[142] To conform the terms of Section 1 of Article VI with the bylaws of the BATS Exchanges, the Exchange also proposes to add the following: ''the stockholder shall appoint the initial Nominating Committee and Member Nominating Committee consistent with the compositional requirements of Article VI. In each subsequent year, each of the Nominating Committee and Member Nominating Committee shall nominate candidates to serve on the succeeding year's Nominating Committee and member Nominating Committee, as applicable, such candidates to be voted on by stockholders at the annual meeting of stockholders.''

[143] The Exchange proposes to make this change to the definition of ''Nominating and Governance Committee'' in Article I(v) (to be renumbered Article I(u)) and throughout the Bylaws).

[144] The Exchange proposes to make this change to the definition of ''Exchange Member Nominating Committee'' in Article I(q) (to be renumbered Article I(r)) as well as throughout the Bylaws where the term ''Exchange Member Nominating Committee'' is used.

President shall have general supervision over the operations of the Company. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers and perform such other duties as may be assigned to the President from time to time by the Board.''

• In addition, Section 8 of Article VII regarding Vice Presidents would read as follows:

The Board shall appoint one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, the Chief Executive Officer or the President. The term ''Vice President'' used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

• Furthermore, new Section 11 of Article VII would describe the responsibilities of an Assistant Secretary as follows: ''In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.''

• In addition, Section 12 of Article VII, regarding Treasurers, would state:

The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Company and shall cause the funds of the Company to be deposited in the name of the Company in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of the Company. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, the Chief Executive Officer or the President.

Finally, new Section 13 of Article VII would describe the role of the Assistant Treasurer. Specifically, it would state that ''In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.''

(VI) Indemnification

The Exchange also proposes to make certain amendments to the indemnification provisions set forth in Section 1 of Article VIII of the Exchange Bylaws, including the following:

• The Exchange proposes to revise paragraph (a) (to be renumbered (b)). First, this paragraph would state that the Exchange shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed proceeding of any kind by reason of the fact that he is or was a Director or executive officer of the Exchange or is or was serving at the request of the Exchange as a Director or executive officer of another entity, prior to the final disposition of such proceeding, all expenses incurred by such person in such proceeding upon receipt of such person's undertaking to repay amounts if it should be determined ultimately that such person is not entitled to be indemnified. The Exchange would add a second paragraph to this renumbered paragraph (b) stating that in general no advance shall be made by the Exchange to an executive officer of the Exchange (except by reason of the fact that such executive officer is or was a Director of the Exchange in which event this paragraph shall not apply) in any proceeding of any kind if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, that the facts demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Exchange.

• The Exchange proposes to delete paragraph (c) and replace it in its entirety. Paragraph (c) currently states that, if a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under Article VIII is not paid in full within thirty days after a written claim by the applicable person has been received by the Exchange, such person may file suit to recover the unpaid amount and, if successful shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Exchange shall have the burden of proving that such person is not entitled to the indemnification or advancement of expenses under applicable law. The revised paragraph (c) would state that any right to indemnification or advances granted by Article VIII is enforceable by or on behalf of the person holding such right if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant, if successful in whole or in part, shall also be entitled to be paid expenses relating to prosecuting his claim.

• The Exchange proposes to revise paragraph (f) (to be renumbered paragraph (e)) to clarify that the rights conferred on any person by Article VIII continue as to a person who has ceased to be a Director or executive officer of the Exchange.

• The Exchange proposes to amend paragraph (k) (to be renumbered paragraph (i)) by adding two new paragraphs. The first new paragraph states that the term ''proceeding'' shall be broadly construed. The second new paragraph provides that references to a ''director,'' ''officer,'' ''employee,'' or ''agent'' of the Exchange shall include, without limitation, situations where such person is serving at the request of the Exchange as a director, officer, employee, trustee or agent of another entity.

• The Exchange also proposes to make certain additional amendments to Article VIII of the Exchange Bylaws that are not material and will not impair the ability of (1) the Exchange to carry out its functions and responsibilities under the Act and the rules and regulations promulgated thereunder or (2) the Commission to enforce the Act and the rules and regulations thereunder.

(VII) Miscellaneous Provisions

The Exchange proposes to make the following amendments to Article XI of the Exchange Bylaws:

• Revising the language of the following sentence in Section 3 of Article XI: ''All books and records of the [Exchange] reflecting confidential information pertaining to the self-regulatory function of the [Exchange]

(including disciplinary matters, trading data, trading practices, and audit information) and the information contained in those books and records shall be retained in confidence by the [Exchange] and the Directors, officers, employees, hearing officers, other agents and advisors of the [Exchange], shall not be used by the [Exchange] for any non-regulatory purposes and shall not be made available to any Person (including any [Member]), other than to personnel of the Commission, and those Directors, officers, employees, hearing officers, other agents and advisors of the [Exchange] to the extent necessary or appropriate to discharge properly the self-regulatory responsibilities of the [Exchange].'' Specifically, the Exchange proposes to (i) delete the phrase ''and the information contained in those books and records''; (ii) replace the phrase ''the Directors, officers, employees, hearing officers, other agents and advisors'' of the Exchange with the more general term ''personnel''; (iii) add the following to the list of persons who may receive confidential information to the extent necessary or appropriate to properly discharge the self-regulatory responsibilities of the Exchange: members of committees of the Board, members of the Board, hearing officers and other agents of the Exchange.

• Amending Section 6(a) of Article XI (Execution of Instruments, Contracts, etc.) to eliminate the statement that the Chief Executive Officer, the Chief Regulatory Officer, the Secretary or such other officer or officers or person or persons as the Chief Executive Officer, the Chief Regulatory Officer, or the Secretary may from time to time designate may sign checks, drafts, bills of exchange, notes or other obligations or orders for the payment of money, and to eliminate the defined term ''Authorized Officers.'' Correspondingly, any ''officer, employee or agent,'' instead of an Authorized Officer, would be authorized, in the name of and on behalf of the Exchange, to enter into or execute and deliver deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

• Amending Section 6(b) of Article XI to permit any officer of the Exchange, or, to the extent designated for such purposes from time to time by the Board, an employee or agent of the Exchange, rather than an Authorized Officer, to execute all applications, written instruments and papers required by any department of the United States government or by any state, county, municipal or other governmental authority in the name of the Exchange. Such designation may contain the power to substitute, in the discretion of the person named, one or more persons.

• Deleting Section 8 of Article XI regarding how notices contemplated by the Exchange Bylaws may be given.[145]

• Deleting Section 10 of Article XI regarding stock certificates and uncertificated shares.

(VIII) Additional Amendments

In addition to the definitional changes discussed above, the Exchange proposes to make the following changes to Article I of the Exchange Bylaws regarding definitions.[146]

• Amend the definition of ''Act'' by deleting the parenthetical ''and in effect from time to time and any successor statute'' to conform to the BATS Exchanges' definition.

• Replace the Exchange's current definition of ''Affiliate'' with the BATS Exchanges' definition. The Exchange currently defines an ''Affiliate'' as ''with respect to any Person, any other person directly or indirectly through one or more intermediaries Controlling, Controlled by, or under direct or indirect common Control with, such Person. 'Affiliated' shall have the correlative meaning.'' Correspondingly, the Exchange currently defines ''Control'' to mean ''the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. 'Controlling' and 'Controlled' shall have correlative meanings.'' The Exchange would eliminate both of these definitions, and adopt the following definition of ''affiliate'': ''a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.''

• Amend the definition of ''Board'' to include ''Board of Directors'' as a defined term.

• Delete the definition of ''Business Day,'' and add the definition of ''day''. ''Day'' would be defined as a ''calendar day.''

• Define a ''broker'' as having the same meaning as in Section 3(a)(4) of the Act.

• Delete the definition of ''Chairman'' as it is defined in Article III, Section 5 of the Bylaws.

• Delete the definition of ''Control.''

• Define a ''dealer'' as having the same meaning as in Section 3(a)(5) of the Act.[147]

• Delete the definition of ''DGCL'' as the term will not be used in the revised Exchange Bylaws.

• Delete the definitions of ''Direct Edge Holdings,'' ''Direct Edge'' and ''Holdings Operating Agreement.''

• Revise the definition of an ''Exchange Member'' to replace the reference to a broker or dealer that has been admitted to membership in the ''Exchange'' with the more general phrase ''national securities exchange operated by the [Exchange].''

• Replace the term ''Exchange Member Representative'' with the term ''Executive Representative.'' In addition, the Exchange proposes to clarify within the definition the means by which the Executive Representative may give notice to the Secretary. Specifically, the amendment would provide that notice may be given ''via electronic process or such other process as the [Exchange] may prescribe.''

• Revise the proviso in the definition of ''Independent Director,'' which currently states that ''an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company, Direct Edge, Direct Edge Holdings or EDGA Exchange, Inc.'' The Exchange proposes to replace the phrase ''Direct Edge, Direct Edge Holdings or EDGA Exchange, Inc.'' with the phrase ''or its stockholder.''

• Replace the current definition of ''List of Candidates'' with the version of the definition employed by the BATS Exchanges. Specifically, the Exchange proposes to delete its existing definition, which states that the List of Candidates ''shall have the meaning set forth in Article III, Section 4(e).'' In its place, the Exchange would define a List of Candidates as ''the list of nominees for Member Representative Director positions as nominated by the Member Nominating Committee and amended by petitions filed by Exchange Members. The List of Candidates is submitted to Exchange Members for the final selection of nominees to be elected by stockholders to serve as Member Representative Directors.''

• Revise the definition of ''Person.'' The Exchange currently defines a ''Person'' as ''any individual, partnership, joint stock company, corporation, entity, association, trust, limited liability company, joint venture, unincorporated organization, and any government, governmental department

[145] Comparable language has been moved to Article III, Section 10.

[146] The Exchange also proposes to make changes to other provisions of the Bylaws that reflect the changes made to these definitions.

[147] 15 U.S.C. 78c(a)(5).

or agency or political subdivision of any government.'' The new definition would define a ''person'' as ''a natural person, partnership, corporation, limited liability company, entity, government, or political subdivision, agency or instrumentality of a government.''

• Delete the specific reference to branch managers from the definition of ''person associated with an Exchange Member.''

• Delete the definition of ''Petition Candidates.''

• Delete the definition of ''Petition Deadline'' and replace the term ''Petition Date'' with the term ''Record Date.'' The Exchange would continue to define the ''Record Date'' as ''a date at least thirty-five (35) days before the date announced as the date for the annual meeting of stockholders.'' In addition, however, the Exchange proposes to clarify that the Record Date is ''set as the last date on which Exchange Members may petition to add to the List of Candidates and used to determine whether Exchange Members are entitled to vote on the final List of Candidates.''

• Amend the definition of ''Rules'' by deleting the parenthetical ''with respect to the company.''

• Delete the definition of ''SRO.'' [148]

• Corresponding technical, non-substantive changes to conform the paragraph letters for defined terms.

The Exchange notes that it is not proposing to change the statement in the definition of ''stockholder'' that identifies DEI as the sole stockholder of the Exchange.[149]

(ii) Changes To Conform to the BATS Exchanges' Proposed Changes to the Existing Bylaws in Connection With the Combination

In addition to the changes discussed above, the Exchange proposes to make the following amendments to the Exchange Bylaws, which are consistent with the changes proposed to be made by the BATS Exchanges in connection with the Combination:

• Adding new Section 2(b) and amending Section 3(b) of Article III of the Exchange Bylaws to clarify that the Chief Executive Officer of the Exchange is considered to be an Industry Director, but is excluded from being designated as a member of one of the three classes of directors for purposes of the Board's staggered three-year terms. The Exchange understands that the BATS Exchanges have proposed this amendment to clarify, rather than change, their current practice. The revised Exchange Bylaws require that the Board of Directors be composed of one Director who is the Chief Executive Officer of the Exchange, and a sufficient number of Non-Industry Directors (including Independent Directors), Industry Directors and Member Representative Directors such that (i) the number of Non-Industry Directors, including at least one Independent Director, equals or exceeds the sum of the number of Industry Directors and Member Representative Directors, and (ii) the number of Member Representative Directors equals at least 20 percent of the Board of Directors (the ''Exchange Board Composition Requirements'').[150] Because the definition of ''Industry Director'' includes a Director that has an employment relationship with the Exchange,[151] the Chief Executive Officer of the Exchange will always meet the definition of ''Industry Director.'' Consistent with this definition, and in order to effectuate the Exchange Board Composition Requirements, the Exchange considers the Chief Executive Officer to be an Industry Director. Were the Chief Executive Officer to not be considered for purpose of determining composition of the board, the total number of persons affiliated with the securities industry (including Industry Directors, Member Representative Directors and the Chief Executive Officer) could potentially exceed the number of Non-Industry Directors—a result that the Exchange believes the Exchange Board Composition Requirements were intended to prevent. The Exchange therefore proposes to add new Section 2(b) of Article III of the Exchange Bylaws to explicitly clarify that the Chief Executive Officer shall be considered to be an Industry Director. The Exchange Bylaws separately provide that each of the Non-Industry Directors and Industry Directors are divided into one of three classes to serve staggered three-year terms.[152] Unlike other Industry Directors, rather than serving a three-year term, the Chief Executive Officer of the Exchange serves on the Board of Directors until he or she ceases to be Chief Executive Officer.[153] The Exchange is therefore proposing to amend Section 3(b) of Article III of the Exchange Bylaws to explicitly clarify that the reference to each Industry Director serving a staggered three-year term excludes the Chief Executive Officer.

• Amending Section 4(a), Section 4(c) and Section 4(e) of Article III of the Exchange Bylaws to permit the Director nomination and election process (including the Member Representative Director nomination and election process conducted by the Member Nominating Committee) to be conducted through either an annual or special meeting of stockholders, rather than solely through an annual meeting of stockholders. Without this change, should one or more vacancies on the Board of Directors occur, the vacancies would continue until they can be filled at an annual meeting. As a result, vacancies that arise soon after an annual meeting could remain for close to a full year. The Exchange therefore proposes to amend the Exchange Bylaws to add flexibility to the governance process around the nomination and election of a Director position that may become vacant at a time that does not coincide with the Exchange's annual director election process, by permitting the process to occur at any time via a special meeting of stockholders.

• Amending Section 2(a) of Article V of the Exchange Bylaws to clarify that the Chairman, with the approval of the Board, not only appoints the members of all committees of the Board, but also the chair of each committee. The Exchange understands that this amendment is intended to reflect the current committee and committee Chair appointment processes utilized by the BATS Exchanges.

• Amending Section 6(c) of Article V of the Exchange Bylaws to clarify that the Regulatory Oversight Committee responsibilities include, in consultation with the Chief Executive Officer of the Exchange, establishing the goals, assessing the performance, and fixing the compensation of the Chief Regulatory Officer of the Company. These amendments are intended to reflect the current responsibilities of the Regulatory Oversight Committee for the Exchange.

• Expanding the prohibition contained in Section 2 of Article XI of the Exchange Bylaws. Currently, Section 2 prohibits DEI and DE Holdings directors, officers, employees, agents or advisors who are not also directors, officers, staff, counsel or advisors of the Exchange from participating in any meetings of the Exchange's Board of Directors (or any committee thereof) pertaining to the self-regulatory function of the Exchange (including disciplinary matters). Because, following the Combination, the Exchange also will be owned indirectly by New BGM, instead

[148] As discussed above, the Exchange also proposes to change the name of the ''Exchange Member Nominating Committee'' to ''Member Nominating Committee,'' and move the definition from Art. I(q) to I(r).

[149] *See* Exchange Bylaws, Art. I(hh) (to be renumbered Article I(cc)).

[150] *See* Exchange Bylaws, Art. III, Section 2(b).

[151] *See* Exchange Bylaws, Art. I, para. (o)(vi).

[152] *See* Exchange Bylaws, Art. III, Section 3(b).

[153] *See* Exchange Bylaws, Art. III, Section 3(a).

of only directly by DEI and indirectly by DE Holdings, the Exchange is proposing to expand this prohibition to cover both its direct and indirect parent companies. The Exchange believes that this amendment will protect the independence of the Exchange's self-regulatory activities.

• Correcting certain typographical errors, including conforming the spelling of ''Bylaws'' throughout the organizational documents of the Exchange and its parent companies.

9. Exchange Rule 2.3—Member Eligibility

Pursuant to Exchange Rule 2.3, in order to be eligible for membership in the Exchange, a registered broker or dealer is required to be a member of at least one other national securities association or national securities exchange. However, membership in the Exchange's affiliated national securities exchange, EDGA, is not sufficient for purposes of eligibility for Exchange membership. As a result of the Combination, the Exchange will additionally become affiliated with the BATS Exchanges. The Exchange continues to believe that it is appropriate to limit its membership to registered broker-dealers that are members of at least one national securities association or national securities exchange that is not affiliated with the Exchange. Therefore, the Exchange proposes to amend Exchange Rule 2.3 to specify that a registered broker-dealer will be eligible for membership only if it is a member of a national securities association or national securities exchange other than or in addition to BATS, BYX, or EDGA. The proposed amendments to Exchange Rule 2.3 are set forth in Exhibit 5I.

10. Exchange Rule 2.12—DE Route as Inbound Router

DE Route provides Members of the Exchange and EDGA with optional routing services to other market centers. Thus, in certain circumstances, DE Route provides inbound routing from EDGA to the Exchange. Exchange Rule 2.12 governs this inbound routing of orders by DE Route to the Exchange in DE Route's capacity as a facility of EDGA. Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange has implemented limitations and conditions on DE Route's affiliation with the Exchange in order to permit the Exchange to accept inbound orders that DE Route routes in its capacity as a facility of EDGA. These conditions and limitations, set forth in Exchange Rule 2.12(a), require that:

(1) The Exchange must enter into (a) a plan pursuant to Rule 17d-2 under the Act with a non-affiliated self-regulatory organization (''SRO'') to relieve the Exchange of regulatory responsibilities for DE Route with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (b) a regulatory services contract (''Regulatory Contract'') with a non-affiliated SRO to perform regulatory responsibilities for DE Route for unique Exchange rules.

(2) The Regulatory Contract must require the Exchange to provide the non-affiliated SRO with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively ''Exceptions'') in which DE Route is identified as a participant that has potentially violated Exchange or Commission Rules, and requires that the non-affiliated SRO provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which DE Route is identified as a participant that has potentially violated Exchange or Commission rules.

(3) The Exchange, on behalf of its parent company, must establish and maintain procedures and internal controls reasonably designed to ensure that DE Route does not develop or implement changes to its system based on non-public information obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Members of the Exchange.

(4) The Exchange may furnish to DE Route only the same information and on the same terms as the Exchange makes available in the normal course of business to other users.[154]

In addition, Exchange Rule 2.12(b) states that, provided the conditions in Exchange Rule 2.12(a) are complied with, and provided further that DE Route operates as an outbound router on behalf of EDGA on the same terms and conditions as it does for the Exchange, and in accordance with the rules of EDGA, DE Route may provide inbound routing services to the Exchange from EDGA.

Similar to the role of DE Route with respect to the DE Exchanges, the Exchange understands that BATS Trading provides members of the BATS Exchanges with optional routing services to other market centers, which may include routing from a BATS Exchange to the Exchange. Following the Combination, it is expected that BATS Trading will continue to provide these routing services, which may involve routing to the Exchange. Because, following the Combination, BATS Trading will be affiliated with and potentially routing to the Exchange, the Exchange believes that the potential conflict of interest currently addressed by Exchange Rule 2.12 with respect to DE Route must also be addressed with respect to BATS Trading.

The Exchange is therefore proposing to amend and expand Exchange Rule 2.12 such that substantially the same conditions and limitations that currently apply to the inbound routing of orders by DE Route apply to the inbound routing of orders by BATS Trading. The proposed amendments to Exchange Rule 2.12, as set forth in Exhibit 5K, would provide that, in order for the Exchange to accept inbound routed orders from BATS Trading, the conditions and limitations currently set forth in Exchange Rule 2.12 with respect to DE Route must also be satisfied with respect to BATS Trading.

The Exchange believes that these proposed amendments will adequately manage the potential for a conflict of interest that could arise from BATS Trading routing orders to the Exchange. The Exchange expects to arrange that these conditions be met prior to the Closing so as to allow BATS Trading to continue routing to the Exchange following the Closing without interruption.[155]

In addition, the language in Exchange Rule 2.12(a) leading into the four conditions described above incorrectly refers to the conditions being undertaken by ''each of the Exchange and DE Route.'' However, by their terms, the conditions contained in Exchange Rule 2.12 are undertaken only by the Exchange and, in one case, the Exchange on behalf of its parent company. The Exchange therefore proposes to delete the incorrect reference to DE Route.

11. Exchange Rule 2.10—Affiliation Between Exchange and a Member

a. Affiliation With BATS Trading

Exchange Rule 2.10 provides that, subject to certain exceptions, without the prior approval of the Commission, (i) the Exchange or any entity with which the Exchange is affiliated (as defined in Rule 12b–2 under the Act), may not directly or indirectly acquire or

[154] *See* Exchange Rule 2.12(a)(2).

[155] If such conditions and limitations are not satisfied by Closing, the Exchange will not accept inbound orders from BATS Trading until such conditions and limitations are satisfied.

maintain an ownership interest in a Member of the Exchange, and (ii) a Member of the Exchange may not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. BATS Trading is currently a Member of the Exchange. As a result of the Combination, (i) New BGM, an entity affiliated with the Exchange, will acquire and maintain an indirect ownership interest in BATS Trading, and (ii) BATS Trading will become an affiliate of the Exchange. Pursuant to Exchange Rule 2.10, the Exchange is seeking the Commission's prior approval to permit this affiliation.

The Exchange notes that the purpose of Exchange Rule 2.10 is to prevent or manage potential conflicts of interest that could arise from the Exchange or its affiliates having an ownership interest in an Exchange Member, particularly with respect to the Exchange's obligation under Section 19(g) of the Act to enforce its Members' compliance with the Act, the Commission's rules thereunder, and Exchange Rules.[156]

The Exchange believes that it should be permitted to become affiliated with BATS Trading, notwithstanding BATS Trading's Exchange membership. As described above, as a result of the proposed amendments to Exchange Rule 2.12, the Exchange intends on addressing the potential conflicts of interests arising from its expected affiliation with BATS Trading by, among other things, entering into (i) a plan pursuant to Rule 17d–2 under the Act with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for BATS Trading with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (ii) a Regulatory Contract with a non-affiliated SRO to perform regulatory responsibilities for BATS Trading for unique Exchange rules. The Exchange believes that any potential conflict of interest that would arise as a result of its affiliation with BATS Trading will be mitigated by the same procedures that the Exchange anticipates adopting to satisfy the proposed amendments to Exchange Rule 2.12. The Exchange therefore requests that, pursuant to Exchange Rule 2.10, the Commission approve the indirect acquisition of BATS Trading by an affiliate of the Exchange and the resulting affiliation between the Exchange and BATS Trading, so long as the requirements under Exchange Rule 2.12, as proposed to be amended, are satisfied.

[156] 15 U.S.C. 78s(g).

b. Proposed Amendments to Exchange Rule 2.10

The Exchange also proposes to make several changes to Exchange Rule 2.10 to reflect the proposed change in the corporate structure of the Exchange after Closing. Specifically, Rule 2.10 currently states that nothing in Rule 2.10 shall prohibit a Member or its affiliate from acquiring or holding an equity interest in DE Holdings that is permitted by the DE Holdings Ownership and Voting Limitations. Furthermore, Rule 2.10 currently states that nothing in Rule 2.10 shall prohibit a Member from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such Member or any officer, director, manager, managing member, partner or affiliate of such Member being or becoming a Director serving on the Board of Directors of DE Holdings. Because New BGM will replace DE Holdings as the ultimate parent company of the Exchange after Closing, New BGM's governing documents, as opposed to the revised DE Holdings governing documents, set forth the relevant ownership and voting limitations, and provide for Member representation on the New BGM Board. Therefore, the Exchange proposes to replace the references to DE Holdings and its governing documents in Rule 2.10 with references to New BGM and its governing documents. The proposed revisions to Exchange Rule 2.10 are set forth in Exhibit 5J.

In addition, current Exchange Rule 2.10 states that nothing in this Rule shall prohibit the Exchange from being an affiliate of DE Route or of EDGA Exchange, Inc. Because the Exchange will be affiliated with BATS Trading and the BATS Exchanges, as well as DE Route and EDGA, after Closing, the Exchange proposes to expand this provision to specifically permit the Exchange's affiliation with BATS Trading and the BATS Exchanges.

2. Statutory Basis

The Exchange believes that the Proposed Rule Change is consistent with the requirements of the Act[157] and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[158] In particular, the proposal is consistent with Section 6(b)(1) of the Act[159] in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Members and persons associated with its Members, with the provisions of the Act, the rules and regulations thereunder, and the Rules of the Exchange. The Proposed Rule Change is designed to enable the Exchange to continue to have the authority and ability to effectively fulfill its self-regulatory duties pursuant to the Act and the rules promulgated thereunder. In particular, the Proposed Rule Change includes in the New BGM Charter and New BGM Bylaws, like the Current BGM Charter and Current BGM Bylaws, various provisions intended to protect and maintain the integrity of the self-regulatory functions of the Exchange upon Closing. Including such provisions in the New BGM Charter and New BGM Bylaws is important because New BGM will be the new ultimate parent company of the Exchange. For example, the New BGM Bylaws, as described above, are drafted to preserve the independence of the Exchange's self-regulatory function and ensure that the Exchange is able to obtain information it needs from the specified parties to detect and deter any fraudulent and manipulative acts in its marketplace and carry out their regulatory responsibilities under the Act. In addition, the New BGM Charter and New BGM Bylaws are drafted to make sure that the Exchange's Board of Directors receives notice of any amendment to the New BGM Charter and New BGM Bylaws so that the Exchange's Board of Directors may review and approve, and the Exchange may make any filings with the Commission necessary for the Exchange to fulfill its regulatory duties under the Act. The New BGM Charter also imposes the BGM Ownership Limitation and BGM Voting Limitation to preclude undue influence over or interference with the Exchange's self-regulatory functions and fulfillment of its regulatory duties under the Act. Moreover, to the extent any protections are being deleted in any governing documents, there are adequate substitutes proposed to be implemented. For example, the deletion of the DE Holdings Ownership and Voting Limitations are being deleted, in favor of the BGM Ownership Limitation and the BGM Voting Limitation.

Moreover, notwithstanding the Proposed Rule Change, including the change to the ownership structure of the Exchange, the Commission will continue to have regulatory authority[160]

[157] 15 U.S.C. 78s(b)(1).

[158] 15 U.S.C. 78f(b).

[159] 15 U.S.C. 78f(b)(1).

[160] *See, e.g.,* New DE Holdings LLC Agreement, Art. X, Section 10.03.

over the Exchange, as is currently the case, as well as jurisdiction over the Exchange's direct and indirect parents with respect to activities related to the Exchange.[161] As a result, the Proposed Rule Change will facilitate an ownership structure that will provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Act with respect to the Exchange, its direct and indirect parent entities and their directors (where applicable), officers, employees and agents to the extent they are involved in the activities of the Exchange.

The Exchange also believes that the Proposed Rule Change furthers the objectives of Section 6(b)(5) of the Act.[162] The Proposed Rule Change is consistent with and facilitates a governance and regulatory structure that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Proposed Rule Change provides transparency and certainty, and promotes efficiency, with respect to the governance and corporate structure of the Exchange and its direct and indirect parent companies. For example, the Exchange proposes to adopt an approach to corporate governance that is consistent with the approach taken by the BATS Exchanges and previously approved by the Commission.[163] The Exchange proposes to revise the Exchange Certificate of Incorporation and Exchange Bylaws to make them substantively consistent with the BATS Exchanges' existing governing documents. In addition, the Exchange proposes several amendments to the Exchange Bylaws that reflect changes that the BATS Exchanges propose to make to their Bylaws as a result of the Combination. The Exchange believes that these additional changes, among other things, will remove administrative impediments to, and reduce the potential for conflicts of interest in, the governance of the Exchange. By simplifying and unifying the governance structure of the four exchanges in this way, the Proposed Rule Change promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

In addition, the Exchange expects that the Combination will facilitate efficiencies and innovation for clients and efficient, transparent and well-regulated markets for issuers and clients, thus removing impediments to, and perfecting the mechanism of a free and open market and a national market system. The Combination will benefit investors, the market as a whole, and shareholders by, among other things, enhancing competition among securities venues and reducing costs. In particular, the Combination will result in a third major exchange operator which will have more streamlined and efficient operations, including the transition of the DE Exchanges to a technology platform in common with the BATS Exchanges, thereby intensifying competition for transaction order flow with other exchange and non-exchange trading centers, as well as potentially in other areas where the two major exchange operators lead, such as proprietary market data products and listings. This enhanced level of competition among trading centers will benefit investors through new or more competitive product offerings and, ultimately, lower costs.

Furthermore, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the change in ownership; the Exchange will operate in essentially the same manner upon Closing as it operates today. Therefore, the Exchange believes that it will continue to satisfy the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. The changes the Exchange is proposing to Exchange Rules 2.3 are designed to extend the membership eligibility criteria in a way that is consistent with the current rule, taking into account the prospective affiliation with the BATS Exchanges. The proposed changes to Exchange Rules 2.12 and 2.10 are designed to address the potential for conflicts of interest due to the prospective affiliation between the Exchange and BATS Trading. The Exchange believes that these proposed changes to its Rules are consistent with the requirements of the Act and the rules and regulations thereunder. The Exchange believes that these rule changes promote the maintenance of a fair and orderly market, the protection of investors and the public interest, and is in the best interests of the Exchange and its Members as it would continue to allow routing of orders between four affiliated exchanges.

Finally, with the Proposed Rule Change, the Exchange emphasizes that it believes that the Proposed Rule Change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on October 13, 2011.[164]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the Proposed Rule Change will enhance competition among intermarket trading venues, as the Exchange believes that the Combination will produce a stronger and more efficient entity that will have an improved ability to provide innovative products and services. Moreover, the Exchange will continue to conduct regulated activities (including operating and regulating its market and Members) of the type it currently conducts, but will be able to do so in a more efficient manner to the benefit of its Members. Furthermore, the Exchange's conclusion that the Proposed Rule Change would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act[165] is consistent with the Commission's prior conclusions about similar combinations involving multiple exchanges in a single corporate family.[166]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the Proposed Rule Change.

[161] *See, e.g.,* New BGM Bylaws, Section 14.05; BGM Holdings Bylaws, Section 7.3.

[162] 15 U.S.C. 78f(b)(5).

[163] *See* Securities Exchange Act Release No. 58375 (Aug. 18, 2008), 73 FR 49498 (Aug. 21, 2008); Securities Exchange Act Release No. 62716 (Aug. 13, 2010), 75 FR 51295 (Aug. 19, 2010).

[164] *See* Securities Exchange Act Release No. 65556 (Oct. 13, 2011).

[165] 15 U.S.C. 78f(b)(8).

[166] *See, e.g.,* Securities Exchange Act Release No. 66071 (Dec. 29, 2011), 77 FR 521 (Jan. 05, 2012) (SR–CBOE–2011–107 and SR–NSX–2011–14); Securities Exchange Act Release No. 58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01); Securities Exchange Act Release No. 53382 (Feb. 27, 2006), 71 FR 11251 (Mar. 06, 2006) (SR–NYSE–2005–77).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–43 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2013–43. 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–EDGX–2013–43 and should be submitted on or before January 7, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[167]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29899 Filed 12–16–13; 8:45 am]

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[167] 17 CFR 200.30–3(a)(12).

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Part V

Social Security Administration

20 CFR Part 404

Revised Medical Criteria for Evaluating Cancer (Malignant Neoplastic Diseases); Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2011–0098]

RIN 0960–AH43

Revised Medical Criteria for Evaluating Cancer (Malignant Neoplastic Diseases)

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the criteria in parts A and B of the Listing of Impairments (listings) that we use to evaluate cases involving cancer (malignant neoplastic diseases) in adults and children under titles II and XVI of the Social Security Act (Act). These proposed revisions reflect our adjudicative experience, advances in medical knowledge, and recommendations from medical experts we consulted, as well as public comments we received on methods of evaluating cancer.

DATES: To ensure that your comments are considered, we must receive them no later than February 18, 2014.

ADDRESSES: You may submit comments by one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2011–0098 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as your Social Security number or medical information.

1. *Internet:* We recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2011–0098. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov*, or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

What revisions are we proposing?

We propose to:

- Change the name of this body system;
- Add several new listings and revise some current ones;
- Revise the introductory text of these listings to provide more information about how we evaluate cancer and to reflect the new listings; and
- Make editorial changes throughout the rules to make the rules internally consistent.

Why are we proposing to make these changes?

We last issued final rules revising these listings on October 6, 2009, effective November 5, 2009.[1] We stated in the preamble of the final rules that we would continue to monitor these listings and revise them, if warranted, before their eight-year effective period ends in 2017. These proposed revisions reflect our adjudicative experience, advances in medical knowledge, and recommendations from medical experts we consulted. They also reflect public comments we received on a notice of proposed rulemaking (NPRM) that we published in 2008 before issuing the final rules in 2009.[2] We did not address these public comments at the time because they were outside the scope of the 2008 NPRM.

Why are we proposing to change the name of this body system?

We propose to change the name of this body system from ''Malignant Neoplastic Diseases'' to ''Cancer'' to improve clarity and ease of use of the listings. While both terms represent the same condition, ''cancer'' is a more commonly used term, and more recognized by the lay public and by health care professionals. The phrase ''malignant neoplastic disease'' is a term used almost exclusively, although infrequently, by health care professionals. We would also replace the term ''malignant neoplastic diseases'' with the term ''cancer'' in the introductory text and listings.

What changes are we proposing to make in the introductory text of the listings for evaluating cancer in adults?

The following is a detailed explanation of the significant changes we would make to the introductory text:

Proposed Section 13.00E—When do we need longitudinal evidence?

We propose to restructure current section 13.00E3 for clarity. We would also add proposed 13.00E3c to clarify how we evaluate cancer treated with multimodal antineoplastic therapy under certain listings. We would explain that we need evidence under current listings 13.02E, 13.11D, and 13.14C to establish that the treating source has initiated multimodal therapy. We also explain that we may defer adjudication if the treating source plans multimodal therapy but has not yet initiated it.

Proposed Section 13.00I—What do we mean by the following terms?

We propose several changes in section 13.00I:

- We would add the term ''antineoplastic therapy'' to the list of defined terms. We would move the definition of ''antineoplastic therapy'' from current section 13.00B3 to proposed section 13.00I1. This change will make it easier for our adjudicators to find the definition for ''antineoplastic therapy.'' We would renumber the definitions in proposed section 13.00I that follow the definition for ''antineoplastic therapy.''
- We would revise and expand the definition of the term ''persistent'' in current section 13.00I4 (proposed section 13.00I5) to reflect how the meaning of this term relates to the outcome of initial antineoplastic therapy. Similarly, we would revise and expand the definition of the term ''progressive'' in current section 13.00I5 (proposed section 13.00I6) to reflect how its meaning relates to the outcome of therapy.
- We would revise and expand the definition of the term ''unresectable'' in current section 13.00I7 (proposed section 13.00I8) to explain situations in which positive surgical margins would not indicate unresectable cancer. We

[1] 74 FR 51229.

[2] 73 FR 22871 (April 28, 2008). Public comments are available at *http://www.regulations.gov/#!docketDetail;rpp=10;po=0;D=SSA-2007-0066.*

propose this change because the initial surgery may be followed by additional surgery that eliminates the positive surgical margins.

Proposed Section 13.00K—How do we evaluate specific cancers?

We propose several changes to current section 13.00K:

• We would revise current section 13.00K2b to explain that we consider chronic myelogenous leukemia (CML) to be in the ''accelerated'' or ''blast'' phase when the proportion of blast (immature) cells in the peripheral blood or bone marrow is 10 percent or greater. We propose this change in response to questions we have received from our adjudicators.

• We would remove the word ''ordinarily'' from current section 13.00K2d to clarify that we do not consider an increase in a person's white blood cell count alone to be sufficient evidence to determine the severity of chronic leukemia. The word ''ordinarily'' may be misinterpreted to mean there are some situations in which an increase in the white blood cell count by itself may determine severity, and this interpretation would be contrary to our intent.

• We would revise and expand current section 13.00K3 to explain that we can evaluate macroglobulinemia or heavy chain disease under current listing 13.05A2. We would make this change to recognize that current medical practice may treat macroglobulinemia as an indolent non-Hodgkin lymphoma. We also explain that we may evaluate macroglobulinemia or heavy chain disease under the appropriate listings in the hematological body system (7.00). We would make a similar change in current section 13.00K2cii to explain that we may evaluate the complications and residual impairments from chronic lymphocytic leukemia under the appropriate listings in the hematological body system.

• We would make two changes to revise and expand current section 13.00K4. First, we would use the broader heading, ''Primary breast cancer,'' rather than the current heading, ''Bilateral primary breast cancer.'' Second, we would add guidance to explain how we evaluate secondary lymphedema resulting from breast cancer treatment under proposed listing 13.10E. We would continue to include guidance in the revised section to explain how we evaluate bilateral primary breast cancer under current listing 13.10A.

• We would reorganize and revise section 13.00K6 to explain why we evaluate specific central nervous system (CNS) cancers by diagnosis alone, unlike other CNS cancers that we evaluate based on a World Health Organization (WHO) grade. We also explain that we use the criteria in listing 13.13 to evaluate ''primary central nervous system cancers,'' which means cancers that originate within the central nervous system, that is, brain and spinal cord cancers.

• We would add section 13.00K7 to explain that we can evaluate primary peritoneal carcinoma in women under current listing 13.23E for ovarian cancer. This change responds to a public comment on the 2008 NPRM that suggested we provide guidance for evaluating this type of cancer. We can evaluate primary peritoneal carcinoma in women under listing 13.23E because the disease course, treatment, and outcome are more similar to ovarian cancer than other cancers. We also explain that we can evaluate primary peritoneal carcinoma in men under current listing 13.15A for malignant mesothelioma because many of these cases in men are similar to malignant mesothelioma.

• We would add section 13.00K8 to explain that current listing 13.24A for recurrent prostate cancer does not include ''biochemical recurrence,'' as measured with the cancer biomarker prostate-specific antigen (PSA). Although the PSA biomarker may track the progression of the person's prostate cancer, we do not consider PSA useful in determining disability because its values do not necessarily correlate with a person's degree of functional impairment.

• We would add section 13.00K9 to explain that we evaluate any malignant melanoma under proposed new listing 13.29. As we note in our detailed explanation of proposed 13.29 below, malignant melanoma may occur in places besides the skin, such as in the eyes and mucosal membranes. The proposed listing provides comprehensive criteria to reflect the full range of malignant melanomas. We would also explain that we evaluate benign melanoma under the listings in 8.00 or other affected body systems.

Proposed Section 13.00L—How do we evaluate cancer treatment by bone marrow or stem cell transplantation, including transplantation using stem cells from umbilical cord blood?

We would revise current section 13.00L to further explain how we evaluate cancers treated with bone marrow or stem cell transplantation, including transplantation using stem cells from umbilical cord blood. We explain that the transplantation must occur before we will evaluate it under the listings. We also explain that we may establish an onset date of disability that is earlier than the date of the transplantation, or the date of first treatment in a treatment regimen that includes transplantation, if an earlier onset date is consistent with the evidence in the case record.

How do we propose to revise the criteria in the listings for evaluating cancer in adults?

We propose to add a criterion in several of the listings for evaluating small-cell (oat cell) carcinoma. We currently only have a listing for small-cell carcinoma in the lungs (listing 13.14). Small-cell carcinoma may originate in places in the body other than the lungs. We would add a criterion for small-cell carcinoma to the listings for these other places.[3] We propose this change in light of our adjudicative experience and the current medical literature establishing that in most instances small-cell carcinomas are of listing-level severity regardless of where they occur in the body.

Proposed Listing 13.02—Soft Tissue Cancers of the Head and Neck (Except Salivary Glands—13.08—and Thyroid Gland—13.09)

We propose to revise current listing 13.02 for soft tissue cancer of the head and neck by removing the requirement for persistent disease following initial *multimodal* antineoplastic therapy from current listing 13.02B. Based on our adjudicative experience and information from medical experts, we believe persistent cancer following a treatment plan using only a single mode of therapy (for example, solely radiation) is also an indication of head and neck cancer of listing-level severity. We would evaluate cancer that is either persistent or recurrent following initial antineoplastic therapy under proposed listing 13.02B. We would delete current listing 13.02C because we would also evaluate recurrent cancer under proposed listing 13.02B. We would also redesignate current listing 13.02D as listing 13.02C.

In proposed 13.02B, we also propose to exclude cancer in the true vocal cords that is persistent or recurrent following initial antineoplastic therapy.

[3] The criterion for evaluating small-cell (oat cell) carcinoma would be added under these proposed listings: 13.02D for soft tissue cancers of the head and neck; 13.10D for cancer of the breast; 13.15C for cancer of the pleura and mediastinum; 13.16C for cancer of the esophagus or stomach; 13.17C for cancer of the small intestine; 13.18D for cancer of the large intestine; 13.22E for cancer of the urinary bladder; 13.23F for cancers of the female genital tract; and 13.24C for cancers of the prostate gland.

Physicians often treat cancer at this location with radiation therapy to preserve the larynx, but if the cancer persists or recurs, they are able to remove the cancer with surgery.

Proposed Listing 13.03—Skin (Except Malignant Melanoma—13.29)

We would revise current listing 13.03 by adding a criterion, proposed listing 13.03B, to evaluate skin cancer that invades deep extradermal structures, such as skeletal muscle, cartilage, or bone. Skin cancer with these findings is often unresectable. We propose to add this criterion to be consistent with the criteria for other cancers that are unresectable and to recognize the poor prognosis for this condition. We would evaluate malignant melanoma of the skin under proposed listing 13.29, which we explain in more detail below.

Proposed Listing 13.05—Lymphoma (Including Mycosis Fungoides, But Excluding T-Cell Lymphoblastic Lymphoma—13.06)

We would add proposed listing 13.05A3 for evaluating mantle cell lymphoma (MCL), a high-grade, non-Hodgkin lymphoma. Current medical practice is unable to achieve a long-lasting remission in MCL or significantly increase a person's life expectancy. Similar to other cancers (for example, liver or gallbladder cancer) with a very poor prognosis, we would consider a person disabled on a confirmed diagnosis of MCL.

Proposed Listing 13.10—Breast (Except Sarcoma—13.04)

Secondary lymphedema that results from breast cancer treatment (for example, radiation treatment) may advance to the point that the person needs surgery to treat the lymphedema and restore the functional use of an upper extremity. We propose to add listing 13.10E to find the person disabled for at least 12 months from the date of this surgery that treated the secondary lymphedema. After that, we would evaluate any residual impairment(s) under the criteria for the affected body system. We propose this new criterion to recognize the debilitating effects of advanced secondary lymphedema, as well as the time needed to recover from the surgery.

Proposed Listing 13.12—Maxilla, Orbit, or Temporal Fossa

We propose to make a minor editorial change to current listing 13.12C by moving the term ''base of the skull'' to the end of the sentence. We do not intend for the word ''base'' in this term to apply to the ''orbit,'' ''meninges,'' or ''sinuses.'' We believe the proposed editorial change will make the current sentence structure clearer.

Proposed Listing 13.13—Nervous System

We propose to reorganize and revise current 13.13A. We would list separately in proposed listings 13.13A1 and 13.13A2 highly malignant primary CNS cancers that we consider to be of listing-level severity by diagnosis alone. These CNS cancers include Grade III and Grade IV astrocytomas, and medulloblastoma and other primitive neuroectodermal tumors (PNETs). We would no longer require highly malignant PNETs to have documented metastases. Our adjudicative experience and the current medical literature establish that Grade III and Grade IV PNETs do not respond well to treatment and in most instances have a poor prognosis. We would evaluate all other primary CNS cancers, including low-grade PNETs, under proposed 13.13A3 or 13.13B.

Proposed Listing 13.20—Pancreas

We propose to make a minor editorial change to current listing 13.20B for islet cell cancer of the pancreas in response to questions from our adjudicators. We would reorganize the listing to clarify that the requirement of ''physiologically active'' cancer applies to tumors that are *either* inoperable or unresectable.

Proposed Listing 13.23—Cancers of the Female Genital Tract—Carcinoma or Sarcoma (Including Primary Peritoneal Carcinoma)

We propose to add listing 13.23B3 for cervical cancer that has spread to distant (for example, para-aortic or supraclavicular) lymph nodes. Current medical literature establishes that cervical cancer with involvement of distant lymph nodes is associated with a poor prognosis and short-term survival, as well as a high recurrence rate.

We also propose to make a minor editorial change in current listing 13.23E1a for ovarian cancer to clarify that the spread of the cancer beyond the pelvis includes direct extension of the tumor. We currently find claimants who have direct tumor extension to the peritoneal, omental, or bowel surfaces to be disabled based on medical equivalence to the current listing.

Proposed Listing 13.29—Malignant Melanoma (Including Skin, Ocular, or Mucosal Melanomas)

We propose to evaluate malignant melanoma separately from other cancers that involve the skin. We would move the criteria for evaluating malignant melanoma in skin from current listing 13.03B to proposed new listing 13.29. We would also evaluate malignant melanoma in the eye (ocular melanoma) and malignant melanoma in mucous membranes (mucosal melanoma) under the proposed listing. This change recognizes that malignant melanoma that originates in the eye or mucous membrane constitutes an impairment of listing-level severity. We also propose an identical listing for evaluating malignant melanoma in children (proposed listing 113.29). We currently find all such children disabled based on medical equivalence to listing 13.03B.

Other Proposed Changes

We would make nonsubstantive editorial revisions throughout these proposed rules to clarify the introductory text and listings. For example, we propose to change the term ''tumor'' to ''cancer'' in the sections of the introductory text where it is obvious that the rules apply to cancerous tumors. These editorial revisions would also include updating the medical terminology in the listings. For example, we would replace the term ''Hodgkin's disease'' with the term ''Hodgkin lymphoma'' to reflect how the medical community currently refers to this cancer.

What specific changes are we proposing to make in the introductory text of the listings for evaluating cancer in children?

We propose to make the following changes to the introductory text of the childhood listings that correspond with the changes we are proposing for the introductory text of the adult listings:

- Move the definition for ''antineoplastic therapy'' from current section 113.00B3 to proposed section 113.00I1.
- Revise the definition of ''persistence'' in proposed section 113.00I4 and revise the definition of ''progressive'' in proposed section 113.00I5.
- Revise current section 113.00K2b to explain that CML is in the accelerated or blast phase if the proportion of blast cells in the peripheral blood or bone marrow is 10 percent or greater.
- Remove the word ''ordinarily'' in current section 113.00K2d.
- Revise current section 113.00K3 to provide more information about which solid tumor cancers we evaluate under listing 113.03 and which we evaluate under other listings in this body system.
- Revise current section 113.00K4 to explain that we evaluate primary CNS cancers under listing 113.13.We would

also list primary CNS cancers that are highly malignant.

- Add guidance in current section 113.00L for evaluating cancers treated with bone marrow or stem cell transplantation, including transplantation using stem cells from umbilical cord blood.
- Make minor editorial changes to make the child introductory text consistent with the adult introductory text.

How do we propose to revise the criteria in the listings for evaluating cancer in children?

We would revise the headings of current listings 113.05 and 113.06 to indicate that we evaluate all types of lymphoblastic lymphomas (not just the T-cell lymphomas) under 113.06. In making this change in the headings of the current listings, we would remove the specific reference to ''T-cell lymphomas'' in 113.05 and 113.06. We would also revise current listing 113.05 for evaluating non-Hodgkin lymphoma (NHL) and Hodgkin lymphoma to recognize that these cancers in children require treatment regimens that are very toxic and prolonged when they have spread to the bone marrow or to visceral organs, such as the brain, liver, or lung. With this level of cancer involvement, we would consider a child with NHL or Hodgkin lymphoma to be under a disability for 24 months from the date of diagnosis without regard to the effectiveness of treatment. After that, we would evaluate any residual impairment(s) under the criteria for the affected body system. We are not proposing similar revisions to current listings 13.05 and 13.06 for lymphomas and leukemias in adults. Pediatric lymphomas and leukemias behave differently, as they are more aggressive and more difficult to treat than most adult lymphomas and leukemias.

We would also add proposed listing 113.05D that is the same as the proposed adult listing for evaluating mantle cell lymphoma.

We would add proposed listing 113.13C to evaluate cancers of the CNS in children that are metastatic. We would also use proposed 113.13C to evaluate cancers of the CNS in children that are progressive or recurrent following initial antineoplastic therapy. We currently find disabled all children with the CNS cancer described in the proposed listing based on medical equivalence to current listing 13.13A2.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Under the Act, we have full power and authority to make rules and regulations and to establish necessary and appropriate procedures to carry out such provisions.[4]

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they would remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, such as grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of the relevant comments we received, along with responses, and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These proposed rules do not create any new, or affect any existing, collections and do not require OMB approval under the Paperwork Reduction Act.

References

We consulted the following references when we developed these proposed rules:

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[4] Sections 205(a), 702(a)(5), and 1631(d)(1) of the Act.

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We included these references in the rulemaking record for these proposed rules and will make them available for inspection by interested individuals who make arrangements with the contact person above.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: December 6, 2013.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III part 404 subpart P as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 as follows:

■ a. Revise item 14 of the introductory text before part A of appendix 1.

■ b. Amend part A by revising the body system name for section 13.00 in the table of contents.

■ c. Revise section 13.00 of part A of appendix 1.

■ d. Amend listing 13.02 of part A of appendix 1 by revising the heading, revising current listing 13.02B, deleting current listing 13.02C, redesignating current listing 13.02D as 13.02C, and adding new listings 13.02D and 13.02E.

■ e. Amend listing 13.03 of part A of appendix 1 by revising listing 13.03B.

■ f. Amend listing 13.05 of part A of appendix 1 by revising listing 13.05A2, adding listing 13.05A3 and replacing the word ''disease'' with the word ''lymphoma'' in listing 13.05B.

■ g. Amend listing 13.06 of part A of appendix 1 by adding a cross-reference in the first sentence of listing 13.06B1.

■ h. Amend listing 13.10 of part A of appendix 1 by revising 13.10A, adding the word ''OR'' after listing 13.10C, and adding listings 13.10D and 13.10E.

■ i. Amend listing 13.11 of part A of appendix 1 by replacing the word ''tumor'' in listing 13.11B with the word ''cancer'' and the word ''tumors'' in listing 13.11D with the word ''cancers,'' and adding a cross-reference to the first sentence of listing 13.11D.

■ j. Amend listing 13.12 of part A of appendix 1 by revising 13.12C.

■ k. Revise listing 13.13 of part A of appendix 1.

■ l. Amend listing 13.14 of part A of appendix 1 by adding a cross-reference in the first sentence of listing 13.14C.

■ m. Amend listing 13.15 of part A of appendix 1 by adding the word ''OR'' after listing 13.15B, and adding listing 13.15C.

■ n. Amend listing 13.16 of part A of appendix 1 by adding the word ''OR'' after listing 13.16B, and adding listing 13.16C.

■ o. Amend listing 13.17 of part A of appendix 1 by adding the word ''OR'' after listing 13.17B, and adding listing 13.17C.

■ p. Amend listing 13.18 of part A of appendix 1 by adding the word ''OR'' after listing 13.18C, and adding listing 13.18D.

■ q. Amend listing 13.19 of part A of appendix 1 by replacing the word ''tumors'' with the word ''cancer.''

■ r. Amend listing 13.20 of part A of appendix 1 by revising listing 13.20B.

■ s. Amend listing 13.22 of part A of appendix 1 by adding the word ''OR'' after listing 13.22D, and adding listing 13.22E.

■ t. Amend listing 13.23 of part A of appendix 1 by revising listings 13.23B and 13.23E, adding the word ''OR'' after listing 13.23E, and adding listing 13.23F.

■ u. Amend listing 13.24 of part A of appendix 1 by revising listing 13.24A, adding the word ''OR'' after listing 13.24B, and adding listing 13.24C.

■ v. Amend listing 13.25 of part A of appendix 1 by replacing the word ''tumor'' with the word ''cancer.''

■ w. Amend listing 13.28 of part A of appendix 1 by replacing the phrase ''malignant neoplastic diseases'' with the word ''cancer.''

■ x. Add listing 13.29 after listing 13.28 of part A of appendix 1.

■ y. Revise section 113.00 of part B of appendix 1.

■ z. Amend listing 113.03 of part B of appendix 1 by changing the phrase ''2 years'' to the phrase ''24 months'' in listings 113.03A and 113.03B.

■ aa. Amend listing 113.05 of part B of appendix 1 by revising listings 113.05A and 113.05B, adding the word ''OR'' after listing 113.05C, and adding listing 113.05D.

■ bb. Amend listing 113.06 of part B of appendix 1 by revising the first sentence of listing 113.06A and adding a cross-reference to the first sentence of listing 113.06B1.

■ cc. Revise listing 113.13 of part B of appendix 1.

■ dd. Add listing 113.29 after listing 113.21 of part B of appendix 1.

The revisions and additions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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14. Cancer (Malignant Neoplastic Diseases) (13.00 and 113.00): [*DATE 5 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULES*].

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Part A

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13.00 Cancer (Malignant Neoplastic Diseases)

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13.00 CANCER (MALIGNANT NEOPLASTIC DISEASES)

A. *What impairments do these listings cover?* We use these listings to evaluate all cancers (malignant neoplastic diseases), except certain cancers associated with human immunodeficiency virus (HIV) infection. If you have HIV infection, we use the criteria in 14.08E to evaluate carcinoma of the cervix, Kaposi sarcoma, lymphoma, and squamous cell carcinoma of the anal canal and anal margin.

B. *What do we consider when we evaluate cancer under these listings?* We will consider factors including:

1. Origin of the cancer.
2. Extent of involvement.
3. Duration, frequency, and response to antineoplastic therapy.
4. Effects of any post-therapeutic residuals.

C. *How do we apply these listings?* We apply the criteria in a specific listing to a cancer originating from that specific site.

D. *What evidence do we need?*

1. We need medical evidence that specifies the type, extent, and site of the primary, recurrent, or metastatic lesion. When the primary site cannot be identified, we will use evidence documenting the site(s) of metastasis to evaluate the impairment under 13.27.

2. For operative procedures, including a biopsy or a needle aspiration, we generally need a copy of both the:

a. Operative note, and

b. Pathology report.

3. When we cannot get these documents, we will accept the summary of hospitalization(s) or other medical reports. This evidence should include details of the findings at surgery and, whenever appropriate, the pathological findings.

4. In some situations, we may also need evidence about recurrence, persistence, or progression of the cancer, the response to therapy, and any significant residuals. (See 13.00G.)

E. *When do we need longitudinal evidence?*

1. *Cancer with distant metastases.* We generally do not need longitudinal evidence for cancer that has metastasized beyond the regional lymph nodes because this cancer usually meets the requirements of a listing. Exceptions are for cancer with distant metastases that we expect to respond to antineoplastic therapy. For these exceptions, we usually need a longitudinal record of 3 months after therapy starts to determine whether the therapy achieved its intended effect, and whether this effect is likely to persist.

2. *Other cancers.* When there are no distant metastases, many of the listings require that we consider your response to initial antineoplastic therapy; that is, the initial planned treatment regimen. This therapy may consist of a single modality or a combination of modalities; that is, multimodal therapy. (See 13.00I4.)

3. *Types of treatment.*

a. Whenever the initial planned therapy is a single modality, enough time must pass to allow a determination about whether the therapy will achieve its intended effect. If the treatment fails, the failure often happens within 6 months after treatment starts, and there will often be a change in the treatment regimen.

b. Whenever the initial planned therapy is multimodal, we usually cannot make a determination about the effectiveness of the therapy until we can determine the effects of all the planned modalities. In some cases, we may need to defer adjudication until we can assess the effectiveness of therapy. However,

we do not need to defer adjudication to determine whether the therapy will achieve its intended effect if we can make a fully favorable determination or decision based on the length and effects of therapy, or the residuals of the cancer or therapy (see 13.00G).

c. We need evidence under 13.02E, 13.11D, and 13.14C to establish that your treating source initiated multimodal antineoplastic therapy. We do not need to make a determination about the length or effectiveness of your therapy. Multimodal therapy has been initiated, and satisfies the requirements in 13.02E, 13.11D, and 13.14C, when your treating source starts the first modality. We may defer adjudication if your treating source plans multimodal therapy and has not yet initiated it.

F. *How do we evaluate impairments that do not meet one of the cancer listings?*

1. These listings are only examples of cancer that we consider severe enough to prevent you from doing any gainful activity. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926 of this chapter.) If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. In that situation, we proceed to the fourth, and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

G. *How do we consider the effects of antineoplastic therapy?*

1. *How we consider the effects of antineoplastic therapy under the listings.* In many cases, cancers meet listing criteria only if the therapy is not effective and the cancer persists, progresses, or recurs. However, as explained in the following paragraphs, we will not delay adjudication if we can make a fully favorable determination or decision based on the evidence in the case record.

2. *Effects can vary widely.*

a. We consider each case on an individual basis because the therapy and its toxicity may vary widely. We will request a specific description of the therapy, including these items:

i. Drugs given.

ii. Dosage.

iii. Frequency of drug administration.

iv. Plans for continued drug administration.

v. Extent of surgery.

vi. Schedule and fields of radiation therapy.

b. We will also request a description of the complications or adverse effects of therapy, such as the following:

i. Continuing gastrointestinal symptoms.

ii. Persistent weakness.

iii. Neurological complications.

iv. Cardiovascular complications.

v. Reactive mental disorders.

3. *Effects of therapy may change.* The severity of the adverse effects of antineoplastic therapy may change during treatment; therefore, enough time must pass to allow us to evaluate the therapy's effect. The residual effects of treatment are temporary in most instances; however, on occasion, the effects may be disabling for a consecutive period of at least 12 months.

4. *When the initial antineoplastic therapy is effective.* We evaluate any post-therapeutic residual impairment(s) not included in these listings under the criteria for the affected body system. We must consider any complications of therapy. When the residual impairment(s) does not meet or medically equal a listing, we must consider its effect on your ability to do substantial gainful activity.

H. *How long do we consider your impairment to be disabling?*

1. In some listings, we specify that we consider your impairment to be disabling until a particular point in time (for example, at least 12 months from the date of diagnosis). We may consider your impairment to be disabling beyond this point when the medical and other evidence justifies it.

2. When a listing does not contain such a specification, we will consider an impairment(s) that meets or medically equals a listing in this body system to be disabling until at least 3 years after onset of complete remission. When the impairment(s) has been in complete remission for at least 3 years, that is, the original tumor or a recurrence (or relapse) and any metastases have not been evident for at least 3 years, the impairment(s) will no longer meet or medically equal the criteria of a listing in this body system.

3. Following the appropriate period, we will consider any residuals, including residuals of the cancer or therapy (see 13.00G), in determining whether you are disabled. If you have a recurrence or relapse of your cancer, your impairment may meet or medically equal one of the listings in this body system again.

I. *What do we mean by the following terms?*

1. *Antineoplastic therapy* means surgery, radiation, chemotherapy, hormones, immunotherapy, or bone marrow or stem cell transplantation. When we refer to surgery as an antineoplastic treatment, we mean surgical excision for treatment, not for diagnostic purposes.

2. *Inoperable* means surgery is thought to be of no therapeutic value or the surgery cannot be performed; for example, when you cannot tolerate anesthesia or surgery because of another impairment(s), or you have a cancer that is too large or that has invaded crucial structures. This term does not include situations in which your cancer could have been surgically removed but another method of treatment was chosen; for example, an attempt at organ preservation. Your physician may determine whether the cancer is inoperable before or after you receive neoadjuvant therapy. *Neoadjuvant therapy* is antineoplastic therapy, such as chemotherapy or radiation, given before surgery in order to reduce the size of the cancer.

3. *Metastases* means the spread of cancer cells by blood, lymph, or other body fluid. This term does not include the spread of cancer cells by direct extension of the cancer to other tissues or organs.

4. *Multimodal therapy* means antineoplastic therapy that is given as a combination of at least two types of treatment given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: surgery, radiation, and systemic drug therapy (chemotherapy, hormone therapy, and immunotherapy or biological modifier therapy). Examples of multimodal therapy include:

a. Surgery followed by chemotherapy or radiation.

b. Chemotherapy followed by surgery.

c. Chemotherapy and concurrent radiation.

5. *Persistent* means the planned initial antineoplastic therapy failed to achieve a complete remission of your cancer; that is, your cancer is evident, even if smaller, after the therapy has ended.

6. *Progressive* means the cancer becomes more extensive after treatment; that is, there is evidence that your cancer is growing after you have completed at least half of your planned initial antineoplastic therapy.

7. *Recurrent or relapse* means the cancer that was in complete remission or entirely removed by surgery has returned.

8. *Unresectable* means surgery or surgeries did not completely remove the cancer. This term includes situations in which your cancer is incompletely resected or the surgical margins are positive. It does not include situations in which there is a finding of a positive margin(s) if additional surgery obtains a margin(s) that is clear. It also does not include situations in which the cancer is completely resected but you are receiving adjuvant therapy. *Adjuvant therapy* is antineoplastic therapy, such as chemotherapy or radiation, given after surgery in order to eliminate any remaining cancer cells or lessen the chance of recurrence.

J. *Can we establish the existence of a disabling impairment prior to the date of the evidence that shows the cancer satisfies the criteria of a listing?* Yes. We will consider factors such as:

1. The type of cancer and its location.

2. The extent of involvement when the cancer was first demonstrated.

3. Your symptoms.

K. *How do we evaluate specific cancers?*

1. *Lymphoma.*

a. Many indolent (non-aggressive) lymphomas are controlled by well-tolerated treatment modalities, although the lymphomas may produce intermittent symptoms and signs. We may defer adjudicating these cases for an appropriate period after therapy is initiated to determine whether the therapy will achieve its intended effect, which is usually to stabilize the disease process. (See 13.00E3.) Once your disease stabilizes, we will assess severity based on the extent of involvement of other organ systems and residuals from therapy.

b. A change in therapy for indolent lymphomas is usually an indicator that the therapy is not achieving its intended effect.

However, your impairment will not meet the requirements of 13.05A2 if your therapy is changed solely because you or your physician chooses to change it and not because of a failure to achieve stability.

c. We consider Hodgkin lymphoma that recurs more than 12 months after completing initial antineoplastic therapy to be a new disease rather than a recurrence.

2. *Leukemia.*

a. *Acute leukemia.* The initial diagnosis of acute leukemia, including the accelerated or blast phase of chronic myelogenous (granulocytic) leukemia, is based on definitive bone marrow examination. Additional diagnostic information is based on chromosomal analysis, cytochemical and surface marker studies on the abnormal cells, or other methods consistent with the prevailing state of medical knowledge and clinical practice. Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. The initial and follow-up pathology reports should be included.

b. *Chronic myelogenous leukemia (CML).* We need a diagnosis of CML based on documented granulocytosis, including immature forms such as differentiated or undifferentiated myelocytes and myeloblasts, and a chromosomal analysis that demonstrates the Philadelphia chromosome. In the absence of a chromosomal analysis, or if the Philadelphia chromosome is not present, the diagnosis may be made by other methods consistent with the prevailing state of medical knowledge and clinical practice. The requirement for CML in the accelerated or blast phase is met in 13.06B if laboratory findings show the proportion of blast (immature) cells in the peripheral blood or bone marrow is 10 percent or greater.

c. *Chronic lymphocytic leukemia.*

i. We require the diagnosis of chronic lymphocytic leukemia (CLL) to be documented by evidence of a chronic lymphocytosis of at least 10,000 cells/mm^3 for 3 months or longer, or other acceptable diagnostic techniques consistent with the prevailing state of medical knowledge and clinical practice.

ii. We evaluate the complications and residual impairment(s) from CLL under the appropriate listings, such as 13.05A2 or the hematological listings (7.00).

d. *Elevated white cell count.* In cases of chronic leukemia (either myelogenous or lymphocytic), an elevated white cell count, in itself, is not a factor in determining the severity of the impairment.

3. *Macroglobulinemia or heavy chain disease.* We require the diagnosis of these diseases to be confirmed by protein electrophoresis or immunoelectrophoresis. We evaluate the resulting impairment(s) under the appropriate listings, such as 13.05A2 or the hematological listings (7.00).

4. *Primary breast cancer.*

a. We evaluate bilateral primary breast cancer (synchronous or metachronous) under 13.10A, which covers local primary disease, and not as a primary disease that has metastasized.

b. We evaluate secondary lymphedema that results from antineoplastic therapy for breast cancer under 13.10E if the lymphedema is treated by surgery to salvage or restore the functioning of an upper extremity. Secondary lymphedema is edema that results from obstruction or destruction of normal lymphatic channels. We may not restrict our determination of the onset of disability to the date of the surgery; we may establish an earlier onset date of disability if the evidence in your case record supports such a finding.

5. *Carcinoma-in-situ.* Carcinoma-in-situ, or preinvasive carcinoma, usually responds to treatment. When we use the term ''carcinoma'' in these listings, it does not include carcinoma-in-situ.

6. *Primary central nervous system (CNS) cancers.* We use the criteria in 13.13 to evaluate cancers that originate within the CNS (that is, brain and spinal cord cancers).

a. The CNS cancers listed in 13.13A1 are highly malignant and respond poorly to treatment, and therefore we do not require additional criteria to evaluate them.

b. We consider a CNS tumor to be malignant if it is classified as Grade II, Grade III, or Grade IV under the World Health Organization (WHO) classification of tumors of the CNS (*WHO Classification of Tumours of the Central Nervous System,* 2007).

c. We evaluate benign (Grade I) CNS tumors under 11.05. We evaluate metastasized CNS cancers from non-CNS sites under the primary cancers (see 13.00C). We evaluate any complications of CNS cancers, such as resultant neurological or psychological impairments, under the criteria for the affected body system.

7. *Primary peritoneal carcinoma.* We use the criteria in 13.23E to evaluate primary peritoneal carcinoma in women because this cancer is often indistinguishable from ovarian cancer and is generally treated the same way as ovarian cancer. We use the criteria in 13.15A to evaluate primary peritoneal carcinoma in men because many of these cases are similar to malignant mesothelioma.

8. *Prostate cancer.* We exclude ''biochemical recurrence'' in 13.24A, which is defined as an increase in the serum prostate-specific antigen (PSA) level following the completion of antineoplastic therapy. We need corroborating evidence to document recurrence, such as radiological studies or findings on physical examination.

9. *Melanoma.* We evaluate malignant melanoma that affects the skin (cutaneous melanoma), eye (ocular melanoma), or mucosal membranes (mucosal melanoma) under 13.29. We evaluate melanoma that is not malignant that affects the skin (benign melanocytic tumor) under the listings in 8.00 or other affected body systems.

L. *How do we evaluate cancer treated by bone marrow or stem cell transplantation, including transplantation using stem cells from umbilical cord blood?* Bone marrow or stem cell transplantation is performed for a variety of cancers. We require the transplantation occur before we evaluate it under these listings. We do not need to restrict our determination of the onset of disability to the date of the transplantation (13.05, 13.06, or 13.07) or the date of first treatment under the treatment plan that includes transplantation (13.28). We may be able to establish an earlier onset date of disability due to your transplantation if the evidence in your case record supports such a finding.

1. *Acute leukemia (including T-cell lymphoblastic lymphoma) or accelerated or blast phase of CML.* If you undergo bone marrow or stem cell transplantation for any of these disorders, we will consider you to be disabled until at least 24 months from the date of diagnosis or relapse, or at least 12 months from the date of transplantation, whichever is later.

2. *Lymphoma, multiple myeloma, or chronic phase of CML.* If you undergo bone marrow or stem cell transplantation for any of these disorders, we will consider you to be disabled until at least 12 months from the date of transplantation.

3. *Other cancers.* We will evaluate any other cancer treated with bone marrow or stem cell transplantation under 13.28, regardless of whether there is another listing that addresses that impairment. The length of time we will consider you to be disabled depends on whether you undergo allogeneic or autologous transplantation.

a. *Allogeneic bone marrow or stem cell transplantation.* If you undergo allogeneic transplantation (transplantation from an unrelated donor or a related donor other than an identical twin), we will consider you to be disabled until at least 12 months from the date of transplantation.

b. *Autologous bone marrow or stem cell transplantation.* If you undergo autologous transplantation (transplantation of your own cells or cells from your identical twin (syngeneic transplantation)), we will consider you to be disabled until at least 12 months from the date of the first treatment under the treatment plan that includes transplantation. The first treatment usually refers to the initial therapy given to prepare you for transplantation.

4. *Evaluating disability after the appropriate time period has elapsed.* We consider any residual impairment(s), such as complications arising from:

a. Graft-versus-host (GVH) disease.

b. Immunosuppressant therapy, such as frequent infections.

c. Significant deterioration of other organ systems.

13.01 Category of Impairments, Cancer (Malignant Neoplastic Diseases)

13.02 *Soft tissue cancers of the head and neck (except salivary glands—13.08—and thyroid gland—13.09).*

* * * * *

B. Persistent or recurrent disease following initial antineoplastic therapy, except persistence or recurrence in the true vocal cord.

OR

C. With metastases beyond the regional lymph nodes.

OR

D. Small-cell (oat cell) carcinoma.

OR

E. Soft tissue cancers originating in the head and neck treated with multimodal antineoplastic therapy (see 13.00E3c). Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual

impairment(s) under the criteria for the affected body system.

13.03 *Skin (except malignant melanoma—13.29).*

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B. Carcinoma invading deep extradermal structures (for example, skeletal muscle, cartilage, or bone).

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13.05 *Lymphoma (including mycosis fungoides, but excluding T-cell lymphoblastic lymphoma—13.06).* (See 13.00K1 and 13.00K2c.)

A. Non-Hodgkin lymphoma, as described in 1, 2, or 3:

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2. Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell) requiring initiation of more than one (single mode or multimodal) antineoplastic treatment regimen within a period of 12 consecutive months. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.

3. Mantle cell lymphoma.

OR

B. Hodgkin lymphoma with failure to achieve clinically complete remission, or recurrent disease within 12 months of completing initial antineoplastic therapy.

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13.06 *Leukemia.* (See 13.00K2.)

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B. * * *

1. Accelerated or blast phase (see 13.00K2b).

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13.10 *Breast (except sarcoma—13.04).* (See 13.00K4.)

A. Locally advanced cancer (inflammatory carcinoma, cancer of any size with direct extension to the chest wall or skin, or cancer of any size with metastases to the ipsilateral internal mammary nodes).

* * * * *

C. * * *

OR

D. Small-cell (oat cell) carcinoma.

OR

E. With secondary lymphedema that is caused by antineoplastic therapy and treated by surgery to salvage or restore the functioning of an upper extremity. (See 13.00K4b.) Consider under a disability until at least 12 months from the date of the surgery that treated the secondary lymphedema. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

13.11 *Skeletal system*—sarcoma.

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B. Recurrent cancer (except local recurrence) after initial antineoplastic therapy.

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D. All other cancers originating in bone with multimodal antineoplastic therapy (see 13.00E3c). Consider under a disability for 12 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

13.12 *Maxilla, orbit, or temporal fossa.*

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C. Cancer with extension to the orbit, meninges, sinuses, or base of the skull.

13.13 *Nervous system.* (See 13.00K6.)

A. Primary central nervous system (CNS; that is, brain and spinal cord) cancers, as described in 1, 2, or 3:

1. Glioblastoma multiforme, ependymoblastoma, and diffuse intrinsic brain stem gliomas (see 13.00K6a).

2. Any Grade III or Grade IV CNS cancer (see 13.00K6b), including astrocytomas, sarcomas, and medulloblastoma and other primitive neuroectodermal tumors (PNETs).

3. Any primary CNS cancer, as described in a or b:

a. Metastatic.

b. Progressive or recurrent following initial antineoplastic therapy.

OR

B. Primary peripheral nerve or spinal root cancers, as described in 1 or 2:

1. Metastatic.

2. Progressive or recurrent following initial antineoplastic therapy.

13.14 *Lungs.*

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C. Carcinoma of the superior sulcus (including Pancoast tumors) with multimodal antineoplastic therapy (see 13.00E3c). Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

13.15 *Pleura or mediastinum.*

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B. * * *

OR

C. Small-cell (oat cell) carcinoma.

13.16 *Esophagus or stomach.*

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B. * * *

OR

C. Small-cell (oat cell) carcinoma.

13.17 *Small intestine*—carcinoma, sarcoma, or carcinoid.

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B. * * *

OR

C. Small-cell (oat cell) carcinoma.

13.18 *Large intestine (from ileocecal valve to and including anal canal).*

* * * * *

C. * * *

OR

D. Small-cell (oat cell) carcinoma.

13.19 *Liver or gallbladder*—cancer of the liver, gallbladder, or bile ducts.

13.20 *Pancreas.*

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B. Islet cell carcinoma that is physiologically active and is either inoperable or unresectable.

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13.22 *Urinary bladder*—carcinoma.

* * * * *

D. * * *

OR

E. Small-cell (oat cell) carcinoma.

13.23 *Cancers of the female genital tract*—carcinoma or sarcoma (including primary peritoneal carcinoma).

* * * * *

B. Uterine cervix, as described in 1, 2, or 3:

1. Extending to the pelvic wall, lower portion of the vagina, or adjacent or distant organs.

2. Persistent or recurrent following initial antineoplastic therapy.

3. With metastases to distant (for example, para-aortic or supraclavicular) lymph nodes.

* * * * *

E. Ovaries, as described in 1 or 2:

1. All cancers except germ-cell cancers, with at least one of the following:

a. Extension beyond the pelvis; for example, implants on, or direct extension to, peritoneal, omental, or bowel surfaces.

b. Metastases to or beyond the regional lymph nodes.

c. Recurrent following initial antineoplastic therapy.

2. Germ-cell cancers—progressive or recurrent following initial antineoplastic therapy.

OR

F. Small-cell (oat cell) carcinoma.

13.24 *Prostate gland*—carcinoma.

A. Progressive or recurrent (not including biochemical recurrence) despite initial hormonal intervention. (See 13.00K8.)

OR

B. * * *

OR

C. Small-cell (oat cell) carcinoma.

13.25 *Testicles*—cancer with metastatic disease progressive or recurrent following initial chemotherapy.

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13.28 *Cancer treated by bone marrow or stem cell transplantation.* (See 13.00L.)

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13.29 *Malignant melanoma* (including skin, ocular, or mucosal melanomas), as described in either A or B:

A. Recurrent (except an additional primary melanoma at a different site, which is not considered to be recurrent disease) following either 1, 2, or 3:

1. Wide excision (skin melanoma).

2. Enucleation of the eye (ocular melanoma).

3. Complete surgical excision (mucosal melanoma).

OR

B. With metastases as described in 1, 2, or 3:

1. Metastases to one or more clinically apparent nodes; that is, nodes that are detected by imaging studies (excluding lymphoscintigraphy) or by clinical evaluation (palpable).

2. If the nodes are not clinically apparent, with metastases to four or more nodes.

3. Metastases to adjacent skin (satellite lesions) or distant sites.

* * * * *

Part B

* * * * *

113.00 Cancer (Malignant Neoplastic Diseases)

* * * * *

113.00 CANCER (MALIGNANT NEOPLASTIC DISEASES)

A. *What impairments do these listings cover?* We use these listings to evaluate all cancers (malignant neoplastic diseases), except certain cancers associated with human immunodeficiency virus (HIV) infection. If you have HIV infection, we use the criteria in 114.08E to evaluate carcinoma of the cervix, Kaposi sarcoma, lymphoma, and squamous cell carcinoma of the anal canal and anal margin.

B. *What do we consider when we evaluate cancer under these listings?* We will consider factors including:

1. Origin of the cancer.
2. Extent of involvement.
3. Duration, frequency, and response to antineoplastic therapy.
4. Effects of any post-therapeutic residuals.

C. *How do we apply these listings?* We apply the criteria in a specific listing to a cancer originating from that specific site.

D. *What evidence do we need?*

1. We need medical evidence that specifies the type, extent, and site of the primary, recurrent, or metastatic lesion. In the rare situation in which the primary site cannot be identified, we will use evidence documenting the site(s) of metastasis to evaluate the impairment under 13.27 in part A.

2. For operative procedures, including a biopsy or a needle aspiration, we generally need a copy of both the:

a. Operative note, and
b. Pathology report.

3. When we cannot get these documents, we will accept the summary of hospitalization(s) or other medical reports. This evidence should include details of the findings at surgery and, when appropriate, the pathological findings.

4. In some situations, we may also need evidence about recurrence, persistence, or progression of the cancer, the response to therapy, and any significant residuals. (See 113.00G.)

E. *When do we need longitudinal evidence?*

1. *Cancer with distant metastases.* Most cancer of childhood consists of a local lesion with metastases to regional lymph nodes and, less often, distant metastases. We generally do not need longitudinal evidence for cancer that has metastasized beyond the regional lymph nodes because this cancer usually meets the requirements of a listing. Exceptions are for cancer with distant metastases that is expected to respond to antineoplastic therapy. For these exceptions, we usually need a longitudinal record of 3 months after therapy starts to determine whether the therapy achieved its intended effect, and whether this effect is likely to persist.

2. *Other cancers.* When there are no distant metastases, many of the listings require that we consider your response to initial antineoplastic therapy; that is, the initial planned treatment regimen. This therapy may consist of a single modality or a combination of modalities; that is, multimodal therapy (see 113.00I3).

3. *Types of treatment.*

a. Whenever the initial planned therapy is a single modality, enough time must pass to allow a determination about whether the therapy will achieve its intended effect. If the treatment fails, the failure often happens within 6 months after treatment starts, and there will often be a change in the treatment regimen.

b. Whenever the initial planned therapy is multimodal, we usually cannot make a determination about the effectiveness of the therapy until we can determine the effects of all the planned modalities. In some cases, we may need to defer adjudication until we can assess the effectiveness of therapy. However, we do not need to defer adjudication to determine whether the therapy will achieve its intended effect if we can make a fully favorable determination or decision based on the length and effects of therapy, or the residuals of the cancer or therapy (see 113.00G).

F. *How do we evaluate impairments that do not meet one of the cancer listings?*

1. These listings are only examples of cancers that we consider severe enough to result in marked and severe functional limitations. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926 of this chapter.) If it does not, we will also consider whether you have an impairment(s) that functionally equals the listings. (See § 416.926a of this chapter.) We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

G. *How do we consider the effects of antineoplastic therapy?*

1. *How we consider the effects of therapy under the listings.* In many cases, cancers meet listing criteria only if the therapy is not effective and the cancer persists, progresses, or recurs. However, as explained in the following paragraphs, we will not delay adjudication if we can make a fully favorable determination or decision based on the evidence in the case record.

2. *Effects can vary widely.*

a. We consider each case on an individual basis because the therapy and its toxicity may vary widely. We will request a specific description of the therapy, including these items:

i. Drugs given.
ii. Dosage.
iii. Frequency of drug administration.
iv. Plans for continued drug administration.
v. Extent of surgery.
vi. Schedule and fields of radiation therapy.

b. We will also request a description of the complications or adverse effects of therapy, such as the following:

i. Continuing gastrointestinal symptoms.
ii. Persistent weakness.
iii. Neurological complications.
iv. Cardiovascular complications.
v. Reactive mental disorders.

3. *Effects of therapy may change.* The severity of the adverse effects of antineoplastic therapy may change during treatment; therefore, enough time must pass to allow us to evaluate the therapy's effect. The residual effects of treatment are temporary in most instances; however, on occasion, the effects may be disabling for a consecutive period of at least 12 months.

4. *When the initial antineoplastic therapy is effective.* We evaluate any post-therapeutic residual impairment(s) not included in these listings under the criteria for the affected body system. We must consider any complications of therapy. When the residual impairment(s) does not meet a listing, we must consider whether it medically equals a listing, or, as appropriate, functionally equals the listings.

H. *How long do we consider your impairment to be disabling?*

1. In some listings, we specify that we will consider your impairment to be disabling until a particular point in time (for example, at least 12 months from the date of diagnosis). We may consider your impairment to be disabling beyond this point when the medical and other evidence justifies it.

2. When a listing does not contain such a specification, we will consider an impairment(s) that meets or medically equals a listing in this body system to be disabling until at least 3 years after onset of complete remission. When the impairment(s) has been in complete remission for at least 3 years, that is, the original tumor or a recurrence (or relapse) and any metastases have not been evident for at least 3 years, the impairment(s) will no longer meet or medically equal the criteria of a listing in this body system.

3. Following the appropriate period, we will consider any residuals, including residuals of the cancer or therapy (see 113.00G), in determining whether you are disabled. If you have a recurrence or relapse of your cancer, your impairment may meet or medically equal one of the listings in this body system again.

I. *What do we mean by the following terms?*

1. *Antineoplastic therapy* means surgery, radiation, chemotherapy, hormones, immunotherapy, or bone marrow or stem cell transplantation. When we refer to surgery as an antineoplastic treatment, we mean surgical excision for treatment, not for diagnostic purposes.

2. *Metastases* means the spread of cancer cells by blood, lymph, or other body fluid. This term does not include the spread of cancer cells by direct extension of the cancer to other tissues or organs.

3. *Multimodal therapy* means antineoplastic therapy that is given as a combination of at least two types of treatment given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: surgery, radiation, and systemic drug therapy (chemotherapy, hormone therapy, and immunotherapy or biological modifier therapy). Examples of multimodal therapy include:

a. Surgery followed by chemotherapy or radiation.
b. Chemotherapy followed by surgery.
c. Chemotherapy and concurrent radiation.

4. *Persistent* means the planned initial antineoplastic therapy failed to achieve a complete remission of your cancer; that is, your cancer is evident, even if smaller, after the therapy has ended.

5. *Progressive* means the cancer becomes more extensive after treatment; that is, there is evidence that your cancer is growing after you have completed at least half of your planned initial antineoplastic therapy.

6. *Recurrent or relapse means* a cancer that was in complete remission or entirely removed by surgery has returned.

J. *Can we establish the existence of a disabling impairment prior to the date of the evidence that shows the cancer satisfies the criteria of a listing?* Yes. We will consider factors such as:

1. The type of cancer and its location.

2. The extent of involvement when the cancer was first demonstrated.

3. Your symptoms.

K. *How do we evaluate specific cancers?*

1. *Lymphoma.*

a. We provide criteria for evaluating lymphomas that are disseminated or have not responded to antineoplastic therapy in 113.05.

b. Lymphoblastic lymphoma is treated with leukemia-based protocols, so we evaluate this type of cancer under 113.06.

2. *Leukemia.*

a. *Acute leukemia.* The initial diagnosis of acute leukemia, including the accelerated or blast phase of chronic myelogenous (granulocytic) leukemia, is based on definitive bone marrow examination. Additional diagnostic information is based on chromosomal analysis, cytochemical and surface marker studies on the abnormal cells, or other methods consistent with the prevailing state of medical knowledge and clinical practice. Recurrent disease must be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination, or by testicular biopsy. The initial and follow-up pathology reports should be included.

b. *Chronic myelogenous leukemia (CML).* We need a diagnosis of CML based on documented granulocytosis, including immature forms such as differentiated or undifferentiated myelocytes and myeloblasts, and a chromosomal analysis that demonstrates the Philadelphia chromosome. In the absence of a chromosomal analysis, or if the Philadelphia chromosome is not present, the diagnosis may be made by other methods consistent with the prevailing state of medical knowledge and clinical practice. The requirement for CML in the accelerated or blast phase is met in 113.06B if laboratory findings show the proportion of blast (immature) cells in the peripheral blood or bone marrow is 10 percent or greater.

c. *Juvenile chronic myelogenous leukemia (JCML).* JCML is a rare, Philadelphia-chromosome-negative childhood leukemia that is aggressive and clinically similar to acute myelogenous leukemia. We evaluate JCML under 113.06A.

d. *Elevated white cell count.* In cases of chronic leukemia, an elevated white cell count, in itself, is not a factor in determining the severity of the impairment.

3. *Malignant solid tumors.* The tumors we consider under 113.03 include the histiocytosis syndromes except for solitary eosinophilic granuloma. We do not evaluate thyroid cancer (see 113.09), retinoblastomas (see 113.12), primary central nervous system (CNS) cancers (see 113.13), or neuroblastomas (see 113.21) under this listing.

4. *Primary central nervous system (CNS) cancers.* We use the criteria in 113.13 to evaluate cancers that originate within the CNS (that is, brain and spinal cord cancers).

a. The CNS cancers listed in 113.13A are highly malignant and respond poorly to treatment, and therefore we do not require additional criteria to evaluate them.

b. We consider a CNS tumor to be malignant if it is classified as Grade II, Grade III, or Grade IV under the World Health Organization (WHO) classification of tumors of the CNS (*WHO Classification of Tumours of the Central Nervous System,* 2007).

c. We evaluate benign (Grade I) CNS tumors under 111.05. We evaluate metastasized CNS cancers from non-CNS sites under the primary cancers (see 113.00C). We evaluate any complications of CNS cancers, such as resultant neurological or psychological impairments, under the criteria for the affected body system.

5. *Retinoblastoma.* The treatment for bilateral retinoblastoma usually results in a visual impairment. We will evaluate any resulting visual impairment under 102.02.

6. *Melanoma.* We evaluate malignant melanoma that affects the skin (cutaneous melanoma), eye (ocular melanoma), or mucosal membranes (mucosal melanoma) under 113.29. We evaluate melanoma that is not malignant that affects the skin (benign melanocytic tumor) under the listings in 108.00 or other affected body systems.

L. *How do we evaluate cancer treated by bone marrow or stem cell transplantation, including transplantation using stem cells from umbilical cord blood?* Bone marrow or stem cell transplantation is performed for a variety of cancers. We require the transplantation occur before we evaluate it under these listings. We do not need to restrict our determination of the onset of disability to the date of transplantation (113.05 or 113.06). We may be able to establish an earlier onset date of disability due to your transplantation if the evidence in your case record supports such a finding.

1. *Acute leukemia (including all types of lymphoblastic lymphomas lymphoblastic lymphoma and JCML) or accelerated or blast phase of CML.* If you undergo bone marrow or stem cell transplantation for any of these disorders, we will consider you to be disabled until at least 24 months from the date of diagnosis or relapse, or at least 12 months from the date of transplantation, whichever is later.

2. *Lymphoma or chronic phase of CML.* If you undergo bone marrow or stem cell transplantation for any of these disorders, we will consider you to be disabled until at least 12 months from the date of transplantation.

3. *Evaluating disability after the appropriate time period has elapsed.* We consider any residual impairment(s), such as complications arising from:

a. Graft-versus-host (GVH) disease.

b. Immunosuppressant therapy, such as frequent infections.

c. Significant deterioration of other organ systems.

113.01 Category of Impairments, Cancer (Malignant Neoplastic Diseases)

113.03 *Malignant solid tumors.* Consider under a disability:

A. For 24 months from the date of initial diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

OR

B. For 24 months from the date of recurrence of active disease. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

113.05 *Lymphoma (excluding all types of lymphoblastic lymphomas—113.06).* (See 113.00K1.)

A. Non-Hodgkin lymphoma (including Burkitt and anaplastic large cell), with either 1 or 2:

1. Bone marrow, brain, spinal cord, liver, or lung involvement at initial diagnosis. Consider under a disability for 24 months from the date of diagnosis. Thereafter, evaluate under 113.05A2, or any residual impairments(s) under the criteria for the affected body system.

2. Persistent or recurrent following initial antineoplastic therapy.

OR

B. Hodgkin lymphoma, with either 1 or 2:

1. Bone marrow, brain, spinal cord, liver, or lung involvement at initial diagnosis. Consider under a disability for 24 months from the date of diagnosis. Thereafter, evaluate under 113.05B2, or any residual impairment(s) under the criteria for the affected body system.

2. Persistent or recurrent following initial antineoplastic therapy.

OR

C. * * *

OR

D. Mantle cell lymphoma.

113.06 *Leukemia.* (See 113.00K2.)

A. Acute leukemia (including all types of lymphoblastic lymphomas and juvenile chronic myelogenous leukemia (JCML)).

OR

B. * * *

1. Accelerated or blast phase (see 113.00K2b).

* * * * *

113.13 *Nervous system.* (See 113.00K4.) Primary central nervous system (CNS; that is, brain and spinal cord) cancers, as described in A, B, or C:

A. Glioblastoma multiforme, ependymoblastoma, and diffuse intrinsic brain stem gliomas (see 113.00K4a).

B. Any Grade III or Grade IV CNS cancer (see 113.00K4b), including astrocytomas, sarcomas, and medulloblastoma and other primitive neuroectodermal tumors (PNETs).

C. Any primary CNS cancer, as described in 1 or 2:

1. Metastatic.

2. Progressive or recurrent following initial antineoplastic therapy.

* * * * *

113.29 *Malignant melanoma* (including skin, ocular, or mucosal melanomas), as described in either A or B:

A. Recurrent (except an additional primary melanoma at a different site, which is not

considered to be recurrent disease) following either 1, 2, or 3:

1. Wide excision (skin melanoma).

2. Enucleation of the eye (ocular melanoma).

3. Complete surgical excision (mucosal melanoma).

OR

B. With metastases as described in 1, 2, or 3:

1. Metastases to one or more clinically apparent nodes; that is, nodes that are detected by imaging studies (excluding lymphoscintigraphy) or by clinical evaluation (palpable).

2. If the nodes are not clinically apparent, with metastases to four or more nodes.

3. Metastases to adjacent skin (satellite lesions) or distant sites.

* * * * *

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