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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0365; Notice No. 25–554–SC]

Special Conditions: Embraer S.A., Model EMB–550 Airplane; Installation of Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions; Request for Comments.

SUMMARY: These special conditions are issued for the Embraer S.A. Model EMB–550 airplanes. This airplane will have a novel or unusual design feature associated with the installation of a satellite communication system that uses rechargeable lithium battery technology. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 10, 2014. We must receive your comments by July 10, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0365 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: Stephen Slotte, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2315; facsimile 425–227–1149.

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

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 special conditions based on the comments we receive.

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB–550 airplane. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for eight (8) passengers, with a maximum of twelve (12) passengers. It is equipped with two Honeywell AS907–3–1E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff.

The Model EMB–550 will have a novel or unusual design feature associated with a satellite communication system that uses rechargeable lithium battery technology. Rechargeable lithium batteries are a novel or unusual design feature in transport category airplanes. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Embraer S.A. must show that the Model EMB–550 meets the applicable provisions of part 25 as amended

through Amendments 25–1 through 25–127 thereto.

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 EMB–550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 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.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–550 airplane 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, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model EMB–550 airplane will incorporate the following novel or unusual design feature: A satellite communication system that uses rechargeable lithium battery technology. Rechargeable lithium batteries are a novel or unusual design feature in transport category airplanes for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion

These special conditions provide additional safety standards to accommodate the unique features of rechargeable lithium battery technology. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes.

The current regulations governing installation of batteries in transport category airplanes were derived from Civil Air Regulations (CAR) part 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. The new battery requirements, 14 CFR 25.1353(c)(1) through (c)(4), basically reworded the CAR requirements.

Increased use of nickel-cadmium batteries in small airplanes resulted in increased incidents of battery fires and failures that led to additional rulemaking affecting transport category airplanes as well as small airplanes. On September 1, 1977, and March 1, 1978, respectively, the FAA issued § 25.1353(c)(5) and (c)(6), governing nickel-cadmium battery installations on transport category airplanes. At Amendment 25–123, effective December 10, 2007, the FAA issued a revised § 25.1353, which moved the battery requirements to § 25.1353(b)(1) through (b)(6).

The proposed use of rechargeable lithium batteries for equipment and systems on the Model EMB–550 has prompted the FAA to review the adequacy of these existing regulations. Our review indicates that the existing regulations do not adequately address several failure, operational, and maintenance characteristics of rechargeable lithium batteries that could affect the safety of the airplane and its passengers and crew.

At present, there is limited experience with use of rechargeable lithium batteries in applications involving commercial aviation. However, other users of this technology, ranging from wireless telephone manufacturers to the electric vehicle industry, have noted safety problems with rechargeable lithium batteries. These problems include overcharging, over-discharging, and flammability of cell components.

1. Overcharging

In general, lithium batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (i.e., thermal runaway) than their nickel-cadmium or lead-acid counterparts. This is especially true for overcharging, which causes heating and destabilization of the components of the cell, leading to the formation (by plating) of highly unstable metallic lithium. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion. Finally, the severity of thermal runaway due to overcharging increases with increasing battery capacity due to the higher amount of electrolyte in large batteries.

2. Over-Discharging

Discharge of some types of lithium batteries beyond a certain voltage (typically 2.4 volts) can cause corrosion of the electrodes of the cell, resulting in loss of battery capacity that cannot be reversed by recharging. This loss of capacity may not be detected by the simple voltage measurements commonly available to flight crews as a means of checking battery status—a problem shared with nickel-cadmium batteries.

3. Flammability of Cell Components

Unlike nickel-cadmium and lead-acid batteries, some types of lithium batteries use liquid electrolytes that are flammable. The electrolyte can serve as a source of fuel for an external fire if there is a breach of the battery container.

These problems experienced by users of lithium batteries raise concern about the use of these batteries in commercial aviation. The intent of these special condition is to establish appropriate airworthiness standards for rechargeable lithium battery installations in the Embraer Model EMB–550, and to ensure, as required by §§ 25.1309 and 25.601, that these battery installations are not hazardous or unreliable.

Applicability

As discussed above, these special conditions are applicable to the Embraer S.A. Model EMB–550 airplane. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one airplane model. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not

have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer S.A. Model EMB–550 airplane.

Installation of Rechargeable Lithium Batteries

In lieu of the requirements of § 25.1353(b)(1) through (b)(4) at Amendment 25–123, all rechargeable lithium batteries and battery system installations on the Model EMB–550 must be designed and installed as follows:

(1) Safe cell temperatures and pressures must be maintained during any foreseeable charging or discharging condition and during any failure of the charging or battery monitoring system not shown to be extremely remote. The rechargeable lithium battery installation must preclude explosion in the event of those failures.

(2) Design of the rechargeable lithium batteries must preclude the occurrence of self-sustaining, uncontrolled increases in temperature or pressure.

(3) No explosive or toxic gases emitted by any rechargeable lithium battery in normal operation, or as the result of any failure of the battery charging system, monitoring system, or battery installation that is not shown to be extremely remote, may accumulate in hazardous quantities within the airplane.

(4) Installations of rechargeable lithium batteries must meet the requirements of 14 CFR 25.863(a) through (d).

(5) No corrosive fluids or gases that may escape from any rechargeable lithium battery may damage surrounding structure or any adjacent systems, equipment, or electrical wiring of the airplane in such a way as to cause a major or more severe failure condition, in accordance with § 25.1309(b) and applicable regulatory guidance.

(6) Each rechargeable lithium battery installation must have provisions to prevent any hazardous effect on structure or essential systems caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(7) Rechargeable lithium battery installations must have a system to control the charging rate of the battery automatically, so as to prevent battery overheating or overcharging, and,

(i) A battery temperature sensing and over-temperature warning system with a means for automatically disconnecting the battery from its charging source in the event of an over-temperature condition, or,

(ii) A battery failure sensing and warning system with a means for automatically disconnecting the battery from its charging source in the event of battery failure.

(8) Any rechargeable lithium battery installation, the function of which is required for safe operation of the airplane, must incorporate a monitoring and warning feature that will provide an indication to the appropriate flight crewmembers whenever the state-of-charge of the batteries has fallen below levels considered acceptable for dispatch of the airplane.

(9) The Instructions for Continued Airworthiness required by § 25.1529 must contain maintenance requirements to assure that the battery is sufficiently charged at appropriate intervals specified by the battery manufacturer and the equipment manufacturer that contain the rechargeable lithium battery or rechargeable lithium battery system. This is required to ensure that lithium rechargeable batteries and lithium rechargeable battery systems will not degrade below specified ampere-hour levels sufficient to power the aircraft system, for intended applications. The Instructions for Continued Airworthiness must also contain procedures for the maintenance of batteries in spares storage to prevent the replacement of batteries with batteries that have experienced degraded charge retention ability or other damage due to prolonged storage at a low state of charge. Replacement batteries must be of the same manufacturer and part number as approved by the FAA. Precautions should be included in the Instructions for Continued Airworthiness maintenance instructions to prevent mishandling of the rechargeable lithium battery and rechargeable lithium battery systems that could result in short-circuit or other unintentional impact damage caused by dropping or other destructive means that could result in personal injury or property damage.

Note 1: The electrical wiring interconnection systems (EWIS) maintenance and inspection tasks required by § 25.1729 must ensure that EWIS components associated with the batteries and battery systems are sufficient to detect degradation of any EWIS component that is designed and installed to support compliance with special conditions 1 through 8.

Note 2: The term ''sufficiently charged'' means that the battery will retain enough of a charge, expressed in ampere-hours, to ensure that the battery cells will not be damaged. A battery cell may be damaged by lowering the charge below a point where there is a reduction in the ability to charge and retain a full charge. This reduction would be greater than the reduction that may result from normal operational degradation.

Note 3: These special conditions are not intended to replace § 25.1353(b) at Amendment 25–123 in the certification basis of the Embraer Model EMB–550. These special conditions apply only to rechargeable lithium batteries and rechargeable lithium battery systems and their installations. The requirements of § 25.1353(b) at Amendment 25–123 remain in effect for batteries and battery installations on the Embraer Model EMB–550 that do not use rechargeable lithium batteries.

Issued in Renton, Washington, on June 2, 2014.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–13530 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–1031; Directorate Identifier 2013–NM–155–AD; Amendment 39–17854; AD 2014–11–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes; and Model A340–200, A340–300, A340–500, and A340–600 series airplanes. This AD was prompted by a non-connection of the constant speed motor/generator (CSM/G) during a final assembly operational test. This AD requires a detailed inspection of the connector wires for connector 1XE–A of the generator control unit (GCU)–CSM/

G for discrepancies (evidence of arcing or overheating damage), and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct incorrect locking of contacts into connector 1XE–A of the GCU–CSM/G, which could result in a loss of contact continuity and lead to the CSM/G not operating, which, in conjunction with an emergency electrical configuration loss of the main electrical system or total engine flameout, could adversely affect the airplane's safe flight.

DATES: This AD becomes effective July 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of July 15, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-1031;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227 1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes; and Model A340–200, A340–300, A340–500, and A340–600 series airplanes. The NPRM published in the **Federal Register** on December 26, 2013 (78 FR 78294).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0175, dated August 2, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During Final Assembly Line tests on an A330 aeroplane, the Generator Control Unit—Constant Speed Motor/Generator (GCU–CSM/G) failed the operational test.
>
> Investigations revealed that it is due to incorrect locking of some contacts (pins) into the GCU–CSM/G connector 1XE–A. An inspection of other aeroplanes confirmed this production quality issue. Among the 26 pins used in GCU–CSM/G connector 1XE–A, 6 pins have been identified as potentially affected by this issue.
>
> A badly locked contact could result in a loss of continuity [non-connection] and lead to the non-operation of the CSM/G.
>
> This condition, if not detected and corrected, and in conjunction with either an emergency electrical configuration loss of main electrical system or total engine flame out, could jeopardize the aeroplane's safe flight.
>
> To address this condition, Airbus developed Alert Operator Transmission (AOT) A24L001–13, to provide instructions for a one-time inspection.
>
> For the reasons described above, this AD requires a one-time [detailed] inspection of the potentially affected connector wires of GCU–CSM/G connector 1XE–A and, depending on [the] finding, accomplishment of [a related investigative action] and applicable corrective actions.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1031-0002.*

Revised Service Information

Since the NPRM (78 FR 78294, December 26, 2013) was published, we have received Airbus Alert Operators Transmission A24L001–13, Revision 01, dated March 6, 2014. We have determined that this service information does not add any additional actions to those proposed in the NPRM, therefore, we have revised paragraph (g) of this AD to refer to that service information. We have also added a new paragraph (h) to this AD to provide credit for actions performed before the effective date of this AD using Airbus Alert Operators Transmission A24L001–13, dated July 25, 2013, and redesignated the subsequent paragraphs accordingly. Additionally, we have added paragraph (k), Material Incorporated by Reference, to the end of this AD.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the NPRM (78 FR 78294, December 26, 2013) and the FAA's response to that comment.

Request To Clarify What Prompted the NPRM (78 FR 78294, December 26, 2013)

Airbus requested clarification in the SUMMARY section and paragraph (e) of the NPRM (78 FR 78294, December 26, 2013). Airbus stated that it was not ''failure of the generator control unit-constant speed motor/generator during a final assembly operational test'' that caused the unsafe condition, but a non-connection of the CSM/G during an operational test in the final assembly line. Investigations revealed an incorrect locking of some contacts into connector 1XE–A of the GCU–CSM/G.

We agree to revise the SUMMARY section and paragraph (e) of this final rule to state that this AD was prompted by a non-connection of the CSM/G during a final assembly operational test.

Changes to This Final Rule

Paragraphs (g)(1) and (g)(2) in the NPRM (78 FR 78294, December 26, 2013) have been combined into paragraph (g) in this final rule.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 78294, December 26, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 78294, December 26, 2013).

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

Costs of Compliance

We estimate that this AD affects 76 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $6,460, or $85 per product.

In addition, we estimate that any necessary follow-on actions will take about 1 work-hour and require parts costing up to $17,314, for a cost of up

to $17,399 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-1031;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–11–04 Airbus: Amendment 39–17854. Docket No. FAA–2013–1031; Directorate Identifier 2013–NM–155–AD.

(a) Effective Date

This AD becomes effective July 15, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, –343 airplanes; and A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes; certificated in any category; manufacturer serial numbers (MSNs) 1 through 1391 inclusive, except MSNs 0925 and 1382.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by a non-connection of the constant speed motor/generator (CSM/G) during a final assembly operational test. We are issuing this AD to detect and correct incorrect locking of contacts into connector 1XE–A of the generator control unit (GCU)–CSM/G, which could result in a loss of contact continuity and lead to the CSM/G not operating, which, in conjunction with an emergency electrical configuration loss of the main electrical system or total engine flameout, could adversely affect the airplane's safe flight.

(f) Compliance

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

(g) Inspections and Corrective Actions

Within 1,000 flight hours after the effective date of this AD: Do a detailed inspection for discrepancies (proper engagement and evidence of arcing or overheating) of the affected connector wires of connector 1XE–A of the GCU–CSM/G, in accordance with Airbus Alert Operators Transmission A24L001–13, Revision 01, dated March 6, 2014. If any discrepancy is detected during the inspection, before further flight, do all applicable related investigative and corrective actions, in accordance with Airbus Alert Operators Transmission A24L001–13, Revision 01, dated March 6, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Alert Operators Transmission A24L001–13, dated July 25, 2013, which is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2013–0175, dated August 2, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-1031-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

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

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

(i) Airbus Alert Operators Transmission A24L001–13, Revision 01, dated March 6, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on May 16, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–12444 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1088; Directorate Identifier 2008–NE–15–AD; Amendment 39–17831; AD 2008–21–07R1]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising airworthiness directive (AD) 2008–21–07 for certain Dowty Propellers model R408/6–123–F/17 propellers. AD 2008–21–07 required initial and repetitive inspections of the blade bonded metallic leading edge (L/E) guards for correct bonding until they accumulate more than 1,200 flight hours (FH) time-in-service. This AD requires the same inspection and replacement requirements of AD 2008–21–07. This AD also provides an optional terminating action to those requirements. This AD was prompted by updated service bulletins that identify terminating action to the requirements of AD 2008–21–07. We are issuing this AD to prevent the loss of the bonded metallic L/E guard of the propeller, which could result in damage to the propeller or to the airplane, or injury to personnel.

DATES: This AD is effective July 15, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 31, 2008 (73 FR 61346, October 16, 2008).

ADDRESSES: For service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2008–1088; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; email: *michael.schwetz@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2008–21–07, Amendment 39–15691 (73 FR 61346, October 16, 2008), (''AD 2008–21–07''). AD 2008–21–07 applied to the specified products. The NPRM published in the **Federal Register** on December 26, 2013 (78 FR 78290). The NPRM proposed to continue to require the inspection and replacement requirements of AD 2008–21–07 and provide an optional terminating action to those requirements.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 78290, December 26, 2013). Since we issued the NPRM we received information that propeller blade, part number (P/N) 697071278–18, has not been implemented and that no parts were manufactured using this P/N. We removed propeller blade, P/N 697071278–18, from this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 174 propellers installed on airplanes of U.S. registry. We also estimate that it will take about 4 hours per propeller to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $352 per propeller. Based on these figures, we estimate the cost of this AD to U.S. operators is $120,408.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–21–07, Amendment 39–15691 (73 FR 61346, October 16, 2008), and adding the following new AD:

AD 2008–21–07R1 Dowty Propellers Propellers: Amendment 39–17831; Docket No. FAA–2008–1088; Directorate Identifier 2008–NE–15–AD.

(a) Effective Date

This AD is effective July 15, 2014.

(b) Affected ADs

This AD replaces AD 2008–21–07, Amendment 39–15691 (73 FR 61346, October 16, 2008).

(c) Applicability

This AD applies to Dowty Propellers model R408/6–123–F/17 propellers with blades, part numbers 697071200–18, 697071210–18, 697071227–18, 697071240–18, 697071245–18, or 697071257–18, installed.

(d) Unsafe Condition

This AD was prompted by updated service bulletins that identify terminating action to the requirements of AD 2008–21–07 (73 FR 61346, October 16, 2008). We are issuing this AD to prevent the loss of the bonded metallic leading edge (L/E) guard of the propeller, which could result in damage to the propeller or to the airplane, or injury to personnel.

(e) Compliance

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

(1) Within the next 50 flight hours (FH) or within 30 days after the effective date of this AD, whichever occurs first, inspect all affected blade assemblies where the bonded metallic L/E guard has accumulated 1,200 FH time-in-service or less since installation, in accordance with the instructions of Dowty Propellers Alert Service Bulletin (ASB) No. D8400–61–A69, Revision 1, dated September 18, 2007.

(2) Within 50 FH or 30 days, whichever occurs first, after installing a replacement blade, inspect the affected blade assembly where the bonded metallic L/E guard has accumulated 1,200 FH time-in-service or less since installation, in accordance with the instructions of Dowty Propellers ASB No. D8400–61–A69, Revision 1, dated September 18, 2007.

(3) Thereafter, at intervals not to exceed 100 FH, repeat the inspection of the affected blade assemblies in accordance with the instructions of Dowty Propellers ASB No. D8400–61–A69, Revision 1, dated September 18, 2007, until the blade bonded metallic L/E guard has accumulated more than 1,200 FH time-in-service since installation.

(4) If, during any of the inspections required by this AD, disbonding is found, apply the criteria in Appendix A of Dowty Propellers ASB No. D8400–61–A69, Revision 1, dated September 18, 2007 and, within the associated time period, repair or replace the affected blade assembly in accordance with Dowty Propellers ASB No. D8400–61–A69, Revision 1, dated September 18, 2007.

(5) Blades that were repaired within the first 101.6 mm (4.0 inches) of the tip of the blade as specified in Appendix D of Dowty Propellers ASB No. D8400–61–A69, Revision 1, dated September 18, 2007, are eligible to continue in service for another 500 FH after accomplishment of the repair. Repair does not terminate the repetitive inspection requirements of paragraph (e)(3) of this AD.

(f) Optional Terminating Action

As optional terminating action to the repetitive inspection requirements of paragraph (e)(3) of this AD, modify the affected propeller using Dowty Propellers Service Bulletin (SB) No. D8400–61–70, Revision 3, dated June 3, 2013, or SB No. D8400–61–83, Revision 4, dated June 3, 2013, as applicable.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact Michael Schwetz, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7761; fax: 781–238–7170; email: *michael.schwetz@faa.gov*.

(2) Refer to MCAI European Aviation Safety Agency AD 2007–0223R4, dated September 30, 2013, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2008-1088-0006*.

(i) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on July 15, 2014.

(i) Dowty Propellers Service Bulletin (SB) No. D8400–61–70, Revision 3, dated June 3, 2013.

(ii) Dowty Propellers SB No. D8400–61–83, Revision 4, dated June 3, 2013.

(4) The following service information was approved for IBR on October 31, 2008, 73 FR 61346, October 16, 2008.

(i) Dowty Propellers Alert Service Bulletin No. D8400–61–A69, Revision 1, including Appendices A and D, dated September 18, 2007; and Appendices B and C dated August 15, 2007.

(ii) Reserved.

(5) For Dowty Propellers service information identified in this AD, contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL2 9QN, UK; phone: 44 (0) 1452 716000; fax: 44 (0) 1452 716001.

(6) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(7) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on May 15, 2014.

Kim Smith,

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

[FR Doc. 2014–12266 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0938; Directorate Identifier 2012–SW–057–AD; Amendment 39–17852; AD 2014–11–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) (Airbus Helicopters) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters to require repetitively inspecting frame number (No.) 9 for a crack. This AD was prompted by a report of a crack in frame No. 9 on an AS365 helicopter. The actions of this AD are intended to detect a crack and prevent loss of structural integrity and subsequent loss of control of the helicopter.

DATES: This AD is effective July 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of July 15, 2014.

ADDRESSES: For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On November 6, 2013, at 78 FR 66668, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Eurocopter (now Airbus Helicopters) Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters. The NPRM proposed to require, for helicopters that have a No. 9 frame that has had any repair or alteration made, within 10 hours time-in-service (TIS) and every 110 hours TIS thereafter, inspecting the left-hand (LH) and right-hand (RH) frame No. 9 for a crack in the areas of the latch support and stretcher support with a 10X or higher power magnifying glass. For all other helicopters, the NPRM proposed to require the inspection within 110 hours TIS and every 110 hours TIS thereafter. If there is a crack, the NPRM proposed to require, before further flight, repairing the crack. The proposed requirements were intended to detect a crack and prevent loss of structural integrity and subsequent loss of control of the helicopter.

The NPRM was prompted by AD No. 2012–0108–E, dated June 15, 2012 (AD 2012–0108–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Eurocopter Model SA 365 N, SA 365 N1, AS 365 N2, and AS 365 N3 helicopters with a frame No. 9 installed, if certain ''doublers or repairs have been installed.'' EASA advises that a crack discovered during the ''T'' inspection of a Model AS365 helicopter started at a rivet hole of a doubler installed on the frame No. 9 in accordance with Eurocopter Alert Service Bulletin (ASB) No. 53.00.42, dated January 31, 2001. EASA further states that structural alteration of frame No. 9 by modifications or repairs can result in fatigue crack initiation under normal operational loads. According to EASA, this condition, if not corrected, could lead to crack propagation and failure of frame No. 9, which would adversely affect the structural integrity of the helicopter. For these reasons, AD 2012–0108–E requires repetitive inspections of frame No. 9 for a crack in the area of the doubler or any repair performed in the area of the latch support and stretcher support.

Since we issued the NPRM, Eurocopter France has changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service documentation.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (78 FR 66668, November 6, 2013).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed except for the minor change previously described. This change is consistent with the intent of the proposals in the NPRM (78 FR 66668, November 6, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

The EASA AD requires contacting Eurocopter (now Airbus Helicopters) for repair instructions if there is a crack, and this AD does not. This AD applies to all Model 365 helicopters, not just those that were altered or repaired in accordance with specific Eurocopter modifications (MODs).

Related Service Information

Eurocopter issued one Emergency ASB (EASB) with two numbers: EASB No. 05.00.63, Revision 1, dated June 18, 2012, for Model AS365 helicopters and EASB No. 05.00.30, Revision 1, dated June 18, 2012, for Model AS565 helicopters. The EASB applies to helicopters with a frame No. 9 that has not been modified by MOD 07 53C17 or MOD 07 53D02, and that has had doublers installed or repairs performed in accordance with certain service instructions. The EASB describes procedures to inspect the frame No. 9 for a crack, and for contacting

Eurocopter for further procedures if there is a crack.

Costs of Compliance

We estimate that this AD affects 37 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per work-hour, inspecting LH and RH frame No. 9 will require about 3 work-hours, for a cost per helicopter of $255 and a total cost to U.S. operators of $9,435 per inspection cycle. Repairing a cracked frame No. 9 will require about 20 work-hours, and required parts will cost about $10,000, for a cost per helicopter of $11,700.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–11–02 Airbus Helicopters (Previously Eurocopter France): Amendment 39–17852; Docket No. FAA–2013–0938; Directorate Identifier 2012–SW–057–AD.

(a) Applicability

This AD applies to Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in frame number (No.) 9, which could result in failure of frame No. 9, loss of structural integrity, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective July 15, 2014.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) For helicopters that have any repair or alteration to the frame No. 9, within 10 hours time-in-service (TIS) and thereafter at intervals not to exceed 110 hours TIS, using a 10X or higher power magnifying glass, inspect the left-hand (LH) and right-hand (RH) frame No. 9 for a crack in the area of the latch support and stretcher support, as depicted in Figure 1 of Eurocopter Emergency Alert Service Bulletin No. 05.00.63, Revision 1, dated June 18, 2012.

(2) For all other helicopters, within 110 hours TIS and thereafter at intervals not to exceed 110 hours TIS, perform the inspection in paragraph (e)(1) of this AD.

(3) If there is a crack, before further flight, repair the frame No. 9. Repairing a frame is not terminating action for the repetitive inspections required by paragraphs (e)(1) and (e)(2) of this AD.

(f) Special Flight Permits

Special flight permits may be issued for up to 10 hours TIS and a maximum crack length of 80 mm.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2012–0108–E, dated June 15, 2012. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket number FAA–2013–0938.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5300, Fuselage Structure (General).

(j) Material Incorporated by Reference

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

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

(i) Eurocopter Emergency Alert Service Bulletin No. 05.00.63, Revision 1, dated June 18, 2012.

(ii) Reserved.

Note 1 to paragraph (j)(2): Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.63, Revision 1, dated June 18, 2012, is co-published as one document along with Eurocopter EASB No. 05.00.30, Revision 1, dated June 18, 2012, which is not incorporated by reference.

(3) For Eurocopter service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*.

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://*

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Fort Worth, Texas, on May 21, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–12721 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0156; Directorate Identifier 2014–CE–001–AD; Amendment 39–17860; AD 2014–11–09]

RIN 2120–AA64

Airworthiness Directives; Costruzioni Aeronautiche Tecnam srl Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a cracked engine mount. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective July 15, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 15, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0156; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Costruzioni Aeronautiche Tecnam Airworthiness Office, Via Maiorise–81043 Capua (CE) Italy; telephone: +39 0823 620134; fax: +39 0823 622899; email: *m.oliva@tecnam.com* or *g.paduano@tecnam.com*; Internet: *www.tecnam.com/it-IT/documenti/service-bulletins.aspx.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to adding an AD that would apply to Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes. The NPRM was published in the **Federal Register** on March 14, 2014 (79 FR 14447). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> During a ''100 hours'' inspection of a P2006T aeroplane, one engine mount Part Number (P/N) 26–7–1200–000 was found cracked on a node.
>
> This condition, if not detected and corrected, could lead to engine damage, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> To address this potential unsafe condition, TECNAM issued Service Bulletin (SB) 138–CS-Rev0, providing inspection instructions.
>
> For the reasons described above, this AD requires a one-time inspection of each engine mount P/N 26–7–1200–000 and, depending on findings, replacement of the engine mount(s).
>
> This AD is considered an interim action and further AD action may follow.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0156-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 14447, March 14, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 14447, March 14, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 14447, March 14, 2014).

Interim Action

We consider this AD interim action. We are requiring inspection of the left hand and right hand engine mounts with a report to the manufacturer of the results if cracks or deformation is found. We will work with the type certificate holder to evaluate the report results to determine repetitive inspection intervals and subsequent terminating action. Based on this evaluation, we may initiate further rulemaking action to address the unsafe condition identified in this AD.

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $5,100, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 18 work-hours and require parts costing $1,570 (per engine mount), for a cost of $3,100 per product. We have no way of determining the number of products that may need these actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591. ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0156; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–11–09 Costruzioni Aeronautiche Tecnam srl: Amendment 39–17860; Docket No. FAA–2014–0156; Directorate Identifier 2014–CE–001–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective July 15, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a cracked engine mount. We are issuing this AD to detect and correct cracked or deformed engine mounts, which could lead to engine damage, possibly resulting in damage to the airplane and injury to the occupants.

(f) Actions and Compliance

Unless already done, do the following actions as specified in paragraphs (f)(1) through (f)(3) of this AD:

(1) *For airplanes with 600 hours time-in-service (TIS) or more as of July 15, 2014 (the effective date of this AD):* Within the next 25 hours TIS after July 15, 2014 (the effective date of this AD) or within the next 30 days after July 15, 2014 (the effective date of this AD), whichever occurs first, inspect the left hand and right hand engine mounts, part number (P/N) 26–7–1200–000, for cracks and deformation following Costruzioni Aeronautiche TECNAM Mandatory Service Bulletin No. SB 138–CS, Rev. 0, dated November 25, 2013.

(2) *For airplanes with less than 600 hours TIS as of July 15, 2014 (the effective date of this AD):* After accumulating 600 hours TIS but before exceeding 625 hours TIS, inspect the left hand and right hand engine mounts, P/N 26–7–1200–000, for cracks and deformation following Costruzioni Aeronautiche TECNAM Mandatory Service Bulletin No. SB 138–CS, Rev. 0, dated November 25, 2013.

(3) If a crack or any other deformation is found during the inspection required by paragraph (f)(1) or (f)(2) of this AD, before further flight, you must contact Costruzioni Aeronautiche Tecnam srl to obtain FAA-approved repair instructions approved specifically for compliance with this AD and incorporate those instructions. You can find contact information for Costruzioni Aeronautiche Tecnam srl in paragraph (i)(3) of this AD. Use the occurrence report in Costruzioni Aeronautiche TECNAM Mandatory Service Bulletin No. SB 138–CS, Rev. 0, dated November 25, 2013.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090; email: *albert.mercado@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0001, dated January 6, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0156-0002.*

(i) Material Incorporated by Reference

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

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

(i) Costruzioni Aeronautiche TECNAM Mandatory Service Bulletin No. SB 138–CS, Rev. 0, dated November 25, 2013.

(ii) Reserved.

(3) For Costruzioni Aeronautiche Tecnam srl service information identified in this AD, contact Costruzioni Aeronautiche Tecnam Airworthiness Office, Via Maiorise–81043 Capua (CE) Italy; telephone: +39 0823 620134; fax: +39 0823 622899; email: *m.oliva@tecnam.com* or *g.paduano@tecnam.com;* Internet: *www.tecnam.com/it-IT/documenti/service-bulletins.aspx.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on May 27, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–12781 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0334; Directorate Identifier 2014–SW–021–AD; Amendment 39–17858; AD 2014–07–52]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are publishing a new airworthiness directive (AD) for certain Airbus Helicopters (previously Eurocopter France) Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, which was sent previously to all known U.S. owners and operators of these helicopters. This AD requires repetitively inspecting certain reinforcement angles of the rear structure to tailboom junction frame (reinforcement angles) for a crack, and repairing any cracked reinforcement angle. This AD is prompted by a report that cracks were found in the reinforcement angles on several AS355 helicopters. These actions are intended to detect a crack in the reinforcement angle, which if not corrected, could result in loss of the tailboom and subsequent loss of control of the helicopter.

DATES: This AD becomes effective June 25, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD (EAD) 2014–07–52, issued on March 28, 2014, which contained the requirements of this AD.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of June 25, 2014

We must receive comments on this AD by August 11, 2014.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated by reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.You* may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On March 28, 2014, we issued EAD 2014–07–52, which requires, for certain helicopters, within 10 hours time-in-service (TIS) and within every 10 hours TIS thereafter, inspecting the right-hand reinforcement angles for a crack and repairing any cracked reinforcement angle. As an option to performing the 10 hour TIS repetitive inspections, the EAD allows an alternate 165 hour TIS repetitive inspection. The EAD was sent previously to all known U.S. owners and operators of these helicopters.

EAD 2014–07–52 was prompted by EAD No. 2014–0076–E, dated March 25, 2014, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with Modification (MOD) 07 3215 or with at least one reinforcement angle, P/N 350A08.2493.21 or P/N 350A08.2493.23, installed. EASA advises that during the inspection of several AS355 helicopters, cracks were found in the reinforcement angles. EASA further states that a subsequent investigation revealed that cracks were initiated on the non-visible surface of the angle, which is the surface in contact with the frame, and that this condition, if not corrected, could lead to further crack propagation and subsequent loss of the tailboom, resulting in loss of the helicopter. The EASA EAD requires repetitive inspections of the reinforcement angles, and states that a terminating action is currently under investigation.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA EAD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

Airbus Helicopters has issued Emergency Alert Service Bulletin (EASB) No. 05.00.70 for Model AS350B, BA, BB, B1, B2, B3, and D helicopters and EASB No. 05.00.62 for Model AS355E, F, F1, F2, N, and NP helicopters, both Revision 0 and dated March 24, 2014. EASB No. 05.00.70 and EASB No. 05.00.62 describe procedures for inspecting the angle reinforcements for a crack.

AD Requirements

This AD requires, for helicopters with 640 or more hours time-in-service (TIS) since installation of MOD 07 3215 or since installation of an applicable reinforcement angle, within 10 hours TIS, and thereafter at intervals not exceeding 10 hours TIS, inspecting certain reinforcement angles for a crack. If there is a crack, this AD requires, before further flight, repairing the reinforcement angle. As an option to performing the 10-hour TIS repetitive inspections, this AD allows an alternate 165-hour TIS repetitive inspection.

Differences Between This AD and the EASA AD

This AD is not applicable to the AS350BB as that model is not type certificated in the U.S. This AD applies to Airbus Helicopters Model AS350C and AS350D1 helicopters because these helicopters have a similar design. The EASA EAD requires a 165 hour TIS repetitive inspection, this AD allows the 165 hour TIS inspection as an option. Finally, the EASA EAD requires operators to contact Airbus Helicopters if there is a crack, this AD does not, however it does require repairing the crack before further flight.

Interim Action

We consider this AD to be an interim action. If final action is later identified, we might consider further rulemaking then.

Costs of Compliance

We estimate that this AD will affect 822 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the reinforcement angles for a crack will require 1 work-hour, for a cost per helicopter of $85 and a total cost of $69,870 for the U.S. fleet. If required, repairing a cracked reinforcement angle will require about 10 work-hours, and required parts will cost about $300, for a total cost per helicopter of $1,150.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found and continue to find that the risk to the flying public justifies waiving notice and comment prior to adopting this rule because the required corrective actions must be done within 10 hours time-in-service, a very short time period based on the average flight-hour utilization rate of these helicopters.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment before issuing this AD were impracticable and contrary to the public interest and good cause existed to make the AD effective immediately by EAD 2014–07–52, issued on March 28, 2014 to all known U.S. owners and operators of these helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–07–52 Airbus Helicopters (previously Eurocopter France): Amendment 39–17858; Docket No. FAA–2014–0334; Directorate Identifier 2014–SW–021–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, with:

(1) Modification (MOD) 07 3215 installed; or

(2) With a reinforcement angle, part number (P/N) 350A08.2493.21 or P/N 350A08.2493.23, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in a rear structure to tailboom junction frame reinforcement angle (reinforcement angle), which if not detected could result in loss of the tailboom and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective June 25, 2014 to all persons except those persons to whom it was made immediately effective by Emergency AD 2014–07–52, issued on March 28, 2014, which contained the requirements of this AD.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) For helicopters with 640 or more hours time-in-service (TIS) since installation of MOD 07 3215 or since installation of an applicable reinforcement angle, within 10 hours TIS, and thereafter, at intervals not exceeding 10 hours TIS, inspect each reinforcement angle for a crack as depicted in Figure 1 of Airbus Helicopters Emergency Alert Service Bulletin No. 05.00.70 for Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1 helicopters and Airbus Helicopters Emergency Alert Service Bulletin No. 05.00.62 for AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, both Revision 0 and dated March 24, 2014.

(2) If there is a crack, before further flight, repair the reinforcement angle in a manner approved by the manager listed in paragraph (f)(1) of this AD.

(3) As an optional terminating action for the repetitive inspections required by paragraph (e)(1) of this AD, at intervals not exceeding 165 hours TIS, remove screw No. 5 from the reinforcement angle, thoroughly clean the area around the hole and inspect the reinforcement angle for a crack. If there is not a crack, reinstall the screw. Sequentially repeat the steps required by this paragraph for screws No. 6 through No. 12. If there is a crack, comply with paragraph (e)(2) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *robert.grant@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) Emergency AD No. 2014–0076–E, dated March 25, 2014. You may view the EASA Emergency AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0334.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5302: Rotorcraft Tailboom.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Emergency Alert Service Bulletin No. 05.00.62, Revision 0, dated March 24, 2014.

(ii) Airbus Helicopters Emergency Alert Service Bulletin No. 05.00.70, Revision 0, dated March 24, 2014.

Note 1 to paragraph (i)(2): Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 05.00.62, Revision 0, dated March 24, 2014, and Airbus Helicopters EASB No. 05.00.70, Revision 0, dated March 24, 2014, are co-published as one document along with Airbus Helicopters EASB No. 05.00.45, Revision 0, dated March 24, 2014, and Airbus Helicopters EASB No. 05.00.41, Revision 0, dated March 24, 2014, which are not incorporated by reference in this AD.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued in Fort Worth, Texas, on May 21, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–12724 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 106

[Docket No. FDA–2014–D–0033]

Guidance for Industry: Demonstration of the Quality Factor Requirements for ''Eligible'' Infant Formulas; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance which describes our current thinking on the quality factor requirements for eligible infant formulas, the record requirements for eligible infant formulas, and the submission of citizen petitions for eligible infant formulas.

DATES: Submit either electronic or written comments on FDA guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.*

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Benson M. Silverman, Center for Food Safety and Applied Nutrition (HFS–850), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1451.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Guidance for Industry: Demonstration of the Quality Factor Requirements Under 21 CFR 106.96(i) for 'Eligible' Infant Formulas.'' This guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents our current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

The guidance is intended to address questions regarding new requirements for eligible infant formulas in 21 CFR 106.96(i). A final rule amending part 106, and establishing the requirements under § 106.96(i), is published elsewhere in this issue of the **Federal Register**.

In the **Federal Register** of February 10, 2014 (79 FR 7609), we made available a draft guidance entitled ''Draft Guidance for Industry: Demonstration of the Quality Factor Requirements for 'Eligible' Infant Formulas'' and gave interested parties an opportunity to submit comments by March 27, 2014, for us to consider before beginning work on the final version of the guidance. We received no comments on the draft guidance but have modified the final guidance where appropriate to correspond to requirements set forth in the final rule, ''Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula,'' published elsewhere in this issue of the **Federal Register**. For example, because the final rule revised the definition of an ''eligible infant formula'' from what was originally published in an interim final rule on February 10, 2014 (79 FR 7934), we revised the guidance to reflect that change. In addition, we revised the guidance to provide more detailed recommendations if a manufacturer includes proprietary information in its citizen petition submitted in accordance with § 106.96(i)(3). Furthermore, we made other edits so that the language in the guidance corresponds more closely to that used in the final rule. The guidance announced in this document finalizes the draft guidance dated February 2014.

II. Paperwork Reduction Act of 1995

This guidance refers to existing regulations in part 10 (21 CFR part 10) as well as the final rule, ''Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula,'' published elsewhere in this issue of the **Federal Register**, which amends parts 106 and 107 (21 CFR parts 106 and 107). The collection of information in part 10 has been approved under OMB control number 0910–0183. The collections of information in parts 106 and 107 have been approved under OMB control number 0910–0256. These collections of information amended by the final rule are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Information Collection Request for the final rule is currently under review.

III. Comments

Interested persons may submit either electronic comments regarding the guidance to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13386 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 106 and 107

[Docket No. FDA–1995–N–0063 (formerly 95N–0309)]

RIN 0910–AF27

Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a final rule that adopts, with some modifications, the interim final rule (IFR) entitled ''Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula'' (February 10, 2014). This final rule affirms the IFR's changes to FDA's regulations and provides additional modifications and clarifications. The final rule also responds to certain comments submitted in response to the request for comments in the IFR.

DATES: This final rule is effective July 10, 2014. The compliance date for manufacturers to meet the requirements of §§ 106.96(a), 106.96(e), 106.96(i)(5), 106.100(p)(2) and 106.100(q)(2) related to quality factors for eligible infant formulas is November 12, 2015. The compliance date for the remaining provisions of this final rule is September 8, 2014. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by July 10, 2014 (see section VII, the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: To ensure that comments on the information collection are received, the Office of Management and Budget (OMB) recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0256 and titled ''Infant Formula Requirements.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Benson M. Silverman, Office of

Nutrition, Labeling, and Dietary Supplements (HFS–850), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1451.

SUPPLEMENTARY INFORMATION:

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I. Background

We are issuing this final rule to establish requirements for quality factors for infant formulas and good manufacturing practices, including quality control procedures, under section 412 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 350a). The final rule will help prevent the manufacture of adulterated infant formula, ensure the safety of infant formula, and ensure that the nutrients in infant formula are present in a form that is bioavailable.

Congress passed the Infant Formula Act of 1980 (the Infant Formula Act) (Public Law 96–359), which created section 412 of the FD&C Act. In 1986, Congress, as part of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) (the 1986 amendments), amended section 412 of the FD&C Act to address concerns related to the sufficiency of quality control testing, current good manufacturing practices (CGMP), recordkeeping, and recall requirements for infant formula. The requirements in the final rule improve protection of infants consuming infant formula products by establishing greater regulatory control over the formulation and production of infant formula.

We previously implemented certain of the provisions in the Infant Formula Act and 1986 amendments. This final rule implements the remaining provisions of the 1986 amendments, including provisions for CGMPs and quality factor requirements.

This final rule generally affirms the IFR's changes to FDA's regulations at parts 106 and 107 (21 CFR parts 106 and 107) and provides additional modifications and clarifications to part 106. The final rule also responds to certain comments submitted in response to the request for comments in the IFR (79 FR 7934, February 10, 2014).

II. Summary of Changes Made to the Interim Final Rule

A. Definitions (§ 106.3)

1. Eligible Infant Formula

We are amending the definition of ''eligible infant formula'' in § 106.3. Eligible infant formula means an infant formula that could be lawfully distributed in the United States on December 8, 2014.

2. Quality Factors

We are clarifying the definition of ''quality factors'' in § 106.3. Under this final rule, quality factors means those factors necessary to demonstrate the safety of the infant formula and the bioavailability of its nutrients, as prepared for market and when fed as the sole source of nutrition, to ensure the healthy growth of infants.

B. Controls To Prevent Adulteration Caused by Facilities (§ 106.20)

We are modifying the language in § 106.20(i) to permit doors to toilet facilities to open into the plant facilities where infant formula, ingredients, containers, or closures are processed, handled, or stored if alternate means have been taken to protect against contamination.

C. Controls To Prevent Adulteration Caused by Equipment or Utensils (§ 106.30)

We are deleting § 106.30(e)(2)(ii)(A) and combining § 106.30(e)(2)(ii) from the IFR with § 106.30(e)(2)(ii)(B) from the IFR. The section is designated as § 106.30(e)(2)(ii). In the final rule, § 106.30(e)(2)(ii) states that ''A manufacturer may maintain a cold storage area for an in-process infant formula or for a final infant formula at a temperature not to exceed 45 °F (7.2 °C) for a defined period of time provided that the manufacturer has scientific data and other information to demonstrate that the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage of the in-process or final infant formula product.''

D. Controls To Prevent Adulteration Due to Automatic (Mechanical or Electronic) Equipment (§ 106.35)

We are amending § 106.35(a)(4) to clarify that validation can be accomplished through any suitable means, such as verification studies or modeling. We are also amending § 106.35(b)(1) to specify that requirements for the calibration, inspection, and checking of hardware apply at any point, step, or stage where control is necessary to prevent adulteration of infant formula.

E. Controls To Prevent Adulteration During Manufacturing (§ 106.50)

We are deleting the word ''drafted'' from § 106.50(a)(2) in the final rule in response to a comment noting that persons other than a responsible official could draft changes to a master manufacturing order.

F. General Quality Control (§ 106.91)

1. Section 106.91(b)(1)

We are reducing the required frequency of stability testing for new infant formulas from every 3 months to every 4 months in § 106.91(b)(1)(i) of the final rule because we agree with a comment that explained that stability testing of new formulas every 3 months, as required by § 106.91(b)(1) in the IFR, would not provide additional public health protection over testing every 4 months.

We are modifying § 106.91(b)(1) to provide an exemption from the testing required by § 106.91(b)(1) of the IFR if the manufacturer of a new infant formula requests an exemption and provides analytical data that demonstrate that the stability of the new infant formula will likely not differ from the stability of formulas with similar composition, processing, and packaging for which there are extensive stability data. In doing so, we are renumbering § 106.91(b)(1) of the IFR as § 106.91(b)(1)(i) and creating § 106.91(b)(1)(ii) in the final rule to provide the exemption. The manufacturer would request the exemption in the 90-day notification for the new infant formula as required by new § 106.120(b)(7). If the manufacturer is exempted from the testing required by § 106.91(b)(1)(i), the manufacturer would then be required under § 106.91(b)(1)(ii) to test the first production aggregate of the new infant formula in accordance with the stability testing requirements for subsequent production aggregates in § 106.91(b)(2).

2. Section 106.91(b)(2)

We are deleting the requirement to conduct stability testing at the midpoint of the shelf life for infant formulas tested under § 106.91(b)(2) in response to a comment that questioned how measuring nutrients at the midpoint of shelf life would provide additional assurance for formulas for which stability data have been established. We

agree with the comment that the critical data are the nutrient levels present at the end of shelf life and that the midpoint data are not essential.

3. Section 106.91(b)(3) and (4)

We are making a technical correction to § 106.91(b)(3) of the final rule to clarify our intent that manufacturers have the option to adjust the ''Use by'' date on an infant formula container so that such date is substantiated if the stability data from the testing required by § 106.91(b)(1) did not substantiate the anticipated shelf life of the formula. We are also changing § 106.91(b)(3) to provide flexibility for manufacturers to take other appropriate actions, in addition to conducting the testing required by § 106.91(b)(1) or adjusting the ''Use by'' date, when stability testing does not substantiate the shelf life of the formula. Further, we are clarifying that the manufacturer must address all production aggregates released and pending release for distribution that are implicated by the testing results.

We are making conforming changes to § 106.91(b)(4)(iii) to clarify that manufacturers also must address all production aggregates released and pending release for distribution that are implicated by testing results required by § 106.91(b)(2) that show that any nutrient that is not present in the production aggregate of infant formula at the level intended by the manufacturer.

We are making other conforming changes in § 106.91(b)(3) and (4) as a result of changes made to these provisions in the final rule.

G. Requirements for Quality Factors for Infant Formulas (§ 106.96)

We are revising the exemption in § 106.96(c)(2)(ii) so that it applies when a change to a formula does not impact normal physical growth. We are also adding section 106.96(g)(3), which states that FDA will exempt a manufacturer from the requirements of conducting a protein efficiency ratio (PER) rat bioassay if the manufacturer requests an exemption and provides assurances, as required under § 106.121(i), that demonstrate that an alternative method to the PER that is based on sound scientific principles is available to show that the formula supports the quality factor for the biological quality of the protein.

H. Records (§ 106.100)

We are revising § 106.100(m) to require access to records ''within 24 hours'' in response to a comment.

I. New Infant Formula Submission (§ 106.120)

As stated earlier in section II.F.1 of this document, we are providing an exemption in § 106.91(b)(1)(ii) from the testing required by § 106.91(b)(1) if the manufacturer of a new infant formula requests an exemption and provides analytical data that demonstrate that the stability of the new infant formula will likely not differ from the stability of formulas with similar composition, processing, and packaging for which there are extensive stability data. In doing so, we added § 106.120(b)(7), which states that if the manufacturer is requesting an exemption under § 106.91(b)(1)(ii), the manufacturer shall include the scientific evidence that the manufacturer is relying on to demonstrate that the stability of the new infant formula will likely not differ from the stability of formulas with similar composition, processing, and packaging for which there are extensive stability data.

J. Quality Factor Assurances for Infant Formulas (§ 106.121)

We are making a change to § 106.121 by adding § 106.121(i) to the final rule, which states that if the manufacturer is requesting an exemption under § 106.96(g)(3), the manufacturer shall include a detailed explanation of the alternative method, an explanation of why the method is based on sound scientific principles, and the data that demonstrates that the quality factor for the biological quality of the protein has been met.

III. Comments on the Interim Final Rule

We provided an opportunity for comment in the IFR but indicated that comments submitted in response to the IFR ''should be limited to those that present new issues or new information'' (79 FR 7934 at 8056). The preamble to the IFR also stated that ''Comments previously submitted to the Division of Dockets Management have been considered and addressed in this IFR and should not be resubmitted'' (id).

We received a number of comments to the IFR. The comments were generally supportive of the rule. After considering all the comments submitted to this docket number, we are making minor technical corrections, clarifications to some provisions in response to comments that indicate some confusion on the part of industry, and modifications that increase flexibility with respect to certain requirements included in the IFR. In addition, we summarize and respond to relevant portions of comments.

To make it easier to identify comments and FDA's responses, the word ''Comment,'' in parentheses, appears before the comment's description, and the word ''Response,'' in parentheses, appears before FDA's response. Each comment is numbered to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance.

A. Subpart A—General Provisions

1. Definitions (§ 106.3)

(Comment 1) One comment stated that FDA's definition of quality factors in the IFR introduced a novel concept, i.e., the ''bioavailability . . . of the formula,'' that is inconsistent with FDA's definition of bioavailability in the IFR and with the scientific and common meaning of ''bioavailability,'' which refers to absorption of particular nutrients. The comment continued that the concept of the bioavailability of a food should be subjected to external nutritional science input before being given the force and effect of law and recommended that the definition of quality factors in the 1996 proposed rule be restored.

(Response) We recognize that the wording of the definition of quality factors in the IFR inadvertently suggested a ''novel'' concept of ''bioavailability.'' To clarify and better align the wording in the definition of quality factors with the definition of bioavailability used by FDA and the scientific community, we are modifying the wording of the definition of ''quality factor'' in § 106.3 in the final rule.

The revised definition still speaks to the safety of the formula while clarifying that the term ''bioavailability'' refers to nutrients. We note, however, that the infant formula as a whole, i.e., the matrix that contains the nutrients, must be formulated, processed, and packaged such that the nutrients are bioavailable. Changes in an infant formula matrix can greatly influence nutrient bioavailability (see 79 FR 7934 at 8007). Because infants are fed formula as the sole source of nutrients, it is imperative that formulas have characteristics that allow the nutrients to be bioavailable.

We decline to restore the definition of quality factors from the 1996 proposed rule. As discussed in response to comment 23 of the IFR, the definition of quality factors in the proposed rule caused some people to interpret

''healthy growth'' as a separate quality factor (79 FR 7934 at 7950–7951).

(Comment 2) One comment expressed concern with defining quality factors to apply to bioavailability of the infant formula as a whole, but did not explain the basis for its concern. Another comment asserted that our explanation for why quality factors apply to the ''bioavailability . . . of the formula'' is inconsistent with the definition of ''bioavailability'' as understood by Congress and fails to consider other more plausible and well-precedented interpretations of Congressional intent. The comment stated that FDA's conclusion that quality factors pertain to the ''bioavailability . . . of the formula'' appears arbitrary in the context of the 1986 Amendments to the Infant Formula Act of 1980. The comment stated that the statutory language requiring that the Secretary of Health and Human Services (the Secretary) establish requirements for quality factors for infant formulas ''including'' quality factor requirements for the nutrients required to be contained in infant formula under section 412(i) of the FD&C Act demonstrates that Congress intended to grant FDA the authority to establish quality factor requirements for individual nutrients other than those specified in section 412(i) of the FD&C Act, as well as quality factor requirements relating to issues other than the quantitative levels of nutrients as prescribed in section 412(i) of the FD&C Act (e.g., the bioavailability of distinct forms of individual nutrients), but not the authority to establish quality factor requirements for the infant formula as a whole. The comment argued that the IFR's definition of ''quality factors'' fails the legal analysis provided by FDA in section VIII.A of the IFR because Congress was not silent about the meaning of the term quality factors.

(Response) To the extent that either comment relates to the explanation of bioavailability as set forth in the IFR and the suggestion that bioavailability relates to the infant formula as a whole, rather than to the bioavailability of individual nutrients, we address this issue in our response to comment 1. To the extent these comments assert that we lack authority to establish a definition of quality factors that relates to the infant formula as a whole, we disagree. We also disagree with the assertion that the legal analysis provided in section VIII.A of the IFR failed to consider all the possible interpretations of the statutory language or otherwise provides an insufficient or inaccurate analysis of FDA's authority.

Comment 195 in the preamble to the IFR explicitly challenged FDA's authority to establish the quality factor of normal physical growth, which relates to the formula as a whole rather than any individual nutrient (79 FR 7934 at 8003). In responding to comment 195, we provided a detailed interpretation of our authority based, in part, on section 412(b)(1) of the FD&C Act, and we summarize some of this argument below (79 FR 7934 at 8003 through 8006). We reaffirm our explanation of our authority as set forth in the response to comment 195 in the preamble to the IFR.

As discussed in the preamble to the IFR, section 412(b)(1) of the FD&C Act requires the Secretary to ''by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by [section 412(i)].'' This statutory language indicates that the Secretary must establish quality factors for (1) the individual nutrient components required under subsection (i) and (2) the infant formula as a whole to the extent possible consistent with current scientific knowledge. The language is silent regarding what the exact quality factors should be. The 1986 Amendments to the 1980 Infant Formula Act are consistent with our interpretation that quality factors extend beyond requirements for individual nutrients. The original language from the Infant Formula Act of 1980 authorized the Secretary to, by regulation, ''establish requirements for quality factors for such nutrients [required by subsection (g)].'' Infant Formula Act of 1980, Public Law 96–359, section 2, 94 Stat. 1190 (1980). (Subsection (g) of section 412 of the FD&C Act was subsequently redesignated as subsection (i) of section 412 of the FD&C Act as part of the 1986 Amendments. Anti-Drug Abuse Act of 1986, Public Law 99–570, section 4014(a)(1), 100 Stat. 3207 (1986).) In 1986, however, the infant formula provisions were amended to specify in revised section 412(b)(1) of the FD&C Act that the ''Secretary shall by regulation establish requirements for *quality factors for infant formulas,* . . . including quality factor requirements for the nutrients required by subsection (i).'' (Emphasis added). This amendment clarified that quality factor requirements apply to the ''infant formula'' as a whole as well as to the individual nutrients.

Further, requiring that quality factors relate to the safety of the infant formula as a whole is reasonable when considering the statutory scheme as a whole. *See FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (explaining that the words of a statute must be read in the context of the overall statutory scheme). Our explicit statutory mission is, in part, to protect the public health by ensuring that foods (including infant formula) are safe, wholesome, sanitary, and properly labeled (section 903(b)(2)(A) of the FD&C Act) (21 U.S.C. 393(b)(2)(A)). Further, the FD&C Act touches ''phases of the lives and health of people which, in the circumstances of modern industrialism, are largely beyond self protection. Regard for these purposes should infuse construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words.'' *United States* v. *Dotterweich,* 320 U.S. 277, 281 (1943); see also *United States* v. *Park,* 421 U.S. 658, 668 (1975). The Infant Formula Act and the 1986 amendments were meant to ensure the ''safety and nutrition'' of infant formulas, and this purpose is achieved, in part, through the establishment of requirements for quality factors that help ensure the safety of the infant formula as a whole. *See* Public Law 96–359, 94 Stat. 1190, 1190 (1980).

(Comment 3) One comment expressed concern that the IFR is silent on what changes, other than major changes, should be submitted to FDA before processing for FDA's concurrence in the manufacturer's assessment. The comment stated that because the guidelines issued under 21 CFR 106.30(c)(2) (and incorporated by reference in the 1986 Infant Formula Act Amendments) discuss changes other than major changes and have the force and effect of law, we should honor those guidelines.

(Response) We disagree that the IFR is silent on what changes, other than major changes, a manufacturer should submit to FDA before first processing (BFP). We addressed this issue in response to comments 256 and 352 of the IFR (79 FR 7934 at 8021 and 8053). As discussed in the preamble to the IFR, a ''before first processing'' (BFP) notification under section 412(d)(3) of the FD&C Act must be submitted when the manufacturer determines that a change in the formulation of the formula or a change in the processing of the formula ''may affect whether the formula is adulterated'' under section 412(a) of the FD&C Act, e.g., when there are questions about whether a formula provides nutrients required by section 412(i) of the FD&C Act, meets quality factor requirements, or is in compliance with CGMP and quality control procedures.

As for the comment's assertion that we should honor the guidelines issued under 21 CFR 106.30(c)(2) with respect to changes other than major changes, the comment misinterprets the language in section 412(c)(2) of the FD&C Act. Section 412(c)(2) of the FD&C Act only incorporates the definition of ''major change'' as found in 21 CFR 106.30(c)(2) (as in effect on August 1, 1986) and the guidelines issued thereunder. Thus, FDA's decision not to codify portions of the guidelines related to changes other than major changes is not inconsistent with section 412(c)(2) of the FD&C Act.

(Comment 4) One comment requested that we clarify the notification requirements of an infant formula submitted after February 10, 2014 (90 days prior to May 12, 2014) under the current 90-day premarket notification requirements. The comment stated that the requirements for formulas submitted before July 10, 2014, and especially before May 12, 2014, need to be clarified.

(Response) We recognize the lack of clarity surrounding the notification requirements for infant formulas submitted after February 10, 2014, based on the definition of eligible infant formula as set forth in the IFR. To address the issue, we are amending the definition of ''eligible infant formula'' to mean an infant formula that could be lawfully distributed in the United States on December 8, 2014. The change should eliminate the confusion surrounding notification requirements for new infant formula products that are the subject of a new infant formula notification submitted after the publication of the IFR. Under the revised definition, new infant formulas that are the subject of a notification submitted prior to the compliance date of September 8, 2014 will be considered eligible.

B. Subpart B—Current Good Manufacturing Practice

1. Production and In-Process Control System (§ 106.6)

(Comment 5) One comment stated that FDA had declined to accept comments submitted on the proposed rule that would limit the areas of production requiring establishment of specifications to those deemed to be critical and requested that wording be inserted in § 106.6(a) to align this section with other parts of the IFR (e.g., § 106.30(d)(1)).

(Response) The comment's assertion that we declined to accept recommendations to limit the areas of production that require specifications to be established to those deemed to be critical is incorrect. This issue is addressed in § 106.6(c), which limits the establishment of specifications to be met ''to any point, step, or stage in the production process where control is necessary to prevent adulteration.'' We indicated in the response to comment 41 in the preamble to the IFR (see 79 FR 7934 at 7957–7958) that ''FDA does not intend that the control procedures established under § 106.6(c) would address every theoretical risk of technical adulteration'' and further stated that ''a manufacturer has a responsibility, as part of CGMP, to ensure quality in the finished product on a consistent basis. The way to ensure quality is to identify controls needed at various steps in the production process so that, in its final form, the formula complies with all requirements.'' The response continued that ''certain actions (e.g., the establishing of specifications) are not required at every step in the manufacturer's process . . . [and] it is the responsibility of the manufacturer to identify those points at which control is necessary to prevent adulteration of infant formula products.'' (79 FR 7934 at 7958).

(Comment 6) One comment stated that specifications necessary to prevent adulteration during production are currently established and contended that additional controls such as warehousing conditions and trailer temperatures during distribution are not expected to cause adulteration and should be out of the scope of the IFR. The comment asked us to clarify whether additional non-process related specifications beyond what manufacturers currently do are required and, if so, which non-process related specifications, or the criteria to make this determination, are needed. The comment said that manufacturers need this information to assess their ability to comply and determine related costs. The comment further stated that compliance with § 106.6 of the IFR would not be feasible by the effective date of the IFR because, if additional specifications need to be developed for areas the comment asserted are not critical to preventing product adulteration, much more time than 150 days will be required to draft, finalize, implement, and train employees. The comment requested that we provide relief through an announcement and exercise of enforcement discretion, a delayed compliance date, or a formal delay for this provision to align with the compliance date for eligible infant formulas.

(Response) We do not agree that warehousing conditions and trailer temperatures during distribution can be dismissed as a potential cause of adulteration. For example, temperatures that are too cold during storage and distribution may result in breaking of the emulsion of an infant formula, causing separation of the fat and liquid portions of the products and rendering the products inappropriate/unfit for consumption by infants. Temperatures that are too hot may result in growth of thermophilic organisms (organisms that need high temperatures for proliferation or that thrive at high temperature) that render the products unpalatable and inappropriate/unfit for infant consumption. As another example, during storage and distribution, rats that may gain access to warehouses and/or trailers could gnaw through cardboard cartons and plastic containers containing infant formula, which would result in adulteration of the product under section 402(a) of the FD&C Act.

The comment did not define non-process related specifications or provide additional examples of non-process related specifications beyond what manufacturers currently do. Therefore, we cannot respond to the comment's request for additional information. However, we remind manufacturers that § 110.93 of Part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food requires that storage and transportation of finished food shall be under conditions that will protect food against physical, chemical, and microbiological contamination as well as deterioration of the food and the container. We expect that infant formula manufacturers have already instituted practices, whether or not they are currently identified as specifications, to prevent adulteration and maintain product integrity during storage and distribution as a necessary step in fulfilling their responsibility to ensure that their formulas reach the consumer in a condition that is safe and appropriate for consumption. Creating written specifications as required by § 106.6(b) for such practices should not involve extensive effort or extra cost, and we see no basis for announcing the exercise of enforcement discretion or a formal delay for this provision to align with the compliance date for eligible infant formulas. Nonetheless, with the exception of the compliance date for certain requirements related to quality factors for eligible infant formulas, the final rule adopts a compliance date of September 8, 2014 to facilitate manufacturer compliance with all requirements of this final rule.

2. Controls To Prevent Adulteration Caused by Facilities (§ 106.20)

(Comment 7) One comment said that the requirements of § 106.20(i), which addresses controls to prevent adulteration from in-plant toilet facilities, are more restrictive than the provisions for toilet facilities in the food GMPs (21 CFR 110.37(d)(4)), which allows for doors in in-plant toilet facilities to open into enumerated areas if alternate means have been taken to protect against contamination (such as double doors or positive air-flow systems). The comment continued that FDA did not establish a public health need for the more restrictive requirements and claimed that infant formula manufacturers will have to move or otherwise reconfigure their in-plant toilet facilities if the IFR is interpreted not to permit the alternate means in the food GMPs or exempt facilities in areas where product is not subject to airborne contamination. The comment further stated that compliance with § 106.20 of the IFR would not be feasible by the effective date of the IFR if the comment's proposed changes to § 106.20 were not accepted and requested that we provide relief through an announcement and exercise of enforcement discretion, a delayed compliance date, or a formal delay for this provision to align with the compliance date for eligible infant formulas.

(Response) We agree with the aspect of the comment that suggests that it should be permissible for doors in in-plant toilet facilities to open into certain areas if alternate means have been taken to protect against contamination. However, we disagree that airborne contamination is the only source of contamination from toilet facilities. Contamination can come from hands, clothing, and footwear of employees exiting the toilet facilities, and it is likely that measures such as foot baths and footwear and garment changes in addition to double doors and positive air-flow systems will be needed to prevent contamination from in-plant toilet facilities. We are revising § 106.20(i) to permit doors to toilet facilities to open into the plant facilities if alternate means have been taken to protect against contamination. With this change to § 106.20(i), we see no basis for announcing the exercise of enforcement discretion or a formal delay for this provision to align with the compliance date for eligible infant formulas. Nonetheless, with the exception of the compliance date for certain requirements related to quality factors for eligible infant formulas, the final rule adopts a compliance date of September 8, 2014 to facilitate manufacturer compliance with all requirements of this final rule.

3. Controls To Prevent Adulteration Caused by Equipment or Utensils (§ 106.30)

(Comment 8) One comment agreed with FDA that controlling the temperature of infant formula is important to prevent adulteration, requested clarification regarding the equipment covered by § 106.30(e)(2), and requested that we modify the provision to apply only to cold bulk liquid storage. The comment stated that, with this change, ingredient receipt through blending would not be classified as in-process infant formula or finished infant formula until the components are mixed and introduced into the cold storage vessel. In support of the requested modification, the comment pointed to FDA's report ''Analysis of Results for FDA Food Defense Vulnerability Assessments and Identification of Activity Types,'' in which we defined liquid storage as follows: ''Bulk liquid storage refers to any medium-long term storage silo or tank where liquid product may be stored prior to introduction into the product stream or to hold finished product prior to loading for outbound shipping.''

(Response) We do not agree with the modification recommended in this comment. The report to which the comment refers, ''Analysis of Results for FDA Food Defense Vulnerability Assessments and Identification of Activity Types,'' identifies liquid storage/hold/surge tanks as a key activity type found in most production environments. However, in addition to the category of bulk liquid storage described in the comment, the report describes a second category of non-bulk holding and surge tanks, which ''refer to any storage tanks used to hold product for a short period or surge tanks. Non-bulk tanks can be used to store non-bulk liquid ingredients, hold liquid product for sample testing and other QC activity, or to control flow rates of liquid ingredients/product through the production system.'' The report also specifies that liquid storage ''refers to any processing step where liquid *ingredient* (emphasis added) or intermediate/finished liquid product is stored in either bulk storage tanks or smaller secondary holding tanks or surge tanks.'' Thus, the report does not provide a basis for restricting cold storage in § 106.30(e)(2)(i) to cold bulk liquid storage, so we decline to revise § 106.30(e)(2)(i) as suggested by the comment.

(Comment 9) One comment asked us to allow a less restrictive approach to meet the showing required under§ 106.30(e)(2)(ii) (i.e., meeting both of the conditions listed in § 106.30(e)(2)(ii) of the IFR). Under § 106.30(e)(2)(ii) in the IFR, a manufacturer may maintain a cold storage area for an in-process infant formula or for a final infant formula at a temperature not to exceed 45 °F (F) for a defined period of time if the manufacturer has scientific data and other information to demonstrate that (a) compliance with § 106.30(e)(2)(i) (which established 40 °F or below as the temperature level for all areas of cold storage) would have an adverse effect on the quality of the in-process or final infant formula and (b) the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage. The comment argued that the changes we made in the IFR do not fully encompass our stated rationale for the provision ''to minimize the growth of pathogens and the deterioration of liquid ingredients'' (79 FR 7934 at 7964).

(Response) In response to the comment's concern, we have revised § 106.30(e)(2)(ii) of the IFR. We are deleting § 106.30(e)(2)(ii)(A) and combining § 106.30(e)(2)(ii) from the IFR with § 106.30(e)(2)(ii)(B) from the IFR. The section will be designated as § 106.30(e)(2)(ii) in the final rule. In the final rule, § 106.30(e)(2)(ii) states that ''A manufacturer may maintain a cold storage area for an in-process infant formula or for a final infant formula at a temperature not to exceed 45 °F (7.2 °C) for a defined period of time provided that the manufacturer has scientific data and other information to demonstrate that the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage of the in-process or final infant formula product.''

(Comment 10) One comment requested that we align section § 106.30(e)(2)(ii) with the Pasteurized Milk Ordinance, which specifies 45 °F as the maximum storage temperature of pasteurized milk and milk products. The comment stated that any capital improvements to facilities needed to comply with § 106.30(e)(2) will take considerably longer than the 150 days until the effective date.

(Response) The language in § 106.30(e)(2)(ii) of this final rule (see

response to comment 9) allows the 45 °F temperature permitted for pasteurized milk and milk products for in-process or final infant formula for a defined period of time provided that the manufacturer has scientific information to demonstrate that the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage of the in-process or final infant formula product. We discussed in the responses to comments 65 and 66 in the IFR our reasons why the time and temperature conditions established in the IFR are sufficient to ensure product safety and the reasons for the 40 °F requirement. Furthermore, because infant formula is consumed by a vulnerable population, food safety and public health considerations do not justify further relaxing of the requirements of § 106.30(e)(2)(ii) of this final rule.

With regard to the comment's concern that compliance will take considerably longer than 150 days, we disagree. Section 106.30(e)(2) of this final rule allows a manufacturer the flexibility to store in-process and final product at temperatures up to and including 45 °F, provided that the manufacturer has scientific data and other information to demonstrate that the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage of the in-process or final infant formula product. The comment provided no information that would lead us to believe that compiling such scientific data would prove difficult or burdensome.

4. Controls To Prevent Adulteration Due to Automatic (Mechanical or Electronic) Equipment (§ 106.35)

(Comment 11) One comment noted that the concept under § 106.30(d)(1), which requires only those instruments and controls at points where control is necessary to prevent adulteration to be accurate and maintained, including by calibration, should be applied to § 106.35(b)(1).

(Response) To the extent this comment requests consistency between the language in the two provisions, we agree that the use of consistent language would be beneficial, and we are amending § 106.35(b)(1) to provide that a manufacturer shall ensure, at any point, step, or stage where control is necessary to prevent adulteration of infant formula, that all hardware is routinely inspected and checked according to written procedures and that hardware that is capable of being calibrated is routinely calibrated according to written procedures. We note, however, that we are not aware of hardware currently in use in the infant formula manufacturing process that is capable of calibration that is not used at a point, step, or stage where control is necessary to prevent adulteration of infant formula. Infant formula manufacturing plants contain many automatic measuring devices that are capable of being calibrated, and they must be calibrated at whatever frequency is necessary to ensure accurate measurement. No device should be providing inaccurate data that could lead to adulteration of the infant formula.

(Comment 12) One comment stated that § 106.35(b)(4) would require revalidation of any system that is modified and suggested an alternative definition of validation in § 106.35(a)(4) to add the phrase ''either through validation or verification of all components or through the validation of the system.'' The comment stated that industry supports the requirement for full system validation. The comment acknowledged that our response to comments in the IFR contains references to ''appropriate regression testing'' and ''validation analysis'' but said that the IFR ultimately points to revalidation of the entire system. The comment suggested revising the final rule to clarify that verification is a sufficient method of ensuring control for some components in a system.

(Response) The preamble to the IFR included an extensive discussion of validation of automatic equipment and FDA's reasons for establishing the definition of validation in § 106.35(a)(4) in the IFR (79 FR 7934 at 7968–7971). We do not agree with the alternative definition proposed because it would permit the initial validation of a system through verification of all components. Complete validation of an automatic system is required initially; however, FDA did not intend that a whole system would always need to be completely revalidated with every change. For example, there may be operations upstream from another part of a system that is being changed that are not affected when the part of the system that is downstream has changed. In such cases, it may be possible to revalidate those parts of the system that are being changed or impacted by the change by other means such as verification studies or modeling. In response to the comment, we are revising § 106.35(a)(4) to clarify that validation can be accomplished through any suitable means, such as verification studies or modeling. However, we note that such verification studies differ from the nutrient testing of the final product, which is a form of verification of a system's proper operation. Finished product testing for nutrients does not eliminate the need for system validation.

(Comment 13) One comment stated that 150 days is insufficient time to conduct all the validations required by § 106.35(b)(3). The comment stated that automation, validation, and change control that is currently used would meet the requirements of ''consistently produces a product meeting predetermined specifications'' and that validation analyses are performed to determine the extent and impact of the change on the system. The comment stated that this is further augmented by the ongoing monitoring of critical control points. The comment requested that, with regard to the requirements of § 106.35, we announce the exercise of enforcement discretion or a formal delay for this provision to align with the compliance date for eligible infant formulas. Nonetheless, with the exception of the compliance date for certain requirements related to quality factors for eligible infant formulas, the final rule adopts a compliance date of September 8, 2014 to facilitate manufacturer compliance with all requirements of this final rule.

(Response) We note that the validation requirement in § 106.35(b)(3) applies to new infant formulas that have not yet been released. As such, manufacturers will not need to conduct a complete system validation for formulas that are already on the market when this rule becomes effective. However, we also note that manufacturers will still need to ensure that all systems are designed, installed, tested, and maintained in a manner that will ensure that they are capable of performing their intended function and of producing and analyzing infant formula in accordance with the CGMP and quality control procedures as required by § 106.35(b). Given that the requirement in § 106.35(b)(3) applies to new infant formulas, complying with the section by the effective date of the rule should not be an issue. We therefore decline the request to announce the exercise of enforcement discretion, a delayed compliance date, or a formal delay for this provision to align with the compliance date for eligible infant formulas.

5. Controls To Prevent Adulteration During Manufacturing (§ 106.50)

(Comment 14) One comment noted that § 106.50(a)(2) of the IFR could be

interpreted to require a ''responsible official'' to draft changes to the master manufacturing order and recommended that we delete the term ''drafted.''

(Response) Although a responsible official is required to review and approve changes in a master manufacturing order, we agree that persons other than a responsible official could draft changes to a master manufacturing order. Accordingly, we have deleted the word ''drafted'' from § 106.50(a)(2) in the final rule.

(Comment 15) One comment recommended adding some examples (e.g., physical separation or another system of segregation) to § 106.50(f)(4) to make it consistent with § 106.20(b)(2), which deals with facilities and separation of raw materials, in-process materials and final product. Section 106.50(f)(4) requires, in part, that rejected in-process materials be controlled under a quarantine system designed to prevent the use of the materials in manufacturing or processing operations.

(Response) Section 106.20(b)(2) requires separate areas or another system of separation such as a computerized inventory control, a written card system, or an automated system of segregation for holding raw materials, in-process materials, and final infant formula product after rejection for use in, or as, infant formula. As noted in the IFR, ''section 106.40(e) describes the ways a manufacturer may quarantine material that has not been released for use due to failure to meet a specification, or that has been rejected for use in the manufacture of an infant formula'' (79 FR 7934 at 7956). As such, we do not believe that adding examples is needed in § 106.50(f)(4) and, therefore, are not making the change recommended in the comment.

6. Controls To Prevent Adulteration From Microorganisms (§ 106.55)

(Comment 16) A comment stated that a 95% level of confidence interval means that up to approximately 5% of *C. sakazakii*-contaminated production aggregates may test negative with FDA's proposed testing scheme and be released to market. The comment said that because thousands of production aggregates are released to market each year, this risk is not inconsiderable. The comment further stated that contamination can occur as clumps and clusters, and this contamination could be missed when the production aggregate is tested. The comment expressed concern that powdered infant formula presents a potential risk to the health of infants of all ages.

(Response) Although we consider the concerns expressed in this comment to be important, the comment appears to mischaracterize the meaning of confidence interval in the quantitative risk analysis. A confidence interval is a range of values in which there is a specified probability that the value of a parameter lies within it. The confidence level does not indicate the percentage of adulterated infant formula that will reach the market.

For purposes of our response, we assume that this comment is referring to the finished product testing required under § 106.55(c). Finished product testing under § 106.55(c) is but one means of assuring the safety of powdered infant formula. The purpose of CGMPs is to have a system that produces products that are consistent in quality and safety and to collectively provide additional safeguards. In the preamble to the IFR, we explained that the sampling plan is intended to help manufacturers identify unacceptable production aggregates at the finished product stage. The sampling plan is a statistical approach based on a quantitative risk analysis and was extensively discussed in the IFR (79 FR 7934 at 7984–7988).

(Comment 17) One comment noted that peer-reviewed articles published after 2011 are not cited and discussed in the IFR and that no articles published after 2011 appear to have been taken into consideration in formulating the IFR. The comment also noted that significant progress has been made in clarifying sources of and risk groups for *Cronobacter,* particularly *C. sakazakii.* The comment noted a 2012 publication in the American Association of Pediatrics to support this statement. The comment urged FDA to review publications after 2011, in particular with regard to *C. sakazakii.*

(Response) Although the IFR did not provide literature citations after 2011, we monitor the scientific literature closely with respect to data and studies that affect infant formula. The comment did not identify, and we are not aware of, any articles published after 2011, including the 2012 publication by Jason cited in the comment, that would have suggested a need to change the IFR's requirements or the requirements of this final rule.

(Comment 18) One comment recommends that the rule clarify that technologies currently used by manufacturers cannot produce a sterile formula but that there are technologies capable of producing a sterile powdered infant formula without damaging the product's nutritional value, if these technologies were applied by manufacturers.

(Response) We discussed in the preamble to the IFR (79 FR 7934 at 7980–7981) the use of technology to eradicate *Cronobacter spp.* To the extent this comment suggests we mandate which production method to use, we disagree. To a large extent, the IFR, as well as this final rule, gives manufacturers the flexibility to establish controls, specifications, and other operations and does not require the use of specific technologies. Given the pace at which technological changes can occur, we believe this more flexible approach is more practical to address the use of changing technologies and best practices.

7. Audits of Current Good Manufacturing Practice (§ 106.90)

(Comment 19) One comment agreed with FDA that audits should be performed by individuals who have as little bias as possible and who do not have a direct interest in the outcome of the audit. The comment also noted that the determination of who satisfies these criteria is largely subjective unless the audit is conducted by a third party, and the comment requested some examples of situations where an audit might be conducted by an individual that is not a third party (e.g., the Head of Quality Assurance auditing a facility) that would be acceptable to FDA.

(Response) As the comment noted, the determination of the objectivity of an in-house employee for performing audits involves subjective as well as objective evaluation of the suitability of the individual for a particular audit. Such assessments must be made on a case-by-case basis. As explained in response to comment 166 in the IFR (79 FR 7934 at 7994), in evaluating whether an audit might be conducted by an individual that is not a third party, the manufacturer should consider factors such as the scope of the employee's previous responsibilities, the time elapsed between the reassignment of the former responsibilities and the audit, and whether the audit will be conducted by this single individual or a team. Therefore, we decline to give examples as requested by the comment.

C. Subpart C—Quality Control Procedures

1. General Quality Control (§ 106.91)

a. Premix Testing

(Comment 20) One comment stated that infant formula manufacturers should be allowed to rely on a premix supplier's certificate of analysis to provide analytical information on all

nutrients in a premix. The comment continued that our proposed rules on Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food (78 FR 3646 (January 16, 2013)) and Foreign Supplier Verification Programs for Importers of Food for Humans and Animals (78 FR 45729 (July 29, 2013)) (part of our implementation of the Food Safety Modernization Act (FSMA)) would require food manufacturers to conduct supplier verification activities with respect to their premix suppliers. The comment predicted that the FSMA-mandated supplier verification requirements will adequately address any potential concerns related to whether nutrient premixes comply with an infant formula manufacturer's specifications and should be taken into account in determining the extent of premix testing that should be required in the IFR.

(Response) We disagree that infant formula manufacturers should be allowed to rely on a premix supplier's certificate of analysis to provide information on the composition of a premix. Section 412(b)(3)(B) of the FD&C Act stipulates that ''[e]ach nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required by subsection (i) which is contained in such premix to *ensure that such premix is in compliance with its specifications or certifications by a premix supplier.''* (Emphasis added.) The statutory language makes it clear that a premix manufacturer's certification is not to be relied upon by the manufacturer of the infant formula to establish the analytical composition of a premix. Further, the statute does not allow other options as substitutes for the testing of premixes by infant formula manufacturers. Therefore, we decline to revise § 106.91(a)(1) as suggested by the comment.

b. Stability Testing and Frequency

(Comment 21) One comment stated that the recipe (the manufacturing order) should be the unit of production used for setting stability testing requirements rather than the production aggregate required by § 106.91(b).

(Response) Under section 412(a) of the FD&C Act, an infant formula that does not provide nutrients as required by section 412(i) is deemed to be adulterated. Section 106.91(b) of the IFR established the production aggregate as the quantity of formula to be used for setting stability testing requirements to provide direct evidence that nutrient levels are maintained throughout the shelf life of all of the product in the marketplace. A requirement to use the recipe (manufacturing order) as the unit of production for setting stability testing requirements, as requested in the comment, could be interpreted to mean that after stability testing was conducted one time on the quantity of formula produced from the recipe, no more stability testing would be required for that formula. Using such a basis for stability testing would not provide evidence that nutrient levels are maintained throughout the shelf life in all formula in the marketplace. Therefore, we are not revising the unit of production to be used for setting stability testing requirements in response to this comment. The production aggregate is the quantity of infant formula from which manufacturers must take a representative sample for the stability testing required by § 106.91(b)(1) and (2) in the final rule.

(Comment 22) One comment asked us to clarify the frequency of stability testing needed for batch processing operations.

(Response) When manufacturers produce their formulas using batch production, they typically manufacture a ''batch'' during a single cycle of manufacture, which would correspond to what we have defined as the production unit in § 106.3 of the IFR (i.e., a specific quantity of an infant formula produced during a single cycle of manufacture that has uniform composition, character, and quality, within specified limits). The individual ''batches'' (i.e., production units) are stored in containers (often referred to as totes) until the formula is packaged. Comingling of the individual ''batches'' (production units) occurs when the contents of the individual storage containers are combined during the packaging process, thereby resulting in a larger quantity of formula that is intended to have uniform composition, character, and quality, consistent with the definition of ''production aggregate'' in the IFR. The larger quantity of the formula that is comingled and packaged in one packaging run would be considered the production aggregate for manufacturers using batch production. Each such production aggregate would be subject to the stability testing requirements as applicable under § 106.91.

(Comment 23) One comment stated that the requirement to conduct stability testing for every production aggregate of infant formula disregards extensive data from longstanding stability programs and treats each production aggregate as an independent sample.

(Response) FDA appreciates that infant formula manufacturers have been conducting stability testing on their infant formulas since the passage of the Infant Formula Act of 1980 and recognizes that a manufacturer may have extensive stability data for existing products that may be applicable to new infant formulas. We realize the potential value of such data and consider that manufacturers may be able to rely on such data in some instances rather than always conducting the *de novo* stability testing of new infant formulas required by § 106.91(b)(1). For this reason, and in order to reduce the amount of comprehensive stability testing required for new products, we are providing an exemption in § 106.91(b)(1)(ii) from the testing required by § 106.91(b)(1)(i) in this final rule if the manufacturer of a new infant formula requests an exemption and provides analytical data that demonstrate that the stability of the new infant formula will likely not differ from the stability of non-new formulas with similar composition, processing, and packaging for which there are extensive stability data. Under § 106.91(b)(1)(ii) of the final rule, the manufacturer would request the exemption in the 90-day notification for the new infant formula under § 106.120(b)(7). If the manufacturer is exempted from the testing required by § 106.91(b)(1)(i), the manufacturer would then be required under § 106.91(b)(1)(ii) of the final rule to test the first production aggregate in accordance with the requirements for routine stability testing of all subsequent production aggregates of infant formula under § 106.91(b)(2).

(Comment 24) One comment stated that stability testing of new formulas every 3 months as required by § 106.91(b)(1) of the IFR is unnecessary. The comment contended that an analytical value at an isolated point in time may misrepresent the shelf life of the product as determined through a manufacturer's existing stability programs. The comment also said that the rate of degradation early in shelf life is not relevant to product safety if the product meets nutrient specifications at the end of the shelf life period.

(Response) We agree that an unexpected analytical value at one point in time may not necessarily be predictive of the shelf life of the product. We disagree, however, that the rate of nutrient degradation early in shelf life is irrelevant to product safety. If the product does not meet nutrient specifications at the end of the shelf life period, the knowledge that nutrient degradation is occurring more rapidly than predicted by previous data

provides a valuable early indicator that possible action may be required to avoid having an adulterated product in the marketplace. We have further considered the requirement that stability testing of new infant formulas be conducted every 3 months (four times a year) in § 106.91(b)(1) of the IFR and conclude that satisfactory data could still be obtained if the frequency of testing is reduced to every 4 months (3 times a year). Therefore, we have reduced the required frequency of stability testing for new infant formulas to every 4 months in § 106.91(b)(1)(i) of the final rule.

(Comment 25) One comment questioned the benefit in requiring that every production aggregate after the first undergo stability testing, as such requirement would represent a large increase in the number of samples undergoing stability testing on a routine basis. The comment stated this testing requirement would have a significant impact on the industry and questioned the value of such testing. Another comment questioned how measuring nutrients at the midpoint of shelf life will provide additional assurance for formulas for which stability data have been established.

(Response) The purpose of stability testing of subsequent production aggregates for nutrients as required by § 106.91(b)(2) is to confirm that the nutrients present in an infant formula at the finished product stage do not degrade below minimum levels over the shelf life of the product. Every production aggregate must be at or above such minimum levels at the end of the shelf life of the product. The evidence that nutrient levels have been maintained at or above such minimum levels in each production aggregate is provided by the results of stability testing at the end of the shelf life of each production aggregate. This testing requirement will provide direct evidence that nutrient levels are maintained throughout the shelf life of infant formula products. We agree that the critical data are the nutrient levels present at the end of shelf life and that the midpoint data are not essential in subsequent production aggregates. Therefore, we have deleted the requirement to conduct stability testing at the midpoint of the shelf life for infant formulas tested under § 106.91(b)(2).

(Comment 26) One comment stated that routine stability testing should not include analysis of nutrients that are not labile (i.e., easily broken down). The comment recommended that we limit routine stability testing to reliable indicator nutrients and supplement such testing with periodic comprehensive testing.

(Response) We do not agree that the routine stability testing required at the end of shelf life under § 106.91(b)(2) should include only labile nutrients or that the purpose of stability testing would be met by the comment's suggested approach. It is essential to have proof that all nutrients, including those that deteriorate more slowly, are present at or above the minimum required levels at the end of shelf life to demonstrate that the product is not adulterated. We note, however, that § 106.91(b)(5) waives evaluation of the levels of minerals from the testing required by § 106.91(b)(1) and (2) because these nutrients do not degrade in infant formula. We decline to revise the final rule in response to this comment.

(Comment 27) One comment stated that the requirements of § 106.91(b)(3) are too prescriptive and pointed out that market withdrawal of the product was another option. The comment further stated that the manufacturer should be allowed to determine the disposition of a product that does not maintain its required nutrient levels throughout shelf life and recommended that § 106.91(b)(3) be deleted.

(Response) We made an inadvertent error in the language of § 106.91(b)(3) by including the words ''shelf life label statement.'' We intended that manufacturers would have the option of making changes to the ''use by'' date, not the ''shelf life label statement,'' if the stability data from the testing required by § 106.91(b)(1) did not substantiate the anticipated shelf life of the formula. We have revised § 106.91(b)(3) accordingly.

We realize that there may be some situations when manufacturers may find that actions other than those provided for in § 106.91(b)(3) in the IFR may be appropriate when the stability testing of a new infant formula required by § 106.91(b)(1) does not substantiate the shelf life of the formula. Consequently, we have revised § 106.91(b)(3) of the final rule to clarify our intent that manufacturers have the option to adjust the ''use by'' date so that such date is substantiated if the stability data from the testing required by § 106.91(b)(1) did not substantiate the anticipated shelf life of the formula. FDA also is providing flexibility for manufacturers to take other appropriate actions in § 106.91(b)(3)—other than conducting the testing required by § 106.91(b)(1) or adjusting the ''use by'' date—when stability testing does not substantiate the shelf life of the formula. We also are clarifying in § 106.91(b)(3) that the manufacturer must address all production aggregates released and pending release for distribution that are implicated by the testing results.

We also are making a conforming change to § 106.91(b)(4)(iii) to clarify that manufacturers must address all production aggregates released and pending release for distribution that are implicated by testing results required by § 106.91(b)(2) that show that any required nutrient is not present in the production aggregate of infant formula at the level required by § 107.100 or that any nutrient added by the manufacturer is not present at the level declared on the labels for the finished products from the production aggregate of infant formula.

(Comment 28) One comment stated that FDA should give further consideration to periodic testing as a complement to stability testing rather than requiring stability testing of each production aggregate. The comment also requested that we change the requirement of the IFR to require that the manufacturer collect representative samples of formulas every 3 months for stability testing.

(Response) We considered whether to require periodic testing in establishing the requirements for quality control procedures in the IFR. However, we concluded that periodic testing was not necessary because the testing required by § 106.91(a) of the IFR ''can serve as final product testing of each production aggregate and also fulfill the purpose of periodic testing by serving as a check on the proper operation of the controls used by a manufacturer to ensure the presence and proper concentration of all nutrients'' (79 FR 7934 at 7993). Adding a requirement for periodic testing would result in unnecessary testing. Further, periodic testing (e.g., testing representative samples of formula every 3 months) would not provide sufficient evidence that nutrient levels in each production aggregate are being maintained. As stated in the response to comment 25, the purpose of routine stability testing for nutrients is to confirm that the nutrients present in an infant formula at the finished product stage do not degrade below minimum levels over the shelf life of the product. Every production aggregate must be at or above such minimum levels at the end of the shelf life of the product. Implementation of the approach requested in the comment would not provide evidence that nutrient levels have been maintained at or above such minimum levels in each production aggregate. Therefore, we are not making either of the changes requested by this comment.

(Comment 29) One comment stated that the requirement in § 106.91(b) to do stability testing on every production aggregate is overly burdensome and unnecessary. The comment stated that this requirement would generate redundant data and would add considerable costs for formulas.

(Response) We note that under § 106.91(a)(4), manufacturers must test every production aggregate of finished infant formula for all nutrients required by § 107.100 and any other nutrient added by the manufacturer before distribution of the product. Testing at this point is already mandated by section 412(b)(2)(B)(i) of the FD&C Act, and the results of this testing can also serve as the initial stability data. Under the final rule, manufacturers must also conduct stability testing on each subsequent production aggregate only at the end of shelf life. In addition, we are providing for an exemption in § 106.91(b)(1)(ii) from the comprehensive stability testing required for new infant formulas by § 106.91(b)(1)(i) if a manufacturer of a new infant formula requests an exemption and provides analytical data that demonstrate that the stability of the new infant formula will likely not differ from the stability of non-new formulas with similar composition, processing and packaging for which there exist extensive stability data.

As such, we do not consider that a requirement for testing of every production aggregate generates redundant data. Each production aggregate is produced independently and verification is needed that an infant formula is not adulterated when it reaches the end of its shelf life as well as at the time of production. Because infant formula serves as the sole source of nutrition for infants, we disagree that such a requirement is overly burdensome or unnecessary.

(Comment 30) One comment stated that the testing required in § 106.91(a)(4) and (b)(1) is limited to the nutrients in § 107.100 because section 412(b)(3)(D) of the FD&C Act specifies that if the Secretary adds a nutrient to the list of nutrients provided in section 412(i) of the FD&C Act, the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with subparagraphs (A), (B), and (C) of section 412(b)(3) of the FD&C Act. The comment argued that section 412(b)(3)(D) of the FD&C Act means that if FDA has not deemed the nutrient to be essential by requiring its addition to infant formula, then testing for the nutrient is also not essential.

(Response) To the extent this comment asserts that we intended to limit the testing required in § 106.91(a)(4) and (b)(1) to those nutrients specified in § 107.100, we disagree. We discuss this issue in detail in our response to comment 173 in the preamble to the IFR (79 FR 7934 at 7996). To the extent this comment suggests that we lack the authority to impose testing requirements on nutrients other than those specified in § 107.100, we also disagree. The statutory language in section 412(b)(3)(D) of the FD&C Act is not our sole authority to establish requirements for nutrient testing. As explained in the IFR, testing for nutrients not required under § 107.100 in each production aggregate of infant formula is consistent with CGMP and quality control procedures that must be established by section 412(b)(2)(A) of the FD&C Act. The preamble to the 1996 proposal explained why testing for these added nutrients is necessary for proper formulation of a formula as follows: ''[I]t is important that the level of these added nutrients be controlled, and that the level of the added nutrient be consistent from batch to batch [production aggregate to production aggregate] and be uniform throughout the batch [production aggregate] of infant formula. The level of a nutrient needs to be controlled because some nutrients can be toxic to an infant if given at too high a level. Controlling the level of the added nutrient for consistency from batch to batch [production aggregate to production aggregate] and in a particular batch [production aggregate] of infant formula will ensure that the infant receives the essential nutrient on a consistent basis and will also ensure that the infant does not receive too high, or too low, a level of the nutrient because the nutrient was not uniform through the batch [production aggregate] of infant formula'' (61 FR 36154 at 36176).

(Comment 31) One comment stated that compliance with § 106.91 by the effective date of the IFR cannot realistically be achieved and requested that we announce and exercise enforcement discretion, delay the compliance date, or formally delay the provisions of § 106.91 to align with the compliance date for eligible infant formula. The comment asserted that the requirements of § 106.91 are burdensome but did not provide specific information about why compliance with § 106.91 by the effective date of the IFR would be impractical.

(Response) As discussed in our responses to other comments relating to § 106.91, we are taking some steps in this final rule to increase flexibility and lessen the burden of some of the requirements in § 106.91. This increased flexibility should address any concerns about complying with § 106.91 by the effective date of this rule. Therefore, we are rejecting the request to announce and exercise enforcement discretion or formally delay the provisions of § 106.91 to align with the compliance date for eligible infant formula. Nonetheless, with the exception of the compliance date for certain requirements related to quality factors for eligible infant formulas, the final rule adopts a compliance date of September 8, 2014 to facilitate manufacturer compliance with all requirements of this final rule.

D. Subpart E—Quality Factors for Infant Formula

(Comment 32) One comment stated that FDA's expansion of the definition of ''Quality Factors'' in the IFR to require a growth monitoring study on the ''bioavailability'' of an infant formula as a whole was not consistent with current scientific knowledge, as specified in section 412(b)(1) of the FD&C Act. The comment included an extended discussion of current scientific knowledge of the effects of specific nutrients on infant growth and alternative methods for evaluating infant formulas, such as animal studies.

(Response) The preamble to the IFR (see 79 FR 7934 at 7951–7952) explored the concept of healthy growth and explained why normal physical growth as a quality factor is not flawed. As that discussion indicates, infant growth is steady and predicable, and physical growth and normal maturation should occur together. If the infant formula does not have all the nutrients needed by an infant in a form that is bioavailable, the infant will not grow. Monitoring of physical growth of infants has long been recognized as an indicator of healthy growth. For example, the 1980 report of the Committee on Nutrition of the American Academy of Pediatrics cited in the IFR stated that ''growth of infants during the first few months of life is a determining factor for the pattern of development and quality of health in adult life'' (79 FR 7934 at 7951), thereby recognizing the critical nature of this period of unparalleled growth. More recently, the 2004 report of the Institute of Medicine of the National Academy of Sciences concluded that ''Growth is well recognized as a sensitive, but nonspecific indicator of the overall health and nutritional status of an infant'' (79 FR 7934 at 8006).

In the preamble to the IFR, we stated that ''the least invasive and most practical means to ensure that the formula, as a whole, delivers nutrients in a form that is bioavailable and safe is a growth monitoring study in which anthropometric measurements of infants fed a new infant formula are assessed (79 FR 7934 at 8008). Assessments described in the comment would require invasive procedures that would increase the level of risk associated with a human study of an infant formula applying such measures. The information provided in the comment also suggested that the evaluation of an infant formula should be accomplished by studying animals. We understand that animal studies can be very useful in determining the bioavailability of nutrients and establishing the safety of ingredients, as well as exploring metabolic pathways. However, as we concluded in the IFR, FDA is not aware of an animal model that is a suitable substitute for the infants in a growth monitoring study (79 FR 7934 at 8008), and the information provided in the comment did not discuss this issue. Therefore, we are maintaining the requirement to conduct a growth monitoring study in this final rule.

(Comment 33) One comment noted that the IFR identified two quality factors, normal physical growth and sufficient biological quality of the formula's protein component. The comment interpreted the IFR to mean that of the many different functional requirements, the only one to be assessed for infant formula is its efficacy in leading to adequate physical growth in the short term, and if the infant leads to adequate growth over a period of fifteen weeks, the infant formula is of good quality. The comment also stated that it should not be suggested that quality on a single dimension is sufficient when an infant must perform well on many different dimensions, and it is misleading to suggest that a short-term measure of infants' physical growth can reasonably be viewed as a measure of the overall quality of infant formula.

(Response) The quality factor requirements are meant to provide the assurance that, when fed as the sole source of nutrition, the infant formula in its entirety will support healthy growth. We understand that the quality factors of normal physical growth and sufficient biological quality of the formula's protein component have limitations and that there are other ''dimensions'' that are relevant to infant formula. The preamble to the IFR (79 FR 7934 at 7953) discussed the limitations of both quality factors, as demonstrated by the growth study and the PER. Although we are aware of these limitations, at this time other methods are not available or are impracticable. As discussed in the IFR, FDA will consider amending the quality factor regulations as new methodology and appropriate reference criteria become available (79 FR 7934 at 7950).

(Comment 34) One comment requested that we revise the designation of normal physical growth to limit the quality factor to changes in formulations that may have an effect on growth. The comment noted that § 106.96(b) sets the default requirement of a growth monitoring study (GMS) for all new formulas. The comment continued that although § 106.96(c) provides exemptions from the requirements of paragraph § 106.96(b) under three conditions, the condition set forth in § 106.96(c)(2)(ii)—that the change from the existing formula does not affect the bioavailability of the formula or bioavailability of nutrients in the formula—is circular because FDA defined the quality factor as normal physical growth, not as bioavailability of the nutrients in the formula. The comments stated that the exemption from the GMS requirement should be provided when there is evidence that a change to the infant formula would not affect physical growth. The comment stated that neither bioavailability of the infant formula nor the nutrients in the formula is directly measured in the GMS. The comment concluded that to require a GMS across all new formulas even when it is known that measurement of physical growth will not be able to detect inadequacies of many nutrients risks the institutionalization of an insensitive, unreliable measure of formula quality that does nothing to ensure the health of formula-fed infants.

(Response) FDA agrees that the exemption from the GMS study should be provided when a change to an existing infant formula would not affect the ability of the formula to support physical growth specifically, instead of when the change to the formula does not affect bioavailability. We agree that bioavailability of individual nutrients is not directly measured in the GMS. We understand that every formulation change may not need a GMS and clearly indicated in the preamble to the IFR that a GMS ''may not be necessary to demonstrate normal physical growth for every new infant formula, including a change to a marketed formula that results in a new infant formula'' (79 FR 7934 at 8005). We are revising the exemption in § 106.96(c)(2)(ii) so that it applies when a change to an existing infant formula would not affect the ability of the formula to support normal physical growth, and are also making conforming changes to the notification requirements in § 106.121(d).

(Comment 35) Two comments urged us to provide greater detail for studies supporting quality factors, particularly in areas of the size and representativeness of the population of infants studied. The comments requested that we develop additional guidance beyond what was published in February 2014 regarding the structure and methodology that should be used in the studies.

(Response) The preamble to the IFR provided a basis for structuring and conducting an adequate and well-controlled growth monitoring study to demonstrate that a new infant formula supports normal physical growth in infants when fed as the sole source of nutrition (79 FR 7934 at 8007–8021). This information provided the scientific basis for how a growth monitoring study should be designed and methodological concerns that included sample size considerations. We would consider future development of additional guidance to expand upon the information in the preamble of the IFR regarding conduct of a growth monitoring study. We are satisfied, however, that the standards set forth in the preamble to the IFR provide sufficient guidance with which to conduct adequate and well-controlled growth monitoring studies.

(Comment 36) One comment expressed concern regarding the voluntary citizen petition process by which manufacturers of eligible infant formula can provide to FDA the basis on which they have concluded that their eligible infant formulas satisfy the quality factors for physical growth and/or protein efficiency ratio (PER). The comment stated that the citizen petition option under § 106.96(i)(3) for eligible infant formulas would make information public to competitors, consumers, and others. The comment continued that it would be difficult for a manufacturer not to submit a citizen petition because there would be a public expectation that the manufacturers do so. The comment further stated that formulas on the market have been through FDA review and have had to satisfy all the requirements of the Infant Formula Act and subsequent amendments. The comment stated that if there is any additional information that the Agency feels is needed from manufacturers, the Agency should include such details in the new notification requirements in the provisions of § 106.120 and § 106.121,

consistent with good administrative procedures for notice and comment. The comment requested clarification of the reasons an additional process was created and how manufacturers would receive a response from FDA. The comment also expressed concern about the manufacturers' ability to submit petitions for each formula by the November 2015 compliance date. The comment noted that because the citizen petition is a voluntary process, it provides no assurance that the Agency will obtain any outstanding information the Agency requires. The comment concluded that the citizen petition process is not necessary, is redundant, and provides no additional benefit to the Agency, the manufacturer, or the public, and that § 106.96(i)(3) should be deleted.

(Response) We disagree that § 106.96(i)(3) should be removed. The preamble to the IFR described the basis for the voluntary citizen petition process and further explained that *all formulas,* new or not new (i.e., currently marketed products), must meet the quality factors requirements (79 FR 7934 at 8028). We reiterate that the citizen petition process under § 106.96(i)(3) is voluntary and transparent; however, meeting the quality factor requirements is not voluntary. Meeting the quality factor requirements is mandatory under section 412(a)(2) of the FD&C Act, and an infant formula that does not meet quality factor requirements is an adulterated product.

We consider the citizen petition process to be a beneficial opportunity for the manufacturer of an eligible infant formula to describe how the quality factors have been met before the compliance date for eligible infant formulas (79 FR 7934 at 8005). We described in further detail in an accompanying draft guidance document how the process works, including information about how FDA will respond to petitioners. Additionally, we indicated that we are available to meet with manufacturers and discuss their particular concerns regarding the citizen petition process. We note that FDA will protect the confidentiality of information submitted through the citizen petition process in accordance with the Freedom of Information Act (5 U.S.C. 552) and FDA's regulations (see, e.g., 21 CFR 20.61). In addition, we are providing more detailed information regarding the process for submitting a citizen petition to meet the quality factor requirements for eligible infant formulas in a guidance document posted on FDA's Web site at *http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocuments RegulatoryInformation/ucm400036.htm.* However, we also note that because the citizen petition process is voluntary, we would not consider the absence of such a petition negatively. Finally, we note that new infant formula notifications submitted prior to the compliance date of September 8, 2014 would not necessarily have demonstrated satisfaction of the quality factor requirements in this final rule. As such, we disagree that providing this voluntary opportunity to describe how the quality factors have been met is redundant.

(Comment 37) One comment requested that additional language be added to § 106.96(f) regarding the methodology required to determine the biological protein quality. The comment suggested the addition of the phrase ''or by other appropriate method(s)'' be added to § 106.96(f) and § 106.96(i)(2)(ii). The comment continued that by incorporating this change of language into the final rule, there would be an opportunity for the use of other scientifically valid methods for determining protein quality beyond what exists currently and for the possibility of other methods that may be developed in the future.

(Response) FDA acknowledges that currently and in the future there may be other methods that could be used for determining protein quality. To address this issue, we added an exemption to § 106.96(g)(3) to allow manufacturers of new infant formulas to use alternative methods based on sound scientific principles to demonstrate protein quality. FDA is also adding language to § 106.121(i) of this final rule, consistent with this change, to explain the information that must be included in a new infant formula notification if the manufacturer is requesting this exemption.

(Comment 38) Several comments understood the protein efficiency ratio (PER) to be a quality factor and indicated this was not an appropriate quality factor.

(Response) We note that the comments have misidentified the quality factor as the PER. The quality factor is the biological quality of the protein, and the PER is a method used to assure such quality.

D. Subpart F—Records and Reports

(Comment 39) One comment stated that the term ''immediate'' is unclear in § 106.100(m). Section 106.100(m) of the IFR described various means of recordkeeping and stated, in relevant part, that the records are to be maintained in a manner that ensures that both the manufacturer and FDA can be provided with ''immediate access'' to the records. The comment would revise § 106.100(m) by replacing ''immediate'' with ''within 24 hours'' to be consistent with records access in § 106.100(k)(5)(v).

(Response) We agree that access to records within 24 hours is reasonable and have revised the wording in § 106.100(m) in the final rule to require access within 24 hours.

IV. Technical Amendments

In addition to the changes we are making in response to the comments, we are making minor technical corrections to § 106.96(c)(1) and (g) to provide more specific cross references to other provisions of the rule. Also, consistent with our discussion in the IFR explaining our decision to use the terms ''production unit'' and ''production aggregate'' instead of ''batch'' and ''lot'' (79 FR 7934 at 7942–7944), we are eliminating the use of the words ''batch'' and lot'' in § 106.100(f)(4), (k)(5)(ii), and (o) to ensure consistency with the terminology used elsewhere in the IFR and final rule. Finally, we are deleting an unnecessary reference to § 106.3 from what was § 106.91(b)(1) in the IFR, which has been redesignated as § 106.91(b)(1)(i) in this final rule.

V. Executive Order 12866 and Executive Order 13563: Cost Benefit Analysis

On February 10, 2014, FDA issued an IFR amending certain requirements in the regulation on the current good manufacturing practices, quality control procedures, quality factors, notification requirements, and records and reports, for infant formula (79 FR 7934). The Economic Impact Analysis in the IFR explained and further revised the analysis set forth in the proposed rule by addressing the economic impact of the changes to the regulations at parts 106 and 107. We did not receive any comments that would warrant further revising the economic analysis of the IFR.

FDA has examined the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We

believe that the final rule is not a significant regulatory action under Executive Orders 12866 and 13563.

The Regulatory Flexibility Act requires Agencies to determine whether a final rule will have a significant impact on small entities when an Agency issues a final rule ''after being required . . . to publish a general notice of proposed rulemaking.'' We certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. We do not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

Thus, this economic analysis affirms the economic impact analysis of the IFR. For a full explanation of the economic impact analysis of this final rule, we direct interested persons to the text of the economic impact analyses in the IFR (79 FR 7934, February 10, 2014, Ref. 92). The analyses that we have performed to examine the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995 are included in the RIA for the final rule (Ref. 1).

VI. Small Entity Analysis (or Final Regulatory Flexibility Analysis)

A regulatory flexibility analysis is required only when an Agency must publish a notice of proposed rulemaking (5 U.S.C. 603, 604). FDA published the IFR after publishing a notice of proposed rulemaking in 1996 (61 FR 36154; July 9, 1996) and reopening of the comment period in 2003 (68 FR 22341; April 28, 2003) and 2006 (71 FR 43392; August 1, 2006). We have conducted such an analysis and examined the economic implications of this final rule on small entities. This final rule is not a significant regulatory action as defined by Executive Order 12866. FDA also certifies that this final rule will not have a significant impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions with estimates of the annual reporting, recordkeeping, and third-party disclosure burden are included in the RIA in section IV, entitled ''Paperwork Reduction Act of 1995'' (Ref. 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 OMB control number.

We had included a section titled ''Paperwork Reduction Act of 1995'' in the preamble to the IFR (79 FR 7934 at 8055–8056). Any comments on our analysis of the burdens presented in that section were submitted to OMB. We will not address these comments in this document. We are resubmitting the information collection provisions of this final rule to OMB because the final rule provides additional modifications and clarifications to 21 CFR part 106.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection provisions of this final rule to OMB for review. Interested persons are requested to submit comments regarding information collection to OMB (see **DATES** and **ADDRESSES**).

We will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VIII. Analysis of Environmental Impact

We have carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(j) and 25.32(n) 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.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Reference

The following reference has been placed on display in the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA. Current Good Manufacturing Practices, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports, for Infant Formula. Regulatory Impact Analysis for Final Rule. FDA–1995–N–0063 (formerly 95N–0309), 2014.

List of Subjects

21 CFR Part 106

Food grades and standards, Infants and children, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

21 CFR Part 107

Food labeling, Infants and children, Nutrition, Reporting and recordkeeping, Signs and symbols.

Accordingly, the interim final rule amending 21 CFR parts 106 and 107, which was published at 79 FR 7933 on February 10, 2014, is adopted as a final rule with the following changes:

PART 106—INFANT FORMULA REQUIREMENTS PERTAINING TO CURRENT GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, RECORDS AND REPORTS, AND NOTIFICATIONS

■ 1. The authority citation for 21 CFR part 106 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 350a, 371.

■ 2. In § 106.3, revise the definitions for ''Eligible infant formula'' and ''Quality factors'' to read as follows:

§ 106.3 Definitions.

* * * * *

Eligible infant formula means an infant formula that could be lawfully distributed in the United States on December 8, 2014.

* * * * *

Quality factors means those factors necessary to demonstrate the safety of the infant formula and the bioavailability of its nutrients, as prepared for market and when fed as the sole source of nutrition, to ensure the healthy growth of infants.

* * * * *

■ 3. In § 106.20, revise paragraph (i) to read as follows:

§ 106.20 Controls to prevent adulteration caused by facilities.

* * * * *

(i) Each infant formula manufacturing site shall provide its employees with readily accessible toilet facilities and hand washing facilities that include hot and cold water, soap or detergent, single-service towels or air dryers in toilet facilities. These facilities shall be maintained in good repair and in a sanitary condition at all times. These facilities shall provide for proper disposal of the sewage. Doors to the toilet facility shall not open into areas where infant formula, ingredients, containers, or closures are processed, handled, or stored, except where alternate means have been taken to protect against contamination.

■ 4. In § 106.30, revise paragraph (e)(2)(ii) to read as follows:

§ 106.30 Controls to prevent adulteration caused by equipment or utensils.

* * * * *

(e) * * *

(2)(i) * * *

(ii) A manufacturer may maintain a cold storage area for an in-process infant formula or for a final infant formula at a temperature not to exceed 45 °F (7.2 °C) for a defined period of time provided that the manufacturer has scientific data and other information to demonstrate that the time and temperature conditions of such storage are sufficient to ensure that there is no significant growth of microorganisms of public health significance during the period of storage of the in-process or final infant formula product.

* * * * *

■ 5. In § 106.35, revise paragraphs (a)(4) and (b)(1) to read as follows:

§ 106.35 Controls to prevent adulteration due to automatic (mechanical or electronic) equipment.

(a) * * *

(4) ''Validation'' means establishing documented evidence that provides a high degree of assurance that a system will consistently produce a product meeting its predetermined specifications and quality characteristics. Validation can be accomplished through any suitable means, such as verification studies or modeling.

(b) * * *

(1) A manufacturer shall ensure, at any point, step, or stage where control is necessary to prevent adulteration of the infant formula, that all hardware is routinely inspected and checked according to written procedures and that hardware that is capable of being calibrated is routinely calibrated according to written procedures.

* * * * *

■ 6. In § 106.50, revise paragraph (a)(2) to read as follows:

§ 106.50 Controls to prevent adulteration during manufacturing.

(a) * * *

(2) Changes made to the master manufacturing order shall be reviewed and approved by a responsible official and include an evaluation of the effect of the change on the nutrient content and the suitability of the formula for infants.

* * * * *

■ 7. In § 106.91, revise paragraphs (b)(1), (b)(2), (b)(3), (b)(4)(ii), (b)(4)(iii), and (b)(4)(iv) to read as follows:

§ 106.91 General quality control.

* * * * *

(b) * * *

(1)(i) For an infant formula that is a new infant formula the manufacturer shall collect, from each manufacturing site and at the final product stage, a representative sample of the first production aggregate of packaged, finished formula in each physical form (powder, ready-to-feed, or concentrate) and evaluate the levels of all nutrients required under § 107.100 of this chapter and all other nutrients added by the manufacturer. The manufacturer shall repeat such testing every 4 months thereafter throughout the shelf life of the product.

(ii) The Food and Drug Administration will exempt the manufacturer from the requirements of paragraph (b)(1)(i) of this section if the manufacturer of a new infant formula requests an exemption and provides analytical data, as required under § 106.120(b)(7), that demonstrates that the stability of the new infant formula will likely not differ from the stability of formulas with similar composition, processing, and packaging for which there are extensive stability data. A manufacturer exempt from the requirements of paragraph (b)(1)(i) of this section would be required to test the first production aggregate according to the requirements of § 106.91(b)(2).

(2) The manufacturer shall collect, from each manufacturing site and at the final product stage, a representative sample of each subsequent production aggregate of packaged, finished formula in each physical form (powder, ready-to-feed, or concentrate) and evaluate the levels of all nutrients required under § 107.100 of this chapter and all other nutrients added by the manufacturer. The manufacturer shall repeat such testing at the end of the shelf life of the product.

(3) If the results of the testing required by paragraph (b)(1) of this section do not substantiate the shelf life of the infant formula, the manufacturer shall address, as appropriate, all production aggregates of formula released and pending release for distribution that are implicated by the testing results, such as by conducting the testing required by paragraph (b)(1) of this section on a subsequently produced production aggregate to substantiate the shelf life of the infant formula or revising the use by date for such product so that such date is substantiated by the stability testing results.

(4) * * *

(ii) Evaluate the significance, if any, of the results for other production aggregates of the same formula that have been released for distribution;

(iii) Address, as appropriate, all production aggregates of formula released and pending release for distribution that are implicated by the testing results; and

(iv) Determine whether it is necessary to conduct the testing required by paragraph (b)(1) of this section.

* * * * *

■ 8. In § 106.96, revise paragraphs (c)(1), (c)(2)(ii), (g)(1), and (g)(2), and add paragraph (g)(3) to read as follows:

§ 106.96 Requirements for quality factors for infant formulas.

* * * * *

(c) * * *

(1) The manufacturer requests an exemption and provides assurances, as required under § 106.121(b), that the changes made by the manufacturer to an existing infant formula are limited to changing the type of packaging of an existing infant formula (e.g., changing from metal cans to plastic pouches); or

(2) * * *

(ii) The change made by the manufacturer to an existing formula does not affect the ability of the formula to support normal physical growth; or

* * * * *

(g) * * *

(1) The manufacturer requests an exemption and provides assurances as required under § 106.121(g) that the changes made by the manufacturer to an

existing infant formula are limited to changing the type of packaging of an existing infant formula (e.g., changing from metal cans to plastic pouches); or

(2) The manufacturer requests an exemption and provides assurances, as required under § 106.121(h), that demonstrate that the change made by the manufacturer to an existing formula does not affect the bioavailability of the protein.

(3) The manufacturer requests an exemption and provides assurances, as required under § 106.121(i), that demonstrate that an alternative method to the PER that is based on sound scientific principles is available to demonstrate that the formula supports the quality factor for the biological quality of the protein.

* * * * *

■ 9. In § 106.100, revise paragraphs (f)(4), (k)(5)(ii), (m), and (o) to read as follows:

§ 106.100 Records.

* * * * *

(f) * * *

(4) Records, in accordance with § 106.30(f), on equipment cleaning, sanitizing, and maintenance that show the date and time of such cleaning, sanitizing, and maintenance and the production aggregate number of each infant formula processed between equipment startup and shutdown for cleaning, sanitizing, and maintenance. The person performing and checking the cleaning, sanitizing, and maintenance shall date and sign or initial the record indicating that the work was performed.

* * * * *

(k) * * *

(5) * * *

(ii) The production aggregate number;

* * * * *

(m) A manufacturer shall maintain all records required under this part in a manner that ensures that both the manufacturer and the Food and Drug Administration can be provided with access to such records within 24 hours. The manufacturer may maintain the records required under this part as original records, as true copies such as photocopies, microfilm, microfiche, or other accurate reproductions of the original records, or as electronic records. Where reduction techniques, such as microfilming, are used, suitable reader and photocopying equipment shall be readily available. All electronic records maintained under this part shall comply with part 11 of this chapter.

* * * * *

(o) The manufacturer shall maintain quality control records that contain sufficient information to permit a public health evaluation of any production aggregate of infant formula.

* * * * *

■ 10. In § 106.120, add paragraph (b)(7) to read as follows:

§ 106.120 New infant formula submission.

* * * * *

(b) * * *

* * * * *

(7) If the manufacturer is requesting an exemption under § 106.91(b)(1)(ii), the manufacturer shall include the scientific evidence that the manufacturer is relying on to demonstrate that the stability of the new infant formula will likely not differ from the stability of formulas with similar composition, processing, and packaging for which there are extensive stability data.

* * * * *

■ 11. In § 106.121 revise paragraphs (d) and (i) and add paragraph (j) to read as follows:

§ 106.121 Quality factor assurances for infant formulas.

* * * * *

(d) If the manufacturer is requesting an exemption under § 106.96(c)(2)(ii), the manufacturer shall include a detailed description of the change and an explanation of why the change made by the manufacturer to an existing infant formula does not the affect the ability of the formula to support normal physical growth.

* * * * *

(i) If the manufacturer is requesting an exemption under § 106.96(g)(3), the manufacturer shall include a detailed explanation of the alternative method, an explanation of why the method is based on sound scientific principles, and the data that demonstrate that the quality factor for the biological quality of the protein has been met.

(j) A statement certifying that the manufacturer has collected and considered all information and data concerning the ability of the infant formula to meet the requirements for quality factors and that the manufacturer is not aware of any information or data that would show that the formula does not meet the requirements for quality factors.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13384 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 314, 329, and 600

[Docket No. FDA–2008–N–0334]

RIN 9010–AF96

Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending its postmarketing safety reporting regulations for human drug and biological products to require that persons subject to mandatory reporting requirements submit safety reports in an electronic format that FDA can process, review, and archive. FDA is taking this action to improve the Agency's systems for collecting and analyzing postmarketing safety reports. The change will help the Agency to more rapidly review postmarketing safety reports, identify emerging safety problems, and disseminate safety information in support of FDA's public health mission. In addition, the amendments will be a key element in harmonizing FDA's postmarketing safety reporting regulations with international standards for the electronic submission of safety information.

DATES: This rule is effective June 10, 2015.

FOR FURTHER INFORMATION CONTACT: *For information concerning human drug products:* Jean Chung, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7268, Silver Spring, MD 20993–0002, 240–402–7911.

For information concerning human biological products: Stephen Ripley, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In the **Federal Register** of August 21, 2009 (74 FR 42184), FDA published a proposed rule to require that persons subject to mandatory postmarketing safety reporting requirements for human drug or biological products submit safety reports in an electronic format that the Agency can process, review, and archive.

When a drug or biological product is approved and enters the market, the product is introduced to a larger patient population in settings different from clinical trials. New information generated during the postmarketing period offers further insight into the benefits and risks of the product, and evaluation of this information is important to ensure the safe use of these products.

FDA receives information regarding postmarketing adverse drug experiences [1] from safety reports submitted to the Agency. For nearly 35 years, FDA has received these postmarketing safety reports on paper. Since 2001, many companies have voluntarily submitted reports for drug and nonvaccine biological products to the Agency in electronic format. Data from both the electronic and paper reports are entered into the FDA Adverse Event Reporting System (FAERS) database. FAERS is a computerized information database designed to support FDA's postmarketing safety surveillance program for drug and nonvaccine biological products. The FAERS database is used to store and analyze data received in postmarketing safety reports. Safety reporting data submitted on paper is first converted into an electronic format before being entered into FAERS.[2] In September 2012, the FAERS database replaced the previously used Adverse Event Reporting System (AERS) database described in the preamble to the proposed rule (74 FR 42184 at 42185). The transition to the FAERS database has been an important step in improving FDA's postmarketing surveillance capabilities. FAERS supports greater functionality and more sophisticated pharmacovigilance tools that enhance FDA's ability to analyze safety information.

The proposed rule proposed that use of an electronic format be mandatory for the submission of all required postmarketing safety reports for human drug and biological products, including vaccines,[3] a change to improve the Agency's systems for collecting and analyzing these reports.

A. The Proposed Rule

In the preamble to the proposed rule (74 FR 42184 at 42187 to 42189), we set forth in detail the rationale for requiring electronic submission of postmarketing safety reports. Receiving postmarketing safety reports in electronic format will expedite access to safety information and facilitate international harmonization and exchange of this information. This, in turn, will lead to more efficient reviews of safety data and will enhance our ability to rapidly disseminate safety information to health care providers, consumers, applicants, sponsors, and other regulatory authorities in support of FDA's public health mission. In addition, the Agency will recognize a significant cost savings by converting the safety reporting system from a paper submission process to a predominantly all-electronic system that will increase the accuracy of information and reduce the need for manual data entry. We also believe this change will benefit industry by eliminating time and costs associated with submitting paper reports.

In the proposed rule, FDA proposed revising §§ 310.305, 314.80, 314.98, and 600.80 (21 CFR 310.305, 314.80, 314.98, and 600.80) to require that manufacturers, packers, and distributors, and applicants with approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biological license applications (BLAs), and those that market prescription drugs for human use without an approved application, submit postmarketing safety reports (i.e., individual case safety reports (ICSRs) and any ICSR attachments) to the Agency in an electronic format that FDA can process, review, and archive. We stated that the proposal would apply to all postmarketing safety reports required to be submitted to FDA under §§ 310.305, 314.80, 314.98, and 600.80 (including vaccines) and would apply to any new postmarketing safety reports for drug or biological products implemented in the future. (The preamble to the proposed rule (74 FR 42184 at 42185 to 42186) describes current postmarketing safety reporting requirements.) We also proposed revising § 600.81 (21 CFR 600.81) to require the electronic submission of biological lot distribution reports.

The preamble to the proposed rule (74 FR 42184 at 42186 to 42187) also discussed the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109–462), enacted on December 22, 2006, which amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to create a new section 760 (21 U.S.C. 379aa), entitled ''Serious Adverse Event Reporting for Nonprescription Drugs.'' As noted in the preamble, section 760 of the FD&C Act requires manufacturers, packers, or distributors whose name appears on the label of nonprescription (over-the-counter or OTC) human drug products marketed *without* an approved application to report to FDA serious adverse events associated with their products. It does not apply to OTC drug products marketed under applications approved under section 505 of the FD&C Act (21 U.S.C. 355), which are subject to the reporting requirements under § 314.80, as are all other drugs marketed under approved NDAs or ANDAs.[4] The requirement went into effect in December 2007, and to assist entities in complying with the requirements, FDA issued a guidance for industry entitled ''Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application'' (available on

[1] For purposes of this preamble, the term ''adverse drug experience'' includes an ''adverse experience'' associated with use of a human drug or biological product.

[2] Additional information regarding the FAERS database may be found at *http://www.fda.gov/cder/aers/default.htm*.

[3] Data from postmarketing safety reports for vaccines is entered into the Vaccine Adverse Event Reporting System (VAERS). The VAERS database is used to store and analyze data received in postmarketing safety reports for vaccines.

[4] Section 760 of the FD&C Act provides for mandatory safety reporting for nonprescription human drug products not subject to NDAs or ANDAs. Accordingly, the requirements apply to all OTC drug products marketed without an approved application, including those marketed under the OTC Drug Monograph Review process (whether or not subject to a final monograph), those marketed outside the monograph system, and including those that have been discontinued from marketing but for which a report of an adverse event was received. These reporting requirements became effective December 22, 2007.

FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm).* In the preamble to the proposed rule, we requested comment on whether to require the electronic submission of postmarketing safety reports required by section 760 of the FD&C Act (referred to in this document as section 760 reports). We noted that our decision would be informed by public comments received and our experience with the submission of these reports to date.

The proposed rule stated that FDA would periodically issue guidance on how to provide the electronic submissions (e.g., method of transmission, media, file formats, preparation, and organization of files). Currently, technical specifications referenced in guidance documents rely upon and adopt certain safety reporting and transmission standards recommended by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). ICH was formed to facilitate the harmonization of technical requirements for the registration of pharmaceutical products among the three ICH regions: The European Union (EU), Japan, and the United States. The proposal reaffirmed our intention to continue to rely on ICH standards while also providing other options for providing electronic submissions to FDA.

In the preamble to the proposed rule, we explained that applicants, manufacturers, packers, and distributors had been voluntarily submitting postmarketing safety reports for drugs and nonvaccine biological products in electronic format by sending the reports to FDA either through FDA's Electronic Submission Gateway (ESG) or on physical media (e.g., CD–ROM (sent by mail).[5] The ESG is the central transmission point for sending information electronically to FDA. Among other things, the ESG allows ICH-compatible postmarketing safety report submissions to be transmitted directly from the company's database to FDA.[6] The direct database-to-database submissions may include ICSRs, any ICSR attachments, and descriptive information. Once received through the ESG, the ICSRs for drug and nonvaccine biological products are downloaded into the FAERS database. FDA has encouraged electronic submission of ICSRs because it is a cost-effective and efficient alternative to paper-based reporting, particularly for companies submitting large numbers of ICSRs. In addition, electronic submission of ICSRs enhances global pharmacovigilance by facilitating electronic transmission and exchange of appropriate information from ICSRs among regulatory bodies and regulated entities through use of common data elements and transmission standards.

In the preamble to the proposed rule, we also explained that we are developing a ''Web-based submission portal'' to collect and process safety information for FDA-regulated products. We anticipated that the Web-based submission portal would allow the secure electronic submission of postmarketing ICSRs directly into FDA's FAERS database once information was entered into a ''Web-based electronic form.'' We stated that the Web-based submission portal would allow submission of ICSRs consistent with ICH standards and could be used as an alternative method for reporting adverse drug experiences to FDA electronically. We noted that the Web-based system would be particularly useful for entities that submit a small number of safety reports because it would create a simpler and more efficient mechanism for reporting that would not require an internal database that is compatible with the ICH-based direct transmission system. (See section II.A for further discussion of the Web-based submission portal.)

Because in certain rare circumstances electronic submission of safety reports may not be feasible, we proposed (in §§ 310.305(e)(2), 314.80(g)(2), and 600.80(g)(2)) to allow for the submission of requests for a temporary waiver from the electronic format requirement and stated that waivers would be granted on a limited basis for good cause shown. We requested comments on circumstances under which a waiver should be granted. We stated that guidance would be issued describing the procedures for submitting a waiver request. Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a draft guidance entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports'' (the postmarketing safety reports guidance) (available on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*). It is intended to assist persons required to submit postmarketing safety reports in complying with the final rule. In addition, the draft guidance addresses procedures for submitting waiver requests and other information.

We proposed to delete the specific references to paper reporting forms in §§ 310.305, 314.80, and 600.80. Because the paper reporting forms would no longer be used, we proposed to add a list of the reportable elements to proposed §§ 310.305(d), 314.80(f), and 600.80(f). The list of reportable elements in the proposed rule was derived from the elements included in Form FDA 3500A, the paper reporting form. Moreover, the obligation to provide all applicable information described in the proposed rule would be the same as the obligation to complete Form FDA 3500A and VAERS–1. To facilitate the shift away from the paper reporting forms, we also proposed to adopt a generic term for the safety reporting vehicle: Individual case safety report (ICSR). Proposed §§ 310.305(b) and 314.80(a) define an ICSR as ''a description of an adverse drug experience related to an individual patient or subject.'' Proposed § 600.80(a) defines ICSR as ''a description of an adverse experience related to an individual patient or subject.''

B. Changes to the Proposed Rule

We received seven submissions containing comments on the proposed rule. Several commenters expressed support for requiring electronic submission of postmarketing safety reports, agreeing that it would help FDA to more rapidly review safety reports and identify emerging safety issues. Two commenters also expressed support for requiring the electronic submission of safety reports required by section 760 of the FD&C Act; no commenters opposed this requirement for the section 760 reports. Commenters also requested clarification of certain terms and requirements in the proposed rule. We address all of the comments in greater detail in section III.

After considering the comments and based on our experience with postmarketing safety reporting, we have concluded that certain revisions to the proposed rule are appropriate. However, we note that the provisions applicable to safety reporting under §§ 310.305, 314.80, and 600.80 are largely unchanged from the proposed rule.

We have concluded that the electronic submission requirement should extend to safety reports required by section 760 of the FD&C Act. Therefore, the final rule adds part 329 (21 CFR part 329), entitled ''Nonprescription Human Drug Products Subject to Section 760 of the Federal Food, Drug, and Cosmetic Act'' to chapter 21 of the Code of Federal

[5] FDA expects that, in the future, all electronic submissions to the Agency will be sent through the ESG and that use of physical media (e.g., CD–ROM) for such submissions will be phased out.

[6] ICH data elements for postmarketing safety reports are available at *http://www.fda.gov/downloads/RegulatoryInformation/Guidances/UCM129399.pdf*.

Regulations to address the safety reporting requirements of section 760 of the FD&C Act described in section I.A. This addition responds to the two comments received on this issue, both of which supported requiring the electronic submission of section 760 reports. It also reflects FDA's determination that the electronic submission requirement should extend to these safety reports in furtherance of FDA's goal to more quickly review postmarketing safety reports and identify emerging safety issues.

The final rule adds new § 329.100 to require the electronic submission of section 760 reports. Section 329.100(a) states that safety reports required by section 760 of the FD&C Act must be submitted to FDA in electronic format. Section 329.100(b) explains that for purposes of safety reporting under section 760, an ICSR constitutes the ''MedWatch Form'' (the common name for Form FDA 3500A) required to be submitted in section 760(d) of the FD&C Act, and sets forth the elements that are reported in an ICSR under section 760. As noted previously in this document and in the preamble to the proposed rule, we have adopted the term ''individual case safety report'' (ICSR) because we will no longer be using the paper reporting forms for mandatory postmarketing safety reporting. New § 329.100(c)(1) states that the submissions must be in an electronic format that FDA can process, review, and archive; § 329.100(c)(2) provides for a good-cause waiver; and § 329.100(d) addresses patient privacy. All of these provisions are analogous to the provisions in this final rule for reports submitted under §§ 310.305, 314.80, and 600.80.

The final rule revises the proposed provisions entitled ''Patient privacy'' (in final §§ 310.305(f), 314.80(i), and 600.80(j)) to state, ''the applicant should assign a unique code for identification of the patient.'' [7] This addresses a comment expressing concern that the proposed rule was confusing because it used two different terms to refer to the code that must be assigned to protect patient privacy. Section 329.100(d) uses the revised language.

On our own initiative, we have made revisions that are described as follows. The final rule adds a definition for the term ''ICSR attachments'' to §§ 310.305(b), 314.80(a), and 600.80(a). In §§ 310.305(b) and 314.80(a), ICSR attachments are defined as ''documents related to the adverse drug experience described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.'' In § 600.80(a), ICSR attachments are defined as ''documents related to the adverse experience described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.''

The final rule revises the proposed provisions addressing waivers in proposed §§ 310.305(e)(2), 314.80(g)(2), and 600.80(g)(2). The final rule deletes the statement that if the Agency grants a waiver, the person who requested the waiver must submit the required reports on paper within the required time periods and that FDA intends to issue guidance on how to provide the paper submission. This statement has been deleted so that the rule does not specify that safety reports that cannot be submitted in electronic format must be submitted on paper. We recognize that alternate formats for safety reports, other than paper, such as email or fax, may be appropriate when a waiver of the electronic submission requirement is granted. We will specify an acceptable alternate format at the time the waiver is granted. The final rule also modifies the language indicating that procedures for how to request waivers will be set forth in guidance. The proposed rule stated, ''Procedures for how to request waivers of this requirement will be set forth in guidance.'' The final rule states, ''FDA will issue guidance on requesting a waiver of the requirements [for electronic submission].'' We have made this change to indicate that the guidance addressing waivers may include information on other aspects of the waiver provision, such as circumstances under which FDA may grant waivers, not just the procedures for how to request waivers. (The waiver provision for biological products has been finalized in § 600.80(h)(2).) Section 329.100(c)(2), applicable to section 760 reports for nonprescription products marketed without an approved application, contains this revised language on waivers. It is important to note that the waiver referred to in the final rule (as in the proposed rule) pertains only to the electronic format requirements. It is not a waiver from the underlying safety reporting requirement.

On our own initiative, we have made additional changes to the provisions addressing patient privacy. The proposed provisions entitled ''Patient privacy'' (in proposed §§ 310.305(f), 314.80(i), and 600.80(i)) state that the preferred methodology for determining the identification code will be set forth in guidance. FDA does not believe that it is necessary to identify specific elements in the final rule for which we will be providing technical guidance or specifications. FDA currently provides and will continue to provide technical guidance and specifications for many different aspects of electronic ICSR submission. Accordingly, we are deleting that language from final §§ 310.305(f), 314.80(i), and 600.80(j). However, for drug and nonvaccine biological products, we recommend that no identifying information, such as initials or birthdate, be used as part of the patient identification code. At the same time, under new § 600.80(g), ICSRs for vaccine products will continue to include the patient's name.

In the patient privacy provisions, we proposed that the name of the reporter not be included when the reporter is also the patient. The proposed provision stated that the submitter should include the name of the reporter from whom the information was received, unless the reporter is the patient. FDA is not finalizing the proposal because we have concluded that those submitting mandatory safety reports should include the name of the reporter (in the reporter section of the ICSR), even when the reporter is the patient. It is important for FDA to have the name of the reporter so that we may contact the reporter, if necessary, to obtain followup information about the adverse event reported. To make clear that the name of the reporter should be provided (in the initial reporter information section of the ICSR), even when the reporter is the patient, we are amending the patient privacy provisions in the final rule to state, ''the [submitter] should include the name of the reporter from whom the information was received as part of the initial reporter information, even when the reporter is the patient'' (§§ 310.305(f), 314.80(i), 329.100(d), and 600.80(j)). FDA regulations prohibit the release of the names of patients, health care professionals, hospitals, and geographical identifiers in adverse event reports to the public, so it is unlikely that the patient's privacy will be compromised if the patient's name is provided in situations where the patient is the reporter.

The final rule modifies the language in proposed § 600.81(b)(1) describing the electronic format requirement for biological product lot distribution reports so that it reflects the language used in analogous provisions (§§ 310.305(e)(1), 314.80(g)(1), 329.100(c)(1), and 600.80(h)(1)).

As described later in this section, the final rule also makes some revisions to the proposed provisions that set forth the reportable elements included in an ICSR. Changes to the language

[7] The revised language in § 600.80(j) applies only to nonvaccine biological products. ICSRs for vaccines should not use a patient identification code but should continue to include the patient's name (§ 600.80(g)).

describing certain elements, including the addition of descriptive phrases, have been made to clarify to what information those elements refer. The final rule also adds a new § 600.80(g) and adds certain elements to proposed §§ 310.305(d), 314.80(f), and 600.80(f) to more accurately describe the information currently reported on the VAERS–1 form and Form FDA 3500A. Accordingly, §§ 310.305(d), 314.80(f), 329.100(b), and 600.80(f) list ICSR elements, derived from Form FDA 3500A, for drug and nonvaccine biological products. Section 600.80(g) in the final rule lists ICSR elements for vaccine products derived from the VAERS–1 form.

The new § 600.80(g) has been added to the final rule to capture the information reported on the VAERS–1 form that was inadvertently omitted from the proposed rule. Section 600.80(f) applies only to nonvaccine biological products. Section 600.80(g) in the final rule lists ICSR elements for vaccines that are derived from the VAERS–1 form. The list of elements in § 600.80(g) (for vaccine products) is largely the same as the list of elements for nonvaccine biological products, but there are some variations, including certain additional elements applicable only to safety reporting for vaccine products. Reporting elements that have been included for vaccine ICSRs that are not applicable to ICSRs for nonvaccine biological products include, among others, patient name (in place of patient identification code), birth weight for children under 5, time of adverse experience, illness at the time of vaccination, anatomical site of vaccination, number of previous vaccine doses, time of vaccination, other vaccine(s) administered in the 4 weeks before the vaccination date, name of the person who administered the vaccine, and name of the responsible physician at the facility where the vaccine was administered. This information is currently reported on the VAERS–1 form and is important for FDA to evaluate adverse experiences associated with the administration of vaccines. In addition, because § 600.80(g) does not include patient identification code as a reporting element, FDA has revised § 600.80(c)(2)(ii)(A)(2) and (A)(4), which describe how to reference and index ICSRs in periodic reports, to note that ICSRs for nonvaccine biological products should be referenced and indexed by patient identification code, whereas ICSRs for vaccines should be referenced and indexed by unique case identification number.

The final rule removes from proposed §§ 310.305(d), 314.80(f), and 600.80(f) the element requiring applicants to report information on whether the initial reporter also sent a copy of the report to FDA. FDA does not often use that information to identify duplicate reports, and including that information is not consistent with international electronic reporting standards. The final rule adds to all sections that contain reporting elements the following elements to be reported: (1) Whether the report is a 15-day ''Alert report'' and (2) whether the ICSR is an initial report or a followup report. These two elements replace the element requiring the type of report (e.g., 15-day, periodic, followup). We believe that it is clearer to represent this information with two separate elements. The final rule adds to §§ 310.305(d), 314.80(f), and 600.80(f) the element requiring information on whether the product is a combination product as defined under § 3.2(e) (21 CFR 3.2(e)).[8] The final rule adds to §§ 310.305(d), 314.80(f), and 600.80(f) the element ''whether the product is a prescription or nonprescription product.'' Section 329.100(b) also lists ''whether the product is a prescription or nonprescription product'' as an element to be included in an ICSR. Even though § 310.305 only applies to prescription products and § 329.100 only applies to nonprescription products, for consistency, we use the same language in all sections to describe the information to be provided. The final rule removes from proposed § 310.305(d), ''Basis for marketing if nonapplication product'' because we are able to obtain that information based on the status of the drug as a prescription product and whether a drug application number is provided. The final rule adds to the ICSR elements for each product type (e.g., drug, nonvaccine biological product, vaccine) ''unique case identification number,'' which must be the same in the initial report and any subsequent followup reports. The unique case identification number is different from the ''unique code [used] for identification of the patient.'' The ''unique case identification number'' replaces the ''Manufacturer Report Number'' used on Form FDA 3500A and VAERS–1. Using a unique case identification number (that is the same in the initial ICSR and any followup reports) allows FDA to link the initial ICSR with any followup reports in the FAERS or VAERS database. This will allow FDA to track an individual case over its life cycle.

[8] For purposes of postmarketing safety reporting, combination product, under § 3.2(e), includes: (1) A product comprised of two or more regulated components, i.e., drug/device, biological product/device, drug/biological product, or drug/device/biological product, that are physically, chemically, or otherwise combined or mixed and produced as a single entity and (2) two or more separate products packaged together in a single package or as a unit and comprised of drug and device products, device and biological products, or biological and drug products.

II. Summary of the Final Rule

A. Electronic Submission of Postmarketing Safety Reports

The final rule revises current §§ 310.305, 314.80, 314.98, and 600.80 to require that manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs, and BLAs and those that market prescription drugs for human use without an approved application submit postmarketing safety reports to the Agency in an electronic format that FDA can process, review, and archive. As addressed in section I.B of this document, the final rule also adds part 329 to address safety reports required by section 760 of the FD&C Act. Section 329.100 requires that reports required to be submitted to the Agency under section 760 of the FD&C Act be submitted in an electronic format that FDA can process, review, and archive.

Under the final rule, the following reports must be submitted to FDA in an electronic format: Postmarketing 15-day Alert report ICSRs and any ICSR attachments; periodic adverse (drug) experience reports (including the ICSRs, any ICSR attachments, and the descriptive information portion); and section 760 reports. A separate ICSR is to be submitted for each individual patient report of an adverse drug experience, just as separate paper forms have been submitted for each individual patient report of an adverse drug experience. Information on the formats the Agency is able to process, review, and archive is described in FDA guidance and associated technical specifications documents available on FDA's Web site.

For marketed products with an approved application, manufacturers, packers, or distributors that do not hold the application continue to have the option of submitting 15-day Alert reports directly to FDA or to the application holder under §§ 314.80(c)(1)(iii) and 600.80(c)(1)(iii). If they opt to submit reports directly to FDA, they are required to do so in electronic format. If they choose to report to the applicant, they may submit the report in any format acceptable to the reporter and applicant. The applicant, however, is required to use electronic reporting when it subsequently reports the information to FDA. Similarly, for marketed

prescription drug products without an approved application, initial safety reports submitted to the manufacturer by packers and distributors under § 310.305 may be sent in any format agreeable to the reporter and the manufacturer, but all safety reports submitted to FDA must be in electronic format. Under section 760 of the FD&C Act, a retailer whose name appears on the label of a nonprescription (OTC) drug product marketed in the United States without an approved application, as a distributor, may, by agreement, authorize the manufacturer or packer of the nonprescription drug to submit the required reports to FDA (as long as the retailer directs to the manufacturer or packer all adverse events associated with the drug that are reported to the retailer as specified in section 760). The retailer may direct serious adverse event reports to the manufacturer or packer in any agreed-upon format. However, the manufacturer or packer must then send the required reports to FDA in an electronic format that the Agency can process, review, and archive.

This rule will apply to any new postmarketing safety reports for drug or biological products that are implemented in the future (e.g., once finalized, new postmarketing safety reports in the proposed rule to amend safety reporting requirements published in the **Federal Register** of March 14, 2003, 68 FR 12406). The rule also revises § 600.81, requiring the electronic submission of biological lot distribution reports.[9] The specific references to submission of postmarketing safety reports in paper format in §§ 310.305, 314.80, 600.2, and 600.80 have been deleted, and language has been added to these sections which states that FDA will issue guidance on how to provide the electronic submissions (e.g., method of transmission, media, file formats, preparation, and organization of files).

In the proposed rule, we stated that we were developing a Web-based submission portal (for submission of reports to FAERS) that we believed might be preferred by entities that submit a small number of safety reports. The Safety Reporting Portal (SRP) (available at *http://www.safetyreporting.hhs.gov*) allows the secure electronic submission of ICSRs for drug and nonvaccine biological products directly into the FAERS database once information is typed into the Web-based electronic form. The SRP creates a simple and efficient mechanism for electronic reporting that does not require an internal ICH-compatible database. As described in the preamble to the proposed rule, use of the SRP does however require some administrative support to manually enter information for the ICSRs into a Web-based form.

To assist entities that submit a small number of safety reports for vaccines, FDA has made available an eSubmitter tool. The eSubmitter tool is a stand-alone application that can be downloaded free of charge from FDA's Web site at *http://www.fda.gov/forindustry/fdaesubmitter*. The eSubmitter application appears as a fillable form, and once the appropriate fields are filled in, an ICSR in electronic format is generated that can be transmitted through the ESG into the VAERS database. We believe that the eSubmitter tool generally offers the same benefits as the SRP. As noted in § 600.80(h), FDA will issue guidance providing further information about the electronic submission of vaccine reports.

B. Safety Reports Not Covered by the Final Rule

Postmarketing safety reports for drugs, including vaccines, constitute the largest volume of paper safety reports received by the Agency and, consequently, require the most resources to input electronically. We anticipate that this final rule will permit FDA to manage these postmarketing safety reports more efficiently. The final rule only addresses electronic submission of postmarketing safety reports for drugs and biological products and does not apply to submission of the following reports:

- Investigational new drug application (IND) safety reports (§ 312.32 (21 CFR 312.32));
- Safety update reports for drugs (§ 314.50(d)(5)(vi)(b) (21 CFR 314.50(d)(5)(vi)(b));
- Approved NDA and BLA annual reports (§§ 314.81(b)(2) and 601.28 (21 CFR 314.81(b)(2) and 601.28));
- Biological product deviation reports (BPDRs) (§§ 600.14 and 606.171 (21 CFR 600.14 and 606.171));
- Reports of complications of blood transfusion and collection confirmed to be fatal (§§ 606.170(b) and 640.73 (21 CFR 606.170(b) and 640.73));
- Adverse reaction reports for human cells, tissues and cellular and tissue-based products (HCT/Ps) regulated solely under section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264) (§ 1271.350(a) (21 CFR 1271.350(a)); and
- NDA-field alert reports (§ 314.81(b)(1) (21 CFR 314.81(b)(1)).

C. Waivers

Although this final rule requires that all postmarketing safety reports be submitted to FDA in electronic format, new §§ 310.305(e)(2), 314.80(g)(2), 329.100(c)(2), 600.80(h)(2), and 600.81(b)(2) allow for a temporary waiver from the electronic format requirement for ''good cause'' shown.[10] Details for submitting waiver requests, such as where to send the request and any supporting information, are provided in the postmarketing safety reports guidance issued today in conjunction with this final rule. When a temporary waiver has been granted, FDA intends to specify an acceptable alternate format for submitting the safety reports. FDA anticipates that temporary waivers of the requirement to submit postmarketing safety reports to the Agency in electronic format will be needed only in rare circumstances.

Companies experiencing technical difficulties with transmission of their electronic submissions to FDA should consult FDA for technical assistance rather than submitting a waiver request. Companies that normally use the direct database-to-database method to submit reports to FDA could use the SRP as a backup method for FAERS submissions and the eSubmitter tool as a backup method for VAERS submissions during short-term, temporary outages.

D. Individual Case Safety Report (ICSR)—Definition and Required Information

In this final rule, as in the proposed rule, the term ''individual case safety report'' (ICSR) is used to describe the information contained in either an initial or a followup report of an individual adverse drug experience, reported on a Form FDA 3500A, on a Council for International Organizations of Medical Sciences (CIOMS) I form, on a VAERS–1 form, or in electronic format. Because we are requiring that all postmarketing safety reports be submitted in electronic format, we proposed this term to describe the safety reporting vehicle generically, rather than by reference to the associated paper form. In addition, this term in now commonly used in international electronic reporting standards (e.g., ICH E2B, Health Level 7 (HL7)) in reference to such reports.

Accordingly, as proposed, §§ 310.305(b) and 314.80(a) have been revised to define an ICSR as a description of an adverse drug experience related to an individual

[9] As noted in § 600.81, FDA intends to issue guidance addressing electronic submission of these reports.

[10] Waiver requests under §§ 600.80(h)(2) and 600.81(b)(2) must be submitted in accordance with § 600.90.

patient or subject, and § 600.80(a) has been revised to define an ICSR as a description of an adverse experience related to an individual patient or subject. Because the items of information to be reported were specified on the paper reporting forms that will no longer be used for reports covered under this rule, we have added a list of the reportable elements to the regulations. Accordingly, §§ 310.305(d), 314.80(f), 329.100(b), 600.80(f), and 600.80(g) provide detailed lists of specific elements (in five broad categories for nonvaccine products and seven broad categories for vaccine products) that are to be reported in an ICSR, derived from the associated paper forms. The five categories applicable to all products, including vaccines, and examples of some of the types of information in each category, are as follows:

- Patient information (e.g., age, gender);
- Information about the adverse experience (e.g., date and description of the adverse drug experience);
- Information about the suspect medical product (e.g., drug name, dose, indication, National Drug Code (NDC) number);
- Information about the initial reporter (e.g., name and contact information); and
- Information about the drug's applicant or manufacturer or responsible person (e.g., name and contact information)

In addition, the two categories applicable to vaccine products only are as follows:

- Information about other vaccine(s) administered in the previous 4 weeks; and
- Information on the facility and personnel where the vaccine was administered (e.g., name of person who administered vaccine, name of responsible physician and facility where the vaccine was administered).

Though there are minor wording differences, the list of information to be reported is derived from the information reflected on Form FDA 3500A and VAERS–1 for postmarketing reporting for drugs and biological products. Codification of the ICSR reporting requirements is not intended to change the obligation of manufacturers, packers, or distributors to exercise due diligence for purposes of completing all of the applicable elements of an ICSR. The obligation to provide all applicable information described in §§ 310.305(d), 314.80(f), 329.100(b), 600.80(f), or 600.80(g) is the same as the obligation to complete Form FDA 3500A or VAERS–1.

E. Removal of Paper Format Provisions

We believe that it is no longer necessary to describe procedures for paper format submissions in the regulations because we anticipate that a paper format will be used on a limited basis, if at all. Accordingly, as proposed, this final rule removes from the regulations provisions describing the details for submission of safety reports in paper format, such as the number of required paper copies or specific markings or notations required on the paper forms. We have deleted in §§ 310.305(d), 314.80(f), and 600.80(f) the provisions specifically describing paper submissions and replaced them with a paragraph (§§ 310.305(e)(1), 314.80(g)(1), and 600.80(h)(1)), which states that ICSRs and any ICSR attachments must be submitted to FDA in an electronic format that we can process, review, and archive. Additional revisions to remove or modify references or provisions that are specific to paper formats include the following:

- References to the number of paper copies required for safety report submissions (§§ 310.305(c), 314.80(c), and 600.80(c));
- The requirement to mark paper reports to identify their contents as ''15-day Alert report'' or ''15-day Alert report-followup,'' (§§ 310.305(c)(4), 314.80(c)(1)(iv), 600.80(c)(1)(iv));
- The requirement to use Form FDA 3500A, CIOMS I form, or VAERS–1 form or to determine an appropriate alternative format for *voluntary* submission in electronic format (§§ 310.305(d)(1) and (d)(3), 314.80(f)(1) and (f)(3), and 600.80(f)(1) and (f)(3));
- The reference to Form FDA 3500A or other paper forms designated for adverse drug experience reporting by FDA for ICSRs that are submitted as part of periodic reporting requirements (§§ 314.80(c)(2)(ii)(b) and 600.80(c)(2)(ii)(B));
- The requirement for identifying reports of adverse drug experiences that occur in postmarketing studies by separating and marking them (§§ 314.80(e)(2) and 600.80(e)(2));
- The requirement to submit adverse experience reports by mail to CBER's mailing address (§ 600.2(a)) by deleting the phrase ''adverse experience reports'' from § 600.2(a);
- The requirement to submit adverse experience reports by mail to CDER's mailing address (§ 600.2(b)(2));
- The requirement to submit VAERS reports by mail to the VAERS mailing address (§ 600.2(d)); and
- The requirement to submit distribution reports on biological products by mail (§ 600.81) by deleting ''(see mailing addresses in § 600.2)'' from § 600.81.

As noted previously in this document, procedural and formatting recommendations, if applicable to electronic submissions, will be set forth in guidance.[11]

F. Section 745A of the FD&C Act and Electronic Format for Submissions

Section 745A(a) of the FD&C Act (21 U.S.C. 379k–1), added by section 1136 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides that submissions under section 505(b), (i), or (j) of the FD&C Act or section 351(a) or (k) of the PHS Act shall be submitted in such electronic format as specified by FDA in guidance. In section 745A(a) of the FD&C Act, Congress granted explicit statutory authority to FDA to implement the electronic format for submissions requirement by guidance. This grant of authority, however, does not preclude FDA from implementing such requirements by notice and comment rulemaking (5 U.S.C. 553). At this time, even though we conclude that certain submissions that are addressed in this final rule are also within the scope of section 745A(a) of the FD&C Act, FDA has determined that it is appropriate to amend the current regulations on the submission of postmarketing safety reports to remove references to paper submissions and to specify that such reports be submitted in an electronic format that FDA can process, review, and archive. FDA may consider, at a future date, whether certain electronic submission requirements should be specified in guidance pursuant to section 745A(a) of the FD&C Act.

G. Miscellaneous Changes

As proposed, the final rule amends §§ 310.305, 314.80, 314.98, and 600.80 by replacing the word ''shall'' with the word ''must'' except in the first sentence of §§ 314.80(c)(1)(iii) and 600.80(c)(1)(iii), from which the word ''shall'' has been removed for editorial reasons. The final rule revises in § 314.80(c)(2) the paragraph designations that were not in correct format. We believe that these minor changes clarify the regulations and make them easier to read. The final rule, as proposed, also changes the term ''licensed manufacturer'' to ''applicant'' in §§ 600.80, 600.81, and 600.90.

[11] We are also issuing a draft guidance today in conjunction with this final rule. The draft guidance, when finalized, will represent FDA's current thinking on certain topics pertaining to the electronic submission of postmarketing safety reports in the context of this rulemaking.

The mailing addresses for the submission of postmarketing safety reports have been removed from §§ 310.305(c), 314.80(c), 314.98(b), and 600.80(c) because this information is no longer necessary in light of the requirement to submit safety reports electronically.

Final § 310.305(c)(1)(i) requires the submission of a current copy of the labeling in electronic format unless it is already on file with FDA. Previously, under § 310.305(c)(1)(i), each report was to be accompanied by a copy of the labeling. However, if the Agency already has the current labeling on file, we do not believe it is necessary for a current copy of the labeling to be submitted with each report.[12]

For products with approved applications, currently, reports for all adverse experiences other than those submitted as 15-day Alert reports or followup reports to 15-day Alert reports (i.e., reports of adverse experiences that are both serious and expected or nonserious) are required to be submitted as a batch as part of the postmarketing periodic safety report for the reporting interval during which the applicant received the report. Although the ICSRs may be generated at any time from the beginning of the reporting interval through the date that the periodic report is submitted to FDA, they are currently retained by the applicant during this time period and submitted to FDA in a single batch, along with the other (descriptive) portions of the periodic report. The final rule includes language in §§ 314.80(c)(2)(ii)(B) and 600.80(c)(2)(ii)(B) to give applicants the option of submitting these ICSRs at any time up until the due date of the periodic report, rather than waiting to submit them in a single batch with the descriptive portion. All reports of adverse experiences that are both serious and expected or nonserious that the applicant received during the reporting interval must still be submitted to the Agency by the time the descriptive portion is due for that period, but the final rule permits them to be filed anytime up until the due date of the periodic report, rather than in a single batch with the descriptive portion of the periodic report. We have adopted this change, as proposed, because we understand that many applicants prefer this added flexibility of submitting the ICSRs on an ongoing basis.

To protect patient privacy, names of individual patients are not to be included in the patient identification portion of the ICSRs for drug and nonvaccine biological products. We instead require that a unique code be used for patient identification. As proposed, the final rule removes from the provisions entitled ''patient privacy'' the language specifying an eight character limit on the code. Although we also proposed that the name of the reporter not be included when the reporter is also the patient, we are not finalizing that proposal. FDA has determined that it is important for us to have the name of the reporter, even when the patient is the reporter, because it will allow us to contact the reporter, if necessary, to obtain followup information. Names of patients, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations. These same requirements addressing patient privacy have been included in § 329.100(d), applicable to reports required by section 760 of the FD&C Act.

As proposed, we have revised §§ 310.305(c)(1)(i), 314.80(c)(1)(i), and 600.80(c)(1)(i) to state that 15-day Alert reports must be submitted as soon as possible, but no later than 15 calendar days from initial receipt of the information. FDA does not intend this change to have any substantive effect. It is being made solely to simplify the regulatory language and improve its readability.

III. Comments on the Proposed Rule

We received written comments from three pharmaceutical companies, two associations representing the drug and biologic industries, a law firm representing a manufacturer of nonprescription drug products marketed without approved applications, and an individual (seven commenters total). A summary of the comments contained in the submissions received, and our responses, follow.

A. Safety Reports Covered

(Comment 1) In the preamble to the proposed rule, we requested public comment on whether we should require the use of an electronic format for reports of serious adverse events required by then newly enacted section 760 of the FD&C Act for nonprescription human drug products marketed without an approved application. Two commenters supported requiring the use of an electronic format for the submission of reports required by section 760 of the FD&C Act. No comments were opposed to such a requirement.

(Response) As discussed in section I.B, we agree that the requirement that postmarketing safety reports be submitted electronically should extend to safety reports required to be submitted by section 760 of the FD&C Act. Electronic submission of safety reports required to be submitted by section 760 of the FD&C Act will allow FDA to process, review, and archive such reports more efficiently. Therefore, as described previously in this document, we have added 21 CFR part 329 to cover nonprescription human drug products subject to section 760 of the FD&C Act. Section 329.100 sets forth information to be included in safety reports that are required to be submitted by section 760 of the FD&C Act and requires that the reports be submitted in an electronic format that FDA can process, review, and archive. As with safety reports required by §§ 310.305, 314.80, and 600.80, § 329.100 also includes a provision allowing requests for a temporary waiver from the electronic submission requirement for good cause. As noted in the preamble to the proposed rule, nonprescription (OTC) drug products that are marketed under approved applications (NDAs or ANDAs) are not covered under section 760 of the FD&C Act. Those products are subject to the reporting requirements of §§ 314.80 and 314.98.

(Comment 2) One comment suggested that we develop an option to allow IND safety reports to be submitted electronically. The comment states that this option would reduce the burden for companies that must use two different systems.

(Response) The comment is beyond the scope of this rulemaking. This rule addresses only the electronic submission of postmarketing safety reports. Premarketing safety reports are transmitted directly to the review division of FDA that has responsibility for review of the IND and are not uploaded into the FAERS database.

(Comment 3) Although this rulemaking does not apply to biological product deviation reports (BPDRs), in the preamble to the proposed rule, we requested comment on requiring the electronic submission of BPDRs (required by §§ 600.14 and 606.171) in the future. One comment supported requiring the electronic submission of BPDRs and also suggested that the

[12] For products subject to § 310.305(c)(1)(i), a copy of the labeling is submitted to FDA in Structured Product Labeling (SPL) format as part of the electronic drug listing process. See the guidance for industry ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing'' (May 2009) available at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/default.htm* and FDA's Web site on Structured Product Labeling Resources at *http://www.fda.gov/ForIndustry/DataStandards/StructuredProductLabeling/default.htm* for information on submitting labeling to FDA in electronic format.

current Web-based form available for the voluntary electronic submission of BPDRs be modified to allow more than 2,000 characters in the *event description field* to allow a complete description of the event.

(Response) We appreciate the comment. As addressed in section II.F, section 745A(a) of the FD&C Act provides that submissions under section 351(a) or (k) of the PHS Act, which include BPDRs, shall be submitted in such electronic format as specified by FDA in guidance. The Agency intends to address the implementation of section 745A(a) of the FD&C Act separately. In the meantime, parties wishing to submit BPDRs electronically are encouraged to do so through the existing Web-based system. We note that the current electronic system for BPDR reporting has been expanded to allow up to 3,999 characters for narrative entries.

(Comment 4) Two comments requested that we address the submission of postmarketing safety reports for combination drug and device products in the final rule. One comment noted specifically that reporting requirements for drugs and biologics differ from the reporting requirements of devices and therefore requested that we provide further information on how to submit safety reports for drug and device combination products.

(Response) These comments are beyond the scope of this rulemaking. This final rule requires electronic submission of required postmarketing safety reports for drugs and biological products (including vaccines). We note that on October 1, 2009, FDA published a proposed rule entitled ''Postmarketing Safety Reporting for Combination Products'' (74 FR 50744). When finalized, this new rule will clarify the safety reporting requirements for combination products such as drug and device combinations.

(Comment 5) One comment noted that the preamble to the proposed rule indicates that developments are underway for VAERS to receive ICSRs for vaccines through FDA's ESG. The comment stated, however, that no information is provided regarding how and when these submissions may be made to VAERS.

(Response) Modifications are still underway to permit VAERS to receive ICSRs through FDA's ESG, which will facilitate the submission of multiple reports without the need for manual data entry. FDA expects that VAERS will be able to receive ICSRs through the ESG by the time this final rule becomes effective.

B. FDA Web-Based Submission Portal

In the preamble to the proposed rule, we explained that a ''Web-based electronic submission portal'' was under development to allow the secure electronic submission of postmarketing ICSRs directly into FDA's AERS database once information is entered into a ''Web-based electronic form.'' We noted that the Web-based submission portal would allow electronic submission of ICSRs consistent with ICH standards and could be used as an alternative method for reporting adverse drug experiences to FDA electronically. We noted that this alternative electronic reporting method would be particularly useful for entities that submit a small number of safety reports because it would create a simpler and more efficient mechanism for reporting that would not require an internal database that is compatible with the ICH-based direct submission system.

(Comment 6) One comment requested clarification of the terms ''Web-based submission portal'' and ''Web-based form,'' noting that both terms are used in the preamble to the proposed rule.

(Response) In the proposed rule, we used the term ''Web-based submission portal'' (now referred to as the Safety Reporting Portal (SRP)) to describe a Web-based system that any person subject to FDA's postmarketing safety reporting requirements could use to submit ICSRs to FDA electronically. (See section II.A for further discussion of the SRP.) We used the term ''Web-based form'' to describe the on-screen interface into which users would enter the ICSR data elements. Users ''complete'' the ICSR by filling in the appropriate fields in the Web-based form and then submit the ICSR to the FAERS database through the Web-based submission portal.[13]

(Comment 7) One comment suggested that to eliminate any potential barriers for small companies, no charge should be associated with use of the Web-based system.

(Response) There will be no charge for electronic submission of safety reports to the FAERS database through the SRP. For submissions to VAERS using the eSubmitter tool, however, a digital security certificate will be necessary. These certificates allow users to sign and encrypt documents for transmission, ensuring that any electronic submissions are verifiable and secure. Digital certificates are available through many third-party vendors. A certificate generally lasts 1 to 3 years and typically costs $10 to $15. A digital certificate is also necessary to comply with FDA's electronic registration and listing requirements, so most companies already have digital certificates and will not need to obtain one to use the eSubmitter tool. Further information about digital security certificates is available on FDA's Electronic Drug Registration and Listing Instructions Web page at *http://www.fda.gov/ForIndustry/ElectronicSubmissionsGateway/ucm177328.htm.*

(Comment 8) One comment asked whether training or some type of qualification will be required to submit ICSRs through the Web-based system.

(Response) The SRP creates a simpler mechanism for electronic submission of safety reports. No special training or qualification will be required. The information for the ICSR is entered into the Web-based form and then submitted to FDA. However, prior to initial use of the SRP, companies will need to contact the FAERS Electronic Submissions Coordinator at *faersesub@fda.hhs.gov* to establish an account to submit safety reports through the SRP. Having an SRP account allows for faster data entry because certain fields will be pre-populated by information from the user account. Having an account also allows users to save a report and complete it later, allows users to see a list of reports that have been submitted, and allows for followup submissions as more information about the adverse drug experience becomes available. Further information on submitting ICSRs through the SRP is included in the postmarketing safety reports guidance.

For vaccine products, the eSubmitter tool can be used, instead of the SRP, as an alternative method for the electronic submission of ICSRs to VAERS. The eSubmitter tool provides a user-friendly method for submission of these reports, and no special training or qualification will be necessary. Firms will, however, need to contact FDA's ESG Help Desk to establish an ESG account and will need to obtain a digital security certificate (as described in the previous response), if these two steps have not already been completed to comply with FDA's electronic drug registration and establishment listing requirements. The first time firms submit a report to the VAERS database, they will also need to contact the CBER Electronic Submissions Program at *esgprep@fda.hhs.gov.*

(Comment 9) One comment suggested that companies should be able to use both the Web-based portal and the ESG

[13] As described in section II.A, the eSubmitter tool will be used instead of the SRP as an alternative method for the electronic submission of vaccine ICSRs into the VAERS database.

and should not have to choose one system.

(Response) FDA will not limit companies to one method for creating and transmitting ICSRs electronically to FDA. As described in this document, FDA offers both the direct database-to-database method and the SRP for submission of ICSRs into the FAERS database, and the direct database-to-database method and eSubmitter tool for submission of ICSRs into the VAERS database. FDA recommends that companies select the submission method that best suits their needs to submit a given report.

(Comment 10) One comment recommended that the Web-based portal provide a receipt or acknowledgement indicating whether the submission was successfully received or if the delivery failed. The comment noted that this will allow companies to take appropriate followup action.

(Response) When using the SRP to submit postmarketing safety reports, users will receive electronic acknowledgement indicating whether or not their submission was accepted into the FAERS database.[14] If notified that the submission was not accepted, users should resubmit the safety report to ensure that FDA receives the report. Further information about FAERS submission acknowledgement is provided in the postmarketing safety reports guidance.

(Comment 11) One comment stated that the Web-based portal should accept ICH-compliant XML files that may be generated and submitted to the Web-based portal and/or the ESG.

(Response) The SRP allows for the submission of ICH-compliant ICSRs. Once the data elements for the ICSR are entered into the Web-based form and submitted to FDA, the SRP generates an XML file which is then uploaded into the FAERS database (along with any ICSR attachments that may be included). The ESG will continue to accept ICH-compliant XML files. Similarly, for submission of vaccine reports, both the eSubmitter tool and the direct database-to-database transmission method generate ICH-compliant XML files that are submitted to FDA through the ESG.

(Comment 12) One comment asked whether followup links to the original report will be available when submitting the report through the Web-based system.

(Response) When the initial ICSR is submitted through the SRP, users will be able to return to the initial ICSR and submit followup reports as more information about the reported adverse experience becomes available. Users may log in to their SRP accounts, locate the ICSR record, and modify or add to the initial ICSR. Users may submit as many followup reports as necessary. More detailed information on how to modify or add to an initial ICSR is available on the SRP Web site.

Similarly, the eSubmitter tool, which can be used for the submission of vaccine reports through the ESG into VAERS, allows for the creation and submission of both initial reports and followup reports as more information regarding the adverse event becomes available. Use of the same unique case identification number for the initial ICSR and any followup reports will be essential to ensure that the reports are linked in the database.

C. Waivers

In the proposed rule, we proposed allowing for the submission of requests for temporary waivers from the electronic format requirement and stated that waivers would be granted on a time-limited basis for ''good cause'' shown. While noting that the details for submitting waiver requests would be announced in guidance, we requested comment on what circumstances would constitute ''good cause'' justifying a waiver from the electronic submission requirement.

(Comment 13) One comment requested a categorical exemption from the electronic reporting requirement for small business entities, which the comment defined as any business with fewer than 100 employees and less than $10,000,000 in annual sales. The comment noted difficulties that these entities had with FDA's system for electronic establishment registration and drug listing and expressed concern that these businesses would have similar difficulties with the electronic submission of safety reports.

(Response) FDA has concluded that it will not grant a categorical exemption from the electronic safety reporting requirement for small business entities. We anticipate that receiving all required postmarketing safety reports electronically will allow us to more rapidly review the reports, identify emerging safety problems, and disseminate safety information. We believe that any categorical exemption from the electronic submission requirement will significantly limit these important benefits. As we stated in the preamble to the proposed rule, we believe a waiver will only be needed in rare circumstances.

We appreciate the commenter's concern about potential difficulties with the electronic submission of safety reports through FDA's system. We believe that the SRP provides a simple, user-friendly system for submission of ICSRs into the FAERS database. The SRP is similar to systems used for online purchases and other Web-based transactions. FDA has been receiving safety reports through the SRP for the Center for Food Safety and Applied Nutrition, the Center for Veterinary Medicine, and the Center for Tobacco Products since 2010. In addition, FDA intends to provide technical assistance to help resolve any problems.

We believe that the eSubmitter tool, which may be used for the electronic submission of ICSRs for vaccines, provides a simple and straightforward method for submitting these reports. Furthermore, submission testing is available so that users will have the opportunity to try out the system before the rule becomes effective.

FDA has been working with both large and small companies and has been successfully receiving voluntary electronic submissions of ICSRs through the ESG since 2001. We believe our experience to date with the electronic submission of safety reports will help us to minimize problems with electronic submission that regulated entities may have, especially entities new to the system. We also believe that the effective date adopted in this rule will permit the Agency and industry sufficient time to ensure that the systems are fully functional and that any technical problems are worked out by the time the requirements of this rule become effective.

(Comment 14) One comment recommended allowing a good cause waiver in cases of natural or manmade disaster. The same comment also suggested allowing a time-limited waiver for companies bringing their first commercially available product to market.

(Response) We agree that natural or manmade disasters may present situations where a waiver from the electronic submission requirement would be appropriate. For example, in these situations, electricity may be unavailable for an extended period of time, and electronic submission of safety reports would not be feasible. We do not agree that a time-limited waiver for companies bringing their first commercially available product to market will be necessary or appropriate.

[14] Similarly, users submitting ICSRs for vaccines using the eSubmitter tool will receive an electronic confirmation. Further information about VAERS submission acknowledgement is provided in guidance available at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

We believe the electronic submission systems are easy to use and will be fully functional by the time this rule becomes effective. Furthermore, as explained in the previous response, FDA is prepared to assist companies to ensure that any problems with electronic submission are resolved.

(Comment 15) One comment suggested that temporary waivers should be granted for unplanned, extended-duration ESG downtime; business continuity or disaster recovery situations where a company's pharmacovigilance system access may be down for a period of time and the volume of reports is too high to use the Web-based system requiring manual entry; or where human resources are greatly diminished, for example, as a result of pandemic or terror attack.

(Response) We agree that disaster recovery situations, pandemics, or terror attacks may present circumstances in which a waiver from the electronic submission requirement would be appropriate. We believe it is unlikely that the ESG would experience unplanned downtime of extended duration such that a waiver from the electronic submission requirement would be necessary. However, if such a situation were to occur, a waiver might be appropriate.

(Comment 16) One comment suggested that the components of a request for a waiver could include the nature of the inability to comply, the anticipated time to recover, and a crisis manager contact for the company who would be accountable to FDA for followup and resolution. The comment also requested that FDA include in its guidance the type of documentation that must be kept and the documentation FDA will provide as a record of the situation for future inspections or audits.

(Response) We agree with the suggestion that a waiver request should include the nature of the inability to comply, the anticipated time to recover, and a company contact. Though additional relevant information could also be included in a waiver request, the components suggested for inclusion would allow us to assess the reasonableness of a waiver request and would ensure that we are able to limit the waiver to the time necessary. Accordingly, in the postmarketing safety reports guidance issued today in conjunction with this rule, we have stated that a waiver request should include the reason for the request and a proposed end date for the waiver. To follow up with the company, FDA intends to contact the individual who submitted the request. Although not addressed in the postmarketing safety reports guidance, we believe that in the normal course of business, it would be usual and customary for companies to maintain adequate records of the situation leading to a waiver request and documentation related to the waiver request.

(Comment 17) Two comments stated that FDA should provide a telephone contact for requesting a temporary waiver, because during a crisis situation, it may be difficult to put together a comprehensive request. One of the comments also suggested fax as an alternative for submitting a waiver request.

(Response) Consistent with the procedures for requesting waivers of other FDA requirements, requests for waivers of the electronic safety reporting requirement should be submitted to FDA in writing by mail as described in the postmarketing safety reports guidance issued today. The Agency is exploring other methods that may facilitate submission of waiver requests, and we will update the postmarketing safety reports guidance, as appropriate, to reflect any changes in waiver request procedures.

D. ICSR Submissions

1. Content

(Comment 18) One comment requested clarification on the types of attachments that are required as part of an ICSR submission.

(Response) The final rule includes a definition of ''ICSR attachments'' for clarification, but the rule does not change the types of attachments that may be necessary as part of an ICSR submission. As noted previously in this document, in the proposed rule, and in final §§ 310.305(b), 314.80(a), and 600.80(a), examples of ICSR attachments that may be necessary include published articles that must accompany ICSRs based on scientific literature (§§ 314.80(d) and 600.80(d)) and other supporting information, such as hospital discharge summaries and autopsy reports.

(Comment 19) One comment asked whether the ICSR attachments will be made public and whether companies will be required to redact the patient information from the attachments. The comment noted that requiring the company to redact patient information, such as address and birth date would create a significant additional burden.

(Response) FDA will not publicly release names or any other identifying information about patients contained in ICSR attachments. FDA redacts patient names and other identifying information before publicly releasing information contained in postmarketing safety reports. Persons submitting reports should not redact information contained in ICSRs or ICSR attachments before submitting them to FDA. We understand that companies may receive documents from reporters that are already redacted. Those documents should be submitted to FDA as received from the reporter and should not be redacted any further.

(Comment 20) Proposed § 310.305(c)(1)(i) stated that each 15-day ''Alert report'' must be accompanied by the ''current content of the labeling'' in electronic format unless it is already on file at FDA. One comment requested clarification of what ''content of the labeling'' means, suggesting that it could refer to the entire label or only certain sections or certain types of information in the labeling.

(Response) As set forth in § 314.50(l)(1)(i), the ''content of labeling'' refers to the contents of the package insert or professional labeling. It is the information required by §§ 201.56, 201.57, and 201.80, in the format specified. For products subject to § 310.305(c)(1)(i), the content of labeling is submitted to FDA in Structured Product Labeling (SPL) format as part of the electronic drug listing process. Further information about electronic submission of content of labeling and SPL format is provided in the guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing'' and the draft guidance ''SPL Standard for Content of Labeling—Technical Qs & As'' (available on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm)* which, when finalized, will represent the Agency's current thinking.

(Comment 21) Proposed §§ 310.305(d)(1)(i), 314.80(f)(1)(i), and 600.80(f)(1)(i) listed ''patient identification code'' as an element to be included in each ICSR. Proposed §§ 310.305(f), 314.80(i), and 600.80(i), entitled ''Patient privacy,'' stated: ''An applicant should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code to each report.'' [15] One comment requested that we clarify

[15] Both proposed and final § 310.305(f) use the phrase ''manufacturers, packers, and distributors'' in place of the term ''applicant,'' because § 310.305 applies to prescription drugs for human use without approved NDAs. Proposed § 600.80(i) and final § 600.80(j) addressing patient privacy state: ''For nonvaccine biological products, an applicant should not include in reports . . .''

whether the term ''patient identification code'' (used in proposed §§ 310.305(d)(1)(i), 314.80(f)(1)(i), and 600.80(f)(1)(i)) and the term ''unique code for each report'' as used in the provisions addressing patient privacy (proposed §§ 310.305(f), 314.80(i), and 600.80(i)) are intended to be different codes.

(Response) The ''patient identification code'' listed as a reporting element to be included in ICSRs (in §§ 310.305(d)(1)(i), 314.80(f)(1)(i), and 600.80(f)(1)(i)) and the ''unique code for each report'' discussed in the provision on patient privacy (in proposed §§ 310.305(f), 314.80(i), and 600.80(i)) are referring to the same code. Entities that submit ICSRs for drug and nonvaccine biological products should not include names and contact information for patients in the ICSRs. Rather, a unique code should be used instead of the patient's name and contact information in the patient information section of the ICSR.[16] The intent of using such a code is to protect the privacy of patients who have experienced adverse events that are being reported to FDA, while allowing the submitter to know the patient's identity and contact information for reference purposes. We agree that as proposed, the requirement is unclear. Therefore, we are revising the sections entitled ''Patient privacy'' (§§ 310.305(f), 314.80(i), and 600.80(j)) to state: ''. . . should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code for identification of the patient.'' We believe this change to the final rule will make clearer that the ''patient identification code'' included in the list of ICSR reporting elements (for drug and nonvaccine biological products) and the code described in the sections on patient privacy are referring to the same code, which is intended to protect the identity of patients. Section 329.100(d) also uses the same language.

We note, however, that §§ 310.305(d), 314.80(f), 329.100(b), and 600.80(f) and (g) that set forth the ICSR reporting elements, as finalized, also require a ''unique case identification number'' for each ICSR. This unique case identification number is distinct from the patient identification code. The unique case identification number, which must be the same in the initial ICSR and any subsequent followup ICSR(s), was referred to as the Manufacturer Report Number on Form FDA 3500A and VAERS–1, and it allows FDA to track an individual case over its life cycle.

(Comment 22) One comment noted that, in the past, the ESG has accepted ICSRs for which the applicant does not have all categories of information. The comment sought to confirm that ICSRs would not be rejected by the ESG if there are any gaps in categories of information.

(Response) The ESG will continue to operate as it has and will accept ICSRs for which the applicant may not have all categories of information. Even though the ESG and SRP accept ICSRs for which there are gaps in certain categories of information, it is important for applicants to include all information about the reported event that is known to the applicant.

2. Timing of Report Submissions

(Comment 23) One comment requested confirmation that the ESG will be available 24 hours a day, 7 days a week, and that ICSRs submitted outside of business hours will be considered timely (if submitted within the required time frame). The comment also requested that we provide guidance on procedures for planned and unplanned downtime of the ESG and how the downtime affects submission deadlines.

(Response) FDA intends to make the ESG available 24 hours a day, 7 days a week to receive electronic submissions. Additional information explaining how submission dates are calculated if the ESG and/or the FAERS database is temporarily unavailable is provided in the postmarketing safety reports guidance issued today. We note that FDA also intends to make the SRP available 24 hours a day, 7 days a week to receive submissions.

E. International Harmonization

(Comment 24) One comment suggested that we reference the ICH Harmonized Tripartite Guideline instead of listing, in the rule, categories of information to be included in ICSRs.

(Response) We set forth the categories of information to be included in ICSRs because we believe that this is a clear and concise way to communicate the information to be included when reporting adverse events to FDA and to move away from reliance on paper forms. We considered the ICH guidelines when creating these categories and believe that the categories included are either consistent with international standards or can be accommodated as local requirements using international transmission standards.

(Comment 25) One comment asked what version of the ICH E2B standard (i.e., the ICH guideline on data elements for transmission of ICSRs) will be accepted.

(Response) It has been FDA's practice to accept both the latest version of the ICH E2B standard in addition to the previous version. This practice has allowed applicants reasonable time to transition to the updated ICH E2B standard. Any changes to submission standards will be provided in guidance, as appropriate.[17]

(Comment 26) One comment noted that the EU Drug Regulatory Authorities Pharmacovigilance system (EudraVigilance) has different validators than FDA's reporting system. As a result, some ICSRs would be accepted by FDA that would not be accepted by the European Medicines Agency. The comment requested that if new validators are placed on the ESG they be aligned with the EudraVigilance validators so that both systems accept the same reports.

(Response) It would not be functionally workable or practical to commit, in advance, to incorporating changes made by other regulatory bodies to ensure complete consistency among the reporting systems. FDA will continue to work with international standards organizations when developing new technical specifications so that differences in those specifications are kept to a minimum.

F. Technical Specifications

The proposed rule indicated that standards and technical specifications will be addressed in guidance documents rather than set forth in the final rule.

(Comment 27) One comment noted that changes to technical standards or specifications can increase costs to companies. The comment expressed concern that by adopting changes in guidance documents, the changes can occur more quickly and more frequently, resulting in a greater burden to companies. The comment stated that it is important that required technical standards or specifications not be changed frequently and that when they

[16] The patient's name and contact information should only be included in an ICSR when the patient is the reporter. Under those circumstances, the patient-reporter's name and contact information should be included in the initial reporter section of the ICSR but not in the patient information section of the ICSR. In the patient information section of the ICSR, a unique code should be used instead of the patient-reporter's name and contact information.

[17] Further information about E2B message standards accepted by FAERS is available on the FAERS Electronic Submissions Web page at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Surveillance/AdverseDrugEffects/ucm115894.htm.*

are changed, adequate time be allowed for public comment.

(Response) We understand the concern that frequent changes in technical standards and specifications may increase the cost of compliance to companies. FDA does not anticipate frequent changes. However, it is important for FDA to retain flexibility so that we can be responsive to the rapidly changing technological environment. We believe that the use of guidance documents to communicate technical specifications will benefit both companies and the Agency. If FDA were to set forth technical specifications in regulations, the result could be that companies would be bound to standards and specifications that are outdated. Maintaining older systems can also be a resource burden to companies.

IV. Legal Authority

FDA's legal authority to amend its regulations governing the submission of postmarketing safety reports for human drugs and biological products derives from sections 201, 301, 501, 502, 503, 505, 505A, 506, 506A, 506B, 506C, 510, 701, 704, 705, 745A, 760, and 801 of the FD&C Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 355a, 356, 356a, 356b, 356c, 360, 371, 374, 375, 379k–1, 379aa, and 381); and the PHS Act (42 U.S.C. 241, 262, and 264).

V. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes that this final rule is not a 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. Because the average small entity submits few safety reports and the Agency's Web-based system for submitting reports electronically will require little additional cost per report, the Agency believes that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2013) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The final rule requires the submission of all postmarketing safety reports, including periodic reports, to FDA in an electronic format. In addition, manufacturers of products distributed under a biologic license are required to submit lot distribution reports electronically. The public health benefits of this final rule, quicker access to postmarketing safety information, were not quantified. The final rule will generate an annual savings for the Agency of about $0.8 million, which is primarily a savings in the cost of processing paper. Total one-time costs to industry will be between $5.9 million to $7.5 million; the costs are for changing standard operating procedures (SOPs) and for training personnel. Annualized over 10 years at a 7 percent discount rate, the costs are from $0.8 million to $1.1 million. At a 3 percent discount rate over 10 years, the annualized costs are $0.7 million to $0.9 million.

The full assessment of economic impacts is available in Docket No. FDA–2008–N–0334 and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 1).

VII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Postmarketing Safety Reports for Human Drug and Biological Products: Electronic Submission Requirements.

Description: The final rule amends FDA's postmarketing safety reporting regulations for human drug and biological products under parts 310, 314, and 600, and adds part 329, to require that persons subject to mandatory reporting requirements submit safety reports in an electronic format that FDA can process, review, and archive. Under §§ 310.305, 314.80, 314.98, and 600.80, manufacturers, packers, and distributors, and applicants with approved NDAs, ANDAs, and BLAs and those that market prescription drugs for human use without an approved application must submit postmarketing safety reports to the Agency. Section 760 of the FD&C Act requires manufacturers, packers, or distributors whose name appears on the label of nonprescription human drug products marketed without an approved application to report serious serious adverse events associated with their products. Under § 600.81, applicants with approved BLAs must submit biological lot distribution reports to the Agency. In this rule, FDA is requiring that these postmarketing reports be submitted to the Agency in an electronic format that FDA can process, review, and archive. The final rule also states that FDA will issue guidance on how to provide the electronic submissions (e.g., method of transmission, media, file formats, preparation and organization of files). This rule does not change the content of these postmarketing reports. It only requires that they be submitted in an electronic format. Under §§ 310.305(e)(2), 314.80(g)(2), 329.100(c)(2), 600.80(h)(2), and 600.81(b)(2), we are also permitting those subject to mandatory reporting requirements to request a waiver from the electronic format requirement.

We currently have OMB approval for submission of postmarketing safety reports to FDA under parts 310, 314, and 600. The information collection for part 310 and part 314 is approved under OMB control numbers 0910–0291 (Form FDA 3500A) and 0910–0230. The information collection for part 600 is approved under OMB control numbers 0910–0291 (Form 3500A) and 0910–0308. The burdens currently estimated

under parts 310, 314, and 600, for submission of postmarketing safety reports to FDA for human drugs and biological products, do not change as a result of this final rule. This is because: (1) Current burden estimates associated with these regulatory requirements have taken into account voluntary submission of these reports in an electronic format and those applicants, manufacturers, packers, and distributors that already submit these reports in an electronic format would have no new reporting burdens and (2) new burdens for establishing the means for submitting postmarketing safety reports in electronic form to comply with this final rule, including obtaining an electronic certificate, revising SOPs, and becoming familiar with the system, would be negated by the savings in burden from not having to print out the report and mail it to FDA. These assumptions also apply to applicants submitting biological lot distribution reports under § 600.81.

OMB has approved the burden associated with submissions required by section 760 of the FD&C Act under OMB control number 0910–0636.

In table 1 of this document, we have estimated the burdens associated with the submission of waivers, under §§ 310.305(e)(2), 314.80(g)(2), 329.100(c)(2), 600.80(h)(2), and 600.81(b)(2). We expect few waiver requests (see section II.C). We estimate that approximately one manufacturer will request a waiver annually under §§ 310.305(e)(2), 329.100(c)(2), and 600.81(b)(2), and five manufacturers will request a waiver annually under §§ 314.80(g)(2) and 600.80(h)(2). We estimate that each waiver request will take approximately 1 hour to prepare and submit to us.

Description of Respondents: Manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of approved applications, applicants with approved NDAs, ANDAs, and BLAs, and those that market nonprescription drugs for human use without an approved application.

Burden Estimate: Table 1 of this document provides an estimate of the new annual reporting burden for submitting requests under the waiver requirement in this final rule.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Sections	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Waivers—Electronic Format for Submissions					
310.305(e)(2)	1	1	1	1	1
314.80(g)(2)	5	1	5	1	5
329.100(c)(2)	1	1	1	1	1
600.80(h)(2)	5	1	5	1	5
600.81(b)(2)	1	1	1	1	1
Total Reporting Burden					13

A. Reporting Costs

Based on the average hourly wage ($79) as calculated in section VI (Analysis of Impacts) of the final rule, the cost to respondents would be $1,027 (13 × $79).

Tables 2 through 5 of this document provide an estimate of the annual reporting burden currently covered under existing OMB control numbers 0910–0291, 0910–0230, 0910–0308, and 0910–0636. As explained previously, we believe that any burden increases associated with electronic reporting are offset by burden decreases associated with not printing out reports and mailing them to FDA. Therefore, we believe that the burden estimates for these information collections will not change.

TABLE 2—OMB CONTROL NUMBER 0910–0291 "MEDWATCH: THE FDA MEDICAL PRODUCTS REPORTING PROGRAM"

21 CFR Sections	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Form FDA 3500A (MedWatch: The FDA Safety Information and Adverse Event Reporting Program—Mandatory) (§§ 310.305—Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications, 314.80—Postmarketing reporting of adverse drug experiences, 314.98—Postmarketing reports, and 600.80—Postmarketing reporting of adverse experiences)	600	683	409,608	1.1	450,568

Based on the average hourly wage ($79) as calculated in section VI (Analysis of Impacts) of the proposed rule, the cost to respondents would be $39,895,948 (505,012 × $79).

TABLE 3—OMB CONTROL NUMBER 0910–0230 ''ADVERSE DRUG EXPERIENCE REPORTING''

21 CFR Sections	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
310.305(c)(5)—Reporting requirements	1	1	1	1	1
314.80(c)(2)—Periodic adverse drug experience reports	642	17.88	11,478	60	688,680
Total					688,681

Based on the average hourly wage ($79) as calculated in section VI of the proposed rule, the cost to respondents would be $54,405,799 (688,681 × $79).

TABLE 4—OMB CONTROL NUMBER 0910–0308 ''ADVERSE EXPERIENCE REPORTING FOR LICENSED BIOLOGICAL PRODUCT; AND GENERAL RECORDS''

21 CFR Sections	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
600.80(c)(1)—Postmarketing 15-day ''Alert reports'' and 600.80(e)—Postmarketing studies	108	801.69	86,583	1	86,583
600.80(c)(2)—Periodic adverse experience reports	108	530.55	57,300	28	1,604,400
600.81—Distribution Reports	108	3.23	349	1	349
600.90—Waivers	21	1	21	1	21
Total					1,691,353

Based on the average hourly wage ($79) as calculated in section VI of the proposed rule, the cost to respondents would be $133,616,887 (1,691,353 × $79).

TABLE 5—OMB CONTROL NUMBER 0910–0636 ''GUIDE FOR INDUSTRY ON LABELING OF NONPRESCRIPTION HUMAN DRUG PRODUCTS MARKETED WITHOUT AN APPROVED APPLICATION AS REQUIRED BY THE DIETARY SUPPLEMENT AND NONPRESCRIPTION DRUG CONSUMER PROTECTION ACT''

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Reports of serious adverse drug events under section 760 of the FD&C Act (21 U.S.C. 379aa((b) and (c))	50	250	12,500	2	25,000

Based on the average hourly wage ($79) as calculated in section VI of the proposed rule, the cost to respondents would be $1,975,000 (25,000 × $79).

B. Capital Costs

As explained in section VI (Analysis of Impacts), total one-time costs to industry would be between $5.9 million to $7.5 million; the costs are for changing standard SOPs and training personnel. Annualized over 10 years at a 7 percent discount rate, the costs will be from 0.8 million to $1.1 million. At a 3 percent discount rate over 10 years, the annualized costs are $0.7 million to $0.9 million.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and is available electronically at *http://www.regulations.gov*.

1. Regulatory Impact Analysis, Regulatory Flexibility Analysis, and Unfunded Mandates Reform Act Analysis for Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements; Final Rule, available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 329

Administrative practice and procedure, Over-the-counter drugs, Reporting and recordkeeping requirements.

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 310, 314, and 600 are amended and a new part 329 is added as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e, 379k–1; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.305 is amended by:
■ a. Removing the word ''shall'' each time it appears and by adding in its place the word ''must'';
■ b. Adding alphabetically in paragraph (b) the definitions of ''Individual case safety report (ICSR)'' and ''ICSR attachments'';
■ c. Revising paragraph (c) introductory text, paragraph (c)(1)(i), and the second sentence of paragraph (c)(3) introductory text; removing the last sentence in paragraph (c)(2), and removing and reserving paragraph (c)(4);
■ d. Revising paragraph (d); and
■ e. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), adding a new paragraph (e), revising newly redesignated paragraph (f), and in newly redesignated paragraph (g)(1) removing ''(c)(4)'' and adding in its place ''(c)(3)'' to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

* * * * *

(b) * * *

Individual case safety report (ICSR). A description of an adverse drug experience related to an individual patient or subject.

ICSR attachments. Documents related to the adverse drug experience described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.

* * * * *

(c) *Reporting requirements.* Each person identified in paragraph (c)(1)(i) of this section must submit to FDA adverse drug experience information as described in this section. Except as provided in paragraph (e)(2) of this section, 15-day ''Alert reports'' and followup reports, including ICSRs and any ICSR attachments, must be submitted to the Agency in electronic format as described in paragraph (e)(1) of this section.

(1) *Postmarketing 15-day ''Alert reports''.* (i) Any person whose name appears on the label of a marketed prescription drug product as its manufacturer, packer, or distributor must report to FDA each adverse drug experience received or otherwise obtained that is both serious and unexpected as soon as possible, but no later than 15 calendar days from initial receipt of the information by the person whose name appears on the label. Each report must be accompanied by the current content of labeling in electronic format as an ICSR attachment unless it is already on file at FDA.

* * * * *

(3) *Submission of reports.* * * * If a packer or distributor elects to submit these adverse drug experience reports to the manufacturer rather than to FDA, it must submit, by any appropriate means, each report to the manufacturer within 5 calendar days of its receipt by the packer or distributor, and the manufacturer must then comply with the requirements of this section even if its name does not appear on the label of the drug product. * * *

* * * * *

(4) [Reserved]

* * * * *

(d) *Information reported on ICSRs.* ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse drug experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse drug experience.*

(i) Outcome attributed to adverse drug experience;

(ii) Date of adverse drug experience;

(iii) Date of ICSR submission;

(iv) Description of adverse drug experience (including a concise medical narrative);

(v) Adverse drug experience term(s);

(vi) Description of relevant tests, including dates and laboratory data; and

(vii) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medical product(s).*

(i) Name;

(ii) Dose, frequency, and route of administration used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) Whether the product is a combination product as defined in § 3.2(e) of this chapter;

(vi) Whether the product is a prescription or nonprescription product;

(vii) Whether adverse drug experience abated after drug use stopped or dose reduced;

(viii) Whether adverse drug experience reappeared after reintroduction of drug;

(ix) Lot number;

(x) Expiration date;

(xi) National Drug Code (NDC) number; and

(xii) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and telephone number;

(ii) Whether the initial reporter is a health care professional; and

(iii) Occupation, if a health care professional.

(5) *Manufacturer, packer, or distributor information.*

(i) Manufacturer, packer, or distributor name and contact office address;

(ii) Telephone number;

(iii) Report source, such as spontaneous, literature, or study;

(iv) Date the report was received by manufacturer, packer, or distributor;

(v) Whether the ICSR is a 15-day ''Alert report'';

(vi) Whether the ICSR is an initial report or followup report; and

(vii) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(e) *Electronic format for submissions.* (1) Each report required to be submitted to FDA under this section, including the ICSR and any ICSR attachments, must be submitted in an electronic format that FDA can process, review, and archive. FDA will issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) Each person identified in paragraph (c)(1)(i) of this section may request, in writing, a temporary waiver of the requirements in paragraph (e)(1)

of this section. These waivers will be granted on a limited basis for good cause shown. FDA will issue guidance on requesting a waiver of the requirements in paragraph (e)(1) of this section.

(f) *Patient privacy.* Manufacturers, packers, and distributors should not include in reports under this section the names and addresses of individual patients; instead, the manufacturer, packer, and distributor should assign a unique code for identification of the patient. The manufacturer, packer, and distributor should include the name of the reporter from whom the information was received as part of the initial reporter information, even when the reporter is the patient. The names of patients, individual reporters, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG

■ 3. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 356a, 356b, 356c, 371, 374, 379e, 379k–1.

■ 4. Section 314.80 is amended:
■ a. By removing the word ''shall'' each time it appears and by adding in its place the word ''must'';
■ b. In paragraph (a) by alphabetically adding the definitions for ''Individual case safety report (ICSR)'' and ''ICSR attachments'';
■ c. In paragraph (c)(1)(i) by removing the phrase ''in no case later than 15 calendar days of'' and by adding in its place the phrase ''no later than 15 calendar days from'';
■ d. By removing the last sentence of paragraph (c)(1)(ii);
■ e. By removing paragraph (c)(1)(iv);
■ f. By revising paragraph (c) introductory text, the first and third sentences of paragraph (c)(1)(iii) introductory text, and paragraph (c)(2)(ii);
■ g. By removing paragraph (d)(2) and by redesignating paragraph (d)(1) as paragraph (d) and revising the first sentence of newly redesignated paragraph (d);
■ h. By removing paragraph (e)(2) and by redesignating paragraph (e)(1) as paragraph (e);
■ i. By revising paragraph (f);
■ j. By redesignating paragraph (g) through paragraph (k) as paragraph (h) through paragraph (l); and by revising newly redesignated paragraph (i); and
■ k. By adding new paragraph (g) to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) * * *

Individual case safety report (ICSR). A description of an adverse drug experience related to an individual patient or subject.

ICSR attachments. Documents related to the adverse drug experience described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.

* * * * *

(c) *Reporting requirements.* The applicant must submit to FDA adverse drug experience information as described in this section. Except as provided in paragraph (g)(2) of this section, these reports must be submitted to the Agency in electronic format as described in paragraph (g)(1) of this section.

(1) * * *

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, also apply to any person other than the applicant whose name appears on the label of an approved drug product as a manufacturer, packer, or distributor (nonapplicant). * * * If a nonapplicant elects to submit adverse drug experience reports to the applicant rather than to FDA, the nonapplicant must submit, by any appropriate means, each report to the applicant within 5 calendar days of initial receipt of the information by the nonapplicant, and the applicant must then comply with the requirements of this section. * * *

* * * * *

(2) * * *

(ii) Each periodic report is required to contain:

(A) *Descriptive information.* (*1*) A narrative summary and analysis of the information in the report;

(*2*) An analysis of the 15-day Alert reports submitted during the reporting interval (all 15-day Alert reports being appropriately referenced by the applicant's patient identification code, adverse reaction term(s), and date of submission to FDA);

(*3*) A history of actions taken since the last report because of adverse drug experiences (for example, labeling changes or studies initiated); and

(*4*) An index consisting of a line listing of the applicant's patient identification code, and adverse reaction term(s) for all ICSRs submitted under paragraph (c)(2)(ii)(B) of this section.

(B) *ICSRs for serious, expected, and nonserious adverse drug experiences.* An ICSR for each adverse drug experience not reported under paragraph (c)(1)(i) of this section (all serious, expected and nonserious adverse drug experiences). All such ICSRs must be submitted to FDA (either individually or in one or more batches) within the timeframe specified in paragraph (c)(2)(i) of this section. ICSRs must only be submitted to FDA once.

* * * * *

(d) *Scientific literature.* A 15-day Alert report based on information in the scientific literature must be accompanied by a copy of the published article. * * *

* * * * *

(f) *Information reported on ICSRs.* ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse drug experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse drug experience.*

(i) Outcome attributed to adverse drug experience;

(ii) Date of adverse drug experience;

(iii) Date of ICSR submission;

(iv) Description of adverse drug experience (including a concise medical narrative);

(v) Adverse drug experience term(s);

(vi) Description of relevant tests, including dates and laboratory data; and

(vii) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medical product(s).*

(i) Name;

(ii) Dose, frequency, and route of administration used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) Whether the product is a prescription or nonprescription product;

(vi) Whether the product is a combination product as defined in § 3.2(e) of this chapter;

(vii) Whether adverse drug experience abated after drug use stopped or dose reduced;

(viii) Whether adverse drug experience reappeared after reintroduction of drug;

(ix) Lot number;

(x) Expiration date;

(xi) National Drug Code (NDC) number; and

(xii) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and telephone number;

(ii) Whether the initial reporter is a health care professional; and

(iii) Occupation, if a health care professional.

(5) *Applicant information.*

(i) Applicant name and contact office address;

(ii) Telephone number;

(iii) Report source, such as spontaneous, literature, or study;

(iv) Date the report was received by applicant;

(v) Application number and type;

(vi) Whether the ICSR is a 15-day ''Alert report'';

(vii) Whether the ICSR is an initial report or followup report; and

(viii) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(g) *Electronic format for submissions.* (1) Safety report submissions, including ICSRs, ICSR attachments, and the descriptive information in periodic reports, must be in an electronic format that FDA can process, review, and archive. FDA will issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) An applicant or nonapplicant may request, in writing, a temporary waiver of the requirements in paragraph (g)(1) of this section. These waivers will be granted on a limited basis for good cause shown. FDA will issue guidance on requesting a waiver of the requirements in paragraph (g)(1) of this section.

* * * * *

(i) *Patient privacy.* An applicant should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code for identification of the patient. The applicant should include the name of the reporter from whom the information was received as part of the initial reporter information, even when the reporter is the patient. The names of patients, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

* * * * *

■ 5. Section 314.98 is revised to read as follows:

§ 314.98 Postmarketing reports.

(a) Each applicant having an approved abbreviated new drug application under § 314.94 that is effective must comply with the requirements of § 314.80 regarding the reporting and recordkeeping of adverse drug experiences.

(b) Each applicant must make the reports required under § 314.81 and section 505(k) of the Federal Food, Drug, and Cosmetic Act for each of its approved abbreviated applications.

■ 6. Part 329 is added to read as follows:

PART 329—NONPRESCRIPTION HUMAN DRUG PRODUCTS SUBJECT TO SECTION 760 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371, 379aa.

§ 329.100 Postmarketing reporting of adverse drug events under section 760 of the Federal Food, Drug, and Cosmetic Act.

(a) *Reporting requirements.* Reports of serious adverse events required by section 760 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) must include the information specified in this section, as applicable. Except as provided in paragraph (c)(2) of this section, these reports must be submitted to the Agency in electronic format as described in paragraph (c)(1) of this section.

(b) *Contents of reports.* For purposes of reporting serious adverse events under section 760 of the FD&C Act, an individual case safety report (ICSR) constitutes the MedWatch form required to be submitted by section 760(d) of the FD&C Act. ICSRs include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse drug experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse event.*

(i) Outcome attributed to adverse drug event;

(ii) Date of adverse drug event;

(iii) Date of ICSR submission;

(iv) Description of adverse drug event (including a concise medical narrative);

(v) Adverse drug event term(s);

(vi) Description of relevant tests, including dates and laboratory data; and

(vii) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medical product(s).*

(i) Name;

(ii) Dose, frequency, and route of administration used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) Whether the product is a combination product as defined in § 3.2(e) of this chapter;

(vi) Whether the product is a prescription or nonprescription product;

(vii) Whether adverse drug event abated after drug use stopped or dose reduced;

(viii) Whether adverse drug event reappeared after reintroduction of drug;

(ix) Lot number;

(x) Expiration date;

(xi) National Drug Code (NDC) number; and

(xii) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and telephone number;

(ii) Whether the initial reporter is a health care professional; and

(iii) Occupation, if a health care professional.

(5) *Responsible person (as defined in section 760(b) of the FD&C Act) information.*

(i) Name and contact office address;

(ii) Telephone number;

(iii) Report source, such as spontaneous;

(iv) Date the report was received by responsible person;

(v) Whether the ICSR is a 15-day report;

(vi) Whether the ICSR is an initial report or followup report; and

(vii) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(c) *Electronic format for submissions.* (1) Each report required to be submitted to FDA under section 760 of the FD&C Act, accompanied by a copy of the label on or within the retail package of the drug and any other documentation (as ICSR attachments), must be in an electronic format that FDA can process, review, and archive. FDA will issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation, and organization of files).

(2) The responsible person may request, in writing, a temporary waiver of the requirements in paragraph (c)(1) of this section. These waivers will be granted on a limited basis for good cause shown. FDA will issue guidance on requesting a waiver of the requirements in paragraph (c)(1) of this section.

(d) *Patient privacy.* The responsible person should not include in reports under this section the names and addresses of individual patients; instead, the responsible person should assign a unique code for identification of the patient. The responsible person should include the name of the reporter from whom the information was received as part of the initial reporter

information, even when the reporter is the patient. The names of patients, health care professionals, hospitals, and geographical identifiers in adverse drug event reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

PART 600—BIOLOGICAL PRODUCTS: GENERAL

■ 7. The authority citation for 21 CFR part 600 is revised to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374, 379k–1; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.2 [Amended]

■ 8. Section 600.2 is amended:
■ a. In paragraph (a) by removing the phrase ''paragraphs (c) or (d)'' and adding in its place ''paragraph (c)'', and by removing the phrase ''adverse experience reports'';
■ b. In paragraph (b) introductory text by removing the phrase ''paragraphs (b)(1), (b)(2), (b)(3), or (c)'' and adding in its place ''paragraphs (b)(1), (b)(2), or (c) ''
■ c. By removing paragraph (b)(2) and redesignating paragraph (b)(3) as paragraph (b)(2);
■ d. By removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e).
■ e. In newly redesignated paragraph (e) by removing the Web address ''*http://www.fda.gov/cber/pubinquire.htm*'' and adding in its place ''*http://www.fda.gov/BiologicsBloodVaccines/default.htm*'' and by removing the Web address ''*http://www.fda.gov/cder/biologics/default.htm*'' and adding in its place ''*http://www.fda.gov/Drugs/default.htm*''.

■ 9. Section 600.80 is amended:
■ a. By removing the word ''shall'' each time it appears and by adding in its place the word ''must'';
■ b. By removing the phrase ''licensed manufacturer'' or ''licensed manufacturers'' each time it appears and by adding in its place the word ''applicant'' or ''applicants'' respectively;
■ c. By removing the phrase ''Licensed manufacturer'' or ''Licensed manufacturers'' each time it appears and by adding in its place the word ''Applicant'' or ''Applicants'' respectively;
■ d. In paragraph (a) by alphabetically adding the definitions for ''Individual case safety report (ICSR)'' and ''ICSR attachments'';
■ e. In paragraph (c)(1)(i) by removing the phrase ''in no case later than 15 calendar days of'' and by adding in its place the phrase ''no later than 15 calendar days from'';
■ f. In paragraph (c)(1)(ii) by removing the last sentence;
■ g. By removing paragraph (c)(1)(iv);
■ h. By revising paragraph (c) introductory text, the first and third sentences of paragraph (c)(1)(iii) introductory text, and paragraph (c)(2)(ii);
■ i. By removing paragraph (d)(2) and by redesignating paragraph (d)(1) as paragraph (d) and revising the first sentence of paragraph (d);
■ j. By removing paragraph (e)(2) and by redesignating paragraph (e)(1) as paragraph (e);
■ k. By revising paragraph (f);
■ l. By redesignating paragraph (g) through paragraph (*l*) as paragraph (i) through paragraph (n) and by revising newly redesignated paragraph (j); and
■ m. By adding new paragraphs (g) and (h) to read as follows:

§ 600.80 Postmarketing reporting of adverse experiences.

(a) * * *

Individual case safety report (ICSR). A description of an adverse experience related to an individual patient or subject.

ICSR attachments. Documents related to the adverse experience described in an ICSR, such as medical records, hospital discharge summaries, or other documentation.

* * * * *

(c) *Reporting requirements.* The applicant must submit to FDA postmarketing 15-day Alert reports and periodic safety reports pertaining to its biological product as described in this section. These reports must be submitted to the Agency in electronic format as described in paragraph (h)(1) of this section, except as provided in paragraph (h)(2) of this section.

(1) * * *

(iii) *Submission of reports.* The requirements of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, concerning the submission of postmarketing 15-day Alert reports, also apply to any person whose name appears on the label of a licensed biological product as a manufacturer, packer, distributor, shared manufacturer, joint manufacturer, or any other participant involved in divided manufacturing. * * * If a person elects to submit adverse experience reports to the applicant rather than to FDA, the person must submit, by any appropriate means, each report to the applicant within 5 calendar days of initial receipt of the information by the person, and the applicant must then comply with the requirements of this section. * * *

* * * * *

(2) * * *

(ii) Each periodic report is required to contain:

(A) *Descriptive information.* (*1*) A narrative summary and analysis of the information in the report;

(*2*) An analysis of the 15-day Alert reports submitted during the reporting interval (all 15-day Alert reports being appropriately referenced by the applicant's patient identification code for nonvaccine biological product reports or by the unique case identification number for vaccine reports, adverse reaction term(s), and date of submission to FDA);

(*3*) A history of actions taken since the last report because of adverse experiences (for example, labeling changes or studies initiated);

(*4*) An index consisting of a line listing of the applicant's patient identification code for nonvaccine biological product reports or by the unique case identification number for vaccine reports and adverse reaction term(s) for ICSRs submitted under paragraph (c)(2)(ii)(B) of this section; and

(B) *ICSRs for serious, expected and, nonserious adverse experiences.* An ICSR for each adverse experience not reported under paragraph (c)(1)(i) of this section (all serious, expected and nonserious adverse experiences). All such ICSRs must be submitted to FDA (either individually or in one or more batches) within the timeframe specified in paragraph (c)(2)(i) of this section. ICSRs must only be submitted to FDA once.

* * * * *

(d) *Scientific literature.* A 15-day Alert report based on information in the scientific literature must be accompanied by a copy of the published article. * * *

* * * * *

(f) *Information reported on ICSRs for nonvaccine biological products.* ICSRs for nonvaccine biological products include the following information:

(1) *Patient information.*

(i) Patient identification code;

(ii) Patient age at the time of adverse experience, or date of birth;

(iii) Patient gender; and

(iv) Patient weight.

(2) *Adverse experience.*

(i) Outcome attributed to adverse experience;

(ii) Date of adverse experience;

(iii) Date of report;

(iv) Description of adverse experience (including a concise medical narrative);

(v) Adverse experience term(s);

(vi) Description of relevant tests, including dates and laboratory data; and

(vii) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medical product(s).*

(i) Name;

(ii) Dose, frequency, and route of administration used;

(iii) Therapy dates;

(iv) Diagnosis for use (indication);

(v) Whether the product is a combination product as defined in § 3.2(e) of this chapter;

(vi) Whether the product is a prescription or nonprescription product;

(vii) Whether adverse experience abated after product use stopped or dose reduced;

(viii) Whether adverse experience reappeared after reintroduction of the product;

(ix) Lot number;

(x) Expiration date;

(xi) National Drug Code (NDC) number, or other unique identifier; and

(xii) Concomitant medical products and therapy dates.

(4) *Initial reporter information.*

(i) Name, address, and telephone number;

(ii) Whether the initial reporter is a health care professional; and

(iii) Occupation, if a health care professional.

(5) *Applicant information.*

(i) Applicant name and contact office address;

(ii) Telephone number;

(iii) Report source, such as spontaneous, literature, or study;

(iv) Date the report was received by applicant;

(v) Application number and type;

(vi) Whether the ICSR is a 15-day ''Alert report'';

(vii) Whether the ICSR is an initial report or followup report; and

(viii) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(g) *Information reported on ICSRs for vaccine products.* ICSRs for vaccine products include the following information:

(1) *Patient information.*

(i) Patient name, address, telephone number;

(ii) Patient age at the time of vaccination, or date of birth;

(iii) Patient gender; and

(iv) Patient birth weight for children under age 5.

(2) *Adverse experience.*

(i) Outcome attributed to adverse experience;

(ii) Date and time of adverse experience;

(iii) Date of report;

(iv) Description of adverse experience (including a concise medical narrative);

(v) Adverse experience term(s);

(vi) Illness at the time of vaccination;

(vii) Description of relevant tests, including dates and laboratory data; and

(viii) Other relevant patient history, including preexisting medical conditions.

(3) *Suspect medical product(s), including vaccines administered on the same date.*

(i) Name;

(ii) Dose, frequency, and route or site of administration used;

(iii) Number of previous vaccine doses;

(iv) Vaccination date(s) and time(s);

(v) Diagnosis for use (indication);

(vi) Whether the product is a combination product (as defined in § 3.2(e) of this chapter);

(vii) Whether the adverse experience abated after product use stopped or dose reduced;

(viii) Whether the adverse experience reappeared after reintroduction of the product;

(ix) Lot number;

(x) Expiration date;

(xi) National Drug Code (NDC) number, or other unique identifier; and

(xii) Concomitant medical products and therapy dates.

(4) *Vaccine(s) administered in the 4 weeks prior to the vaccination date.*

(i) Name of vaccine;

(ii) Manufacturer;

(iii) Lot number;

(iv) Route or site of administration;

(v) Date given; and

(vi) Number of previous doses.

(5) *Initial reporter information.*

(i) Name, address, and telephone number;

(ii) Whether the initial reporter is a health care professional; and

(iii) Occupation, if a health care professional.

(6) *Facility and personnel where vaccine was administered.*

(i) Name of person who administered vaccine;

(ii) Name of responsible physician at facility where vaccine was administered; and

(iii) Name, address (including city, county, and state), and telephone number of facility where vaccine was administered.

(7) *Applicant information.*

(i) Applicant name and contact office address;

(ii) Telephone number;

(iii) Report source, such as spontaneous, literature, or study;

(iv) Date received by applicant;

(v) Application number and type;

(vi) Whether the ICSR is a 15-day ''Alert report'';

(vii) Whether the ICSR is an initial report or followup report; and

(viii) Unique case identification number, which must be the same in the initial report and any subsequent followup report(s).

(h) *Electronic format for submissions.* (1) Safety report submissions, including ICSRs, ICSR attachments, and the descriptive information in periodic reports, must be in an electronic format that FDA can process, review, and archive. FDA will issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) Persons subject to the requirements of paragraph (c) of this section may request, in writing, a temporary waiver of the requirements in paragraph (h)(1) of this section. These waivers will be granted on a limited basis for good cause shown. FDA will issue guidance on requesting a waiver of the requirements in paragraph (h)(1) of this section. Requests for waivers must be submitted in accordance with § 600.90.

* * * * *

(j) *Patient privacy.* For nonvaccine biological products, an applicant should not include in reports under this section the names and addresses of individual patients; instead, the applicant should assign a unique code for identification of the patient. The applicant should include the name of the reporter from whom the information was received as part of the initial reporter information, even when the reporter is the patient. The names of patients, health care professionals, hospitals, and geographical identifiers in adverse experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter. For vaccine adverse experience reports, these data will become part of the CDC Privacy Act System 09–20–0136, ''Epidemiologic Studies and Surveillance of Disease Problems.'' Information identifying the person who received the vaccine or that person's legal representative will not be made available to the public, but may be available to the vaccinee or legal representative.

* * * * *

■ 10. Section § 600.81 is amended:

■ a. By removing the phrase ''licensed manufacturer'' each time it appears and by adding in its place the word ''applicant'';

■ b. By removing the word ''shall'' each time it appears and by adding in its place the word ''must'';

■ c. By designating the existing text as paragraph (a) and by adding a heading for newly designated paragraph (a);

■ d. In newly designated paragraph (a), by removing from the first sentence the phrase ''(see mailing addresses in § 600.2)''; and

■ e. By adding new paragraph (b) to read as follows:

§ 600.81 Distribution reports.

(a) *Reporting requirements.* * * *

(b)(1) *Electronic format.* Except as provided for in paragraph (b)(2) of this section, the distribution reports required under paragraph (a) of this section must be submitted to the Agency in an electronic format that FDA can process, review, and archive. FDA will issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files).

(2) *Waivers.* An applicant may request, in writing, a temporary waiver of the requirements in paragraph (b)(1) of this section. These waivers will be granted on a limited basis for good cause shown. FDA will issue guidance on requesting a waiver of the requirements in paragraph (b)(1) of this section. Requests for waivers must be submitted in accordance with § 600.90.

§ 600.90 [Amended]

■ 11. Section 600.90 is amended by removing the phrase ''licensed manufacturer'' or ''licensed manufacturer's'' each time it appears and by adding in its place the word ''applicant'' or ''applicant's'' respectively.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13480 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID: ED–2014–OSERS–0013]

Final Priority. National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

[CFDA Number: 84.133B–4.]

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for an RRTC on Health and Function of Individuals with Physical Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years. We take this action to focus research attention on an area of national need. We intend the priority to contribute to improved outcomes of health and function of individuals with physical disabilities.

DATES: This priority is effective July 10, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@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: *Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers, and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on March 3, 2014 (79 FR 11738). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, six parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the NPP follows.

Comment: One commenter questioned the need for this priority.

Discussion: This priority, creating an RRTC on Health and Function of Individuals with Physical Disabilities, would help achieve the goals of, and improve the effectiveness of services authorized under, the Rehabilitation Act. By creating an RRTC on Health and Function for Individuals with Physical Disabilities, we are fulfilling the purposes established in NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (Plan), which was published in the **Federal Register** on April 4, 2013 (78 FR 20299). More specifically, as we discuss in the NPP, there is a need to better understand how specific health problems are interrelated with optimal health and function; how they may affect community participation, work productivity, and quality of life; and how they may be prevented or mitigated. We believe this priority will focus research attention on this area of national need.

Changes: None.

Comment: One commenter recommended that the RRTC should focus on technology-based interventions to improve health and function outcomes of individuals with disabilities.

Discussion: NIDRR agrees that technology can be used to improve the health and function outcomes of individuals with physical disabilities. This is one of five broad areas described in the priority, under which applicants can propose research and related activities. NIDRR does not wish to limit applicants' ability to address the other areas in the priority by requiring a focus

on technology, as recommended by the commenter. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter noted that several research centers working in the area of health and function for individuals with physical disabilities have focused their efforts on analysis of existing data. The commenter recommended that NIDRR revise the priority to require the RRTC to collect new data in order to advance the field.

Discussion: Nothing in the priority precludes an applicant from proposing to engage in the collection and analysis of new data. However, NIDRR does not wish to revise the research requirements in the way suggested by the commenter because we believe the revisions would limit the number and breadth of applications submitted under this priority. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter recommended that NIDRR revise the priority to require the RRTC to focus on at least two study populations or diagnostic groups, thereby promoting the generalizability of the RRTC's findings.

Discussion: Paragraph (a) of the proposed priority states that the RRTC can focus on individuals with physical disabilities as a group or on specific disability or demographic subpopulations of individuals with physical disabilities. NIDRR purposely does not require a minimum number of target populations because we do not want to limit the breadth and number of applications that can be submitted under this priority.

Changes: None.

Comment: One commenter asked NIDRR to further define and specify the limits of the term ''physical disability.'' The commenter noted that people with traumatic brain injury (TBI) or stroke, for example, have acquired cognitive or intellectual impairments, as well as physical impairments, and often receive clinical services from rehabilitation professionals with expertise in physical disabilities. The commenter requested clarification of the term ''physical disability'' to help applicants determine whether their proposed target population(s) are an appropriate fit within the priority.

Discussion: We agree that some individuals with disabling conditions such as TBI or stroke could be considered in multiple target populations, including individuals with physical disabilities. NIDRR purposely outlines broad categories of target populations in its Plan and its priorities to allow applicants the flexibility to choose the disability category that is most relevant to their research questions and purposes. With this priority, we allow applicants to define and justify their target population within the broad category of individuals with physical disabilities. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter noted that paragraph (c)(ii) of the priority requires the RRTC to provide training to rehabilitation providers and other disability service providers in order to facilitate more effective delivery of services. The commenter suggested that by limiting the recipients of the required training to service providers, NIDRR may be limiting the knowledge that is available to consumers and reinforcing the knowledge barrier between service providers and consumers. The commenter suggested that NIDRR modify paragraph (c)(ii) to require the RRTCs to provide training to consumers and service providers.

Discussion: The requirements in paragraph (c)(ii) are based directly on the Federal regulations that govern administration of the RRTC program. The regulations in 34 CFR 350.22(b)(1) require that training be provided to rehabilitation personnel or rehabilitation research personnel. At the same time, nothing in the regulations or in the priority precludes applicants from proposing to provide training to individuals with disabilities in addition to rehabilitation or rehabilitation research providers (who may also have disabilities). It is up to the applicant to designate and justify training targets. The peer review process will determine the merits of each proposal.

Changes: None.

Final Priority

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Health and Function of Individuals with Physical Disabilities.

The RRTC must contribute to maximizing the health and function outcomes of individuals with physical disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with physical disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with physical disabilities:

(i) Technology to improve health and function outcomes for individuals with physical disabilities.

(ii) Individual and environmental factors associated with improved access to rehabilitation and health care and improved health and function outcomes for individuals with physical disabilities.

(iii) Interventions that contribute to improved health and function outcomes for individuals with physical disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for the specified population.

(iv) Effects of government practices, policies, and programs on health care access and on health and function outcomes for individuals with physical disabilities.

(v) Practices and policies that contribute to improved health and function outcomes for individuals with physical disabilities.

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. The research stages and their definitions are in the final priorities and definitions published in the **Federal Register** on May 7, 2013 (78 FR 26513).

(c) Serving as a national resource center related to health and function for individuals with physical disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with physical disabilities and their representatives, and other key stakeholders.

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation providers and other disability service providers, to facilitate more effective delivery of services to individuals with physical disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities.

(iii) Disseminating research-based information and materials related to health and function for individuals with physical disabilities.

(iv) Involving key stakeholder groups in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

(3) Materially alter the budgetary impacts of entitlement 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 stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. The new RRTC will generate and promote the use of new knowledge that is intended to the health and function of individuals with disabilities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

Dated: June 5, 2013.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–13498 Filed 6–9–14; 8:45 am]

BILLING CODE 4000–01–P

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act Implementing Procedures

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service (USPS)™ is publishing this final rule to amend a categorical exclusion (CATEX) in the Postal Service's National Environmental Policy Act (NEPA) implementing procedures. This document responds to comments received concerning a previously-published interim final rule, and adopts without change the text of the amendments set forth in the interim final rule.

DATES: *Effective date:* June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Charlotte Parrish, Environmental Specialist, at *charlotte.parrish@usps.gov* or 201–714–7216, or Matthew Raeburn, Environmental Counsel, at *matthew.d.raeburn@usps.gov* or 202–268–4570.

SUPPLEMENTARY INFORMATION:

Summary

On January 13, 2014, the Postal Service published an interim final rule with request for comments to amend a categorical exclusion (CATEX) in the Postal Service's National Environmental Policy Act (NEPA) implementing procedures (79 FR 2102). As explained in that document, the amendment focuses the CATEX more clearly on activities that, absent extraordinary circumstances, do not normally have the potential for individual or cumulative significant impacts on the quality of the human environment. The amendment also makes the CATEX consistent with analogous CATEXs used by the General Services Administration (GSA) and other major federal landowners.

In response to the interim final rule, the Postal Service received five comment letters. Commenters included non-governmental organizations, a municipality, three Members of Congress, and an individual. The commenters expressed their concerns about the interim final rule, which the Postal Service discusses and responds to in this document. In short, the five comment letters received from the public have not raised issues prompting the Postal Service to modify or deviate from its interim final rule. This final rule thus confirms and adopts the interim final rule's amendment to the Postal Service's CATEX.

Rulemaking's Relation to Litigation Over Previous CATEX

Some commenters note the rulemaking's timing given the preliminary injunction in *National Post Office Collaborate* v. *Donahoe,* No. 3:13cv1406, 2013 WL 5818889 (D. Conn. Oct. 28, 2013). That the court's reading of the Postal Service's previously-worded CATEX in that case differs from the Postal Service's own longstanding interpretation demonstrates the need for clarification, which brings the Postal Service's CATEX into accord with federal agencies' comparable CATEXs.

Regardless of its timing, the amended CATEX constitutes a reasonable interpretation of the Postal Service's obligations under NEPA. The United States Supreme Court has held that an ''initial agency interpretation [of a statute] is not instantly carved in stone'' and that any agency ''must consider varying interpretations and the wisdom of its policy on a continuing basis.'' *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 863–64 (1984). As noted in the interim final rule, the Council on Environmental Quality (CEQ) has recommended that agencies periodically review their CATEXs and benchmark them against other agencies' (75 FR 75628, Feb. 18, 2010).

One commenter asserted that the new CATEX would reinstate a process that was purportedly rejected or temporarily enjoined in *National Post Office Collaborate.* That portrayal of the court's order is inaccurate. The court did not find the Postal Service's application of its property disposal CATEX *per se* deficient under NEPA. Instead, the court found the Postal Service's *application* of the CATEX to be procedurally deficient based, in large part, on how the CATEX was worded prior to this rulemaking. *National Post Office Collaborate,* No. 3:13cv1406, 2013 WL 5818889, at 13–15. At no point did the Court dispute the validity of the CATEX. Thus, this rulemaking merely clarifies the Postal Service's intent by rewording its property disposal CATEX, which, due to its former wording, the court in *National Post Office Collaborate* read differently from the Postal Service's longstanding interpretation.

This rulemaking is not retroactive and does not affect actions taken under the prior CATEX. *See generally, Bowen* v. *Georgetown Univ. Hosp.,* 488 U.S. 204, 208 (1988) (holding that agency regulations are not retroactive except as specifically authorized by Congress).

The Postal Service's Implementation of NEPA

The Postal Service applies its NEPA process and implements its CEQ-approved NEPA regulations for *every* property disposal. The interim final rule has not changed that, nor would this final rule. Nevertheless, a group of commenters suggests that the interim final rule would offer the Postal Service a way to bypass the NEPA reporting requirements that apply when there is no significant effect on the human environment. As was the case before this rulemaking, however, even where a proposed property disposal does not require an environmental assessment (EA), the Postal Service's NEPA process will still result in NEPA documentation: Notably, the Facilities Environmental Checklist and the Record of Environmental Consideration (*see* U.S. Postal Service, *Facilities Environmental Guide Handbook RE–6* § 2–4.1 (Nov. 2004)). Those documents are a matter of public record. Rather than somehow bypassing NEPA, the Postal Service would continue to document its decisionmaking throughout the NEPA process, including where the Postal Service applies a CATEX, which itself is an application of NEPA.

The Postal Service's Consistency With Other Agencies' Interpretation of NEPA

Some commenters assert that the amended CATEX does not follow NEPA, because it emphasizes the surrounding property uses around the Postal Service property proposed for disposal. As discussed in the interim final rule document, however, other federal landowners have incorporated the same comparison as an important aspect of their NEPA processes (79 FR 2102). The Postal Service's amended CATEX mirrors the language of a long-standing and well-established CATEX used by the General Services Administration (GSA) (*see* 65 FR 69558, Nov. 17, 2000). The amended CATEX also follows the lead of the United States Coast Guard (USCG), which similarly adopted a CATEX based on the GSA's language (78 FR 44140). The Postal Service is unaware of any authority suggesting those CATEXs are not valid exercises of the agencies' discretion in implementing NEPA.

Several groups' combined comment letter purports to contrast the Postal Service's current regulations, which deem historic status to be one of many factors considered in completing its ''extraordinary circumstances'' checklist, with analogous provisions in the GSA and USCG regulations. Upon careful review of these comparable

regulations and discussions with responsible personnel at each agency, the Postal Service has confirmed that its approach to historic property disposals under NEPA is no less thorough than the approaches shared by those other two federal owners of historic properties. Like the Postal Service, both GSA and USCG include historic status as one factor in a more holistic review of the proposed action, such that the CATEX may remain applicable to a historic property in light of mitigating actions and other circumstances. In this regard, those agencies' procedures remain consistent with the Postal Service's own.

Some commenters assert that the Postal Service has not properly substantiated that property disposals under the revised CATEX would not normally result in significant environmental impacts. As explained in the interim final rule, CEQ has advised that an agency can substantiate its own CATEX by comparing another agency's experience promulgating and applying a comparable CATEX (*see* 75 FR 75628). That—along with the Postal Service's experience described in the interim final rule and the experience of two federal agencies with comparable CATEXs—supports the Postal Service's decision to finalize its amended property disposal CATEX via this final rule.

All commenters convey the general notion that disposals of historic properties should warrant more NEPA review (not less). The Postal Service's revision to its CATEX in no way limits the Postal Service's NEPA review of historic properties. Like GSA and USCG, the Postal Service already has additional procedures specifically for reviewing proposed disposals of historic properties (*see, Facilities Environmental Guide Handbook RE–6* § 3–4.1 (''Historic and cultural resources are considered in the environmental planning processes, both environmental due diligence and NEPA[.]''). As explained with regard to the interim final rule (79 FR 2102, 2103), the Postal Service's procedural safeguards regarding historical properties remain an integral part of the Postal Service's property disposal process. *See, e.g., Facilities Environmental Guide Handbook RE–6* § 3–4.3.4.4.4 (discussing circumstances prompting and requirements for implementing preservation covenants). Historic status remains a factor in determining whether ''extraordinary circumstances'' require further NEPA review, notwithstanding an otherwise applicable CATEX. This rulemaking does not diminish the significance of historic status as a factor in an overall assessment of potential environmental impacts and extraordinary circumstances.

Historical Status Is Not a Per Se Extraordinary Circumstance

Some commenters ask that the Postal Service couple its CATEX revision with an amendment making a property's historic listing an ''extraordinary circumstance'' that would automatically trigger an EA. This suggestion is at odds with CEQ guidance, however. According to CEQ, ''the agencies may define their extraordinary circumstances differently, so that a particular situation, such as the presence of a protected resource [e.g., historic property], is not considered an extraordinary circumstance *per se,* but a factor to consider when determining if there are extraordinary circumstances, such as a significant impact to that resource'' (75 FR 75628, 75629, Dec. 6, 2010). CEQ's guidance is consistent with the Postal Service's experience with sales of historical properties.

In a great many instances, the disposal of a historic Postal Service property does not result in significant environmental impacts. As described in the previous section, the Postal Service, GSA, and USCG each consider whether such potential issues exist and whether they could be sufficiently alleviated outside of the NEPA process, such as through historic preservation covenants. In other words, historic status may be a starting point to consideration of ''extraordinary circumstances,'' but it is not an immediate EA decision point under the regulatory scheme of the GSA, USCG, or USPS. The Postal Service's ''extraordinary circumstance'' regulations are consistent with those of the GSA and USCG in this regard, and the use of those agencies' CATEXs as models does not provide a basis for additional changes to other aspects of the Postal Service's CATEX regulations.

One commenter believes that any proposed action to move Postal Service activities from a downtown area should be subject to an environmental impact statement (EIS). Although this rulemaking's CATEX covers proposed actions to dispose of property rather than to move the Postal Service's operations from one place to another, both categories of decisions and others are subject to the Postal Service's NEPA process. Under the Postal Service's longstanding NEPA regulations, an EIS does not generally need to be performed for a Postal Service action, including a routine transfer of operations, absent extraordinary circumstances. *See* 39 CFR 775.5(a); 40 CFR 1508.27.

Consistency of This NEPA CATEX With National Historic Preservation Act

Although the National Historic Preservation Act (NHPA) and National Register of Historic Places are not immediately relevant to this NEPA rulemaking, commenters have discussed their application to federal entities' property disposals, particularly the GSA's. Several commenters state that the Postal Service must consider a property's listing on the National Register of Historic Places, which the Postal Service already does as part of its NEPA analysis. Commenters also make an effort to distinguish the Postal Service's requisite procedures for evaluating potential disposals of historical properties with GSA's.

As discussed above, the Postal Service already has special procedures for reviewing proposed disposals of historic properties (*Facilities Environmental Guide Handbook RE–6* §§ 3–4.1, 3–4.3.4.4.4), and this rulemaking does not change or otherwise affect those procedures or the significance of a property's historic status. The Postal Service voluntarily complies with the requirements of Section 106 of the NHPA (16 U.S.C. 470f) in making a finding that there would be no adverse effects to a historic property as a result of a disposal, or if an adverse effect is found, then consulting with the requisite parties to develop an agreement to mitigate adverse effects. These procedures remain effective notwithstanding this rulemaking, and they are generally similar to other Federal entities' corresponding procedures. As such, they do not affect the reasonableness of the Postal Service's amendment to its NEPA procedures on the basis of GSA's model.

The Public Trust Doctrine

One commenter offered an opinion that the common-law public trust doctrine affects the Postal Service's ability to modify a NEPA CATEX. While courts have applied the public trust doctrine to natural resources (particularly water-related resources), there does not appear to be authority for the proposition that the public trust doctrine applies to government-owned facilities and property. Such a proposition would seem contrary to the long history of disposals of governmental property. Nor does the Constitution pose any such limits on Congress's powers to provide for the disposal of federal property.

In fact, the Constitution explicitly vests Congress with the power ''to dispose of any kind of property belonging to the United States . . .

without limitation.'' *Alabama* v. *Texas,* 347 U.S. 272, 273 (1954) (per curiam) (internal quotation marks and citation omitted). Congress has expressly delegated its disposal powers to the Postal Service. *See* 39 U.S.C. 401(5). Thus, even if the public trust doctrine somehow applied to the federal government as a general matter, the doctrine still would not encumber the Postal Service as a statutory matter. *See* 39 U.S.C. 410(a).

Even if the public trust doctrine had any relevance for disposals of government property, the public trust doctrine is a distinct area of state law that does not apply to a federal NEPA rulemaking. *PPL Mont., LLC* v. *Montana,* 132 S. Ct. 1215, 1235 (2012) (emphasizing that the public trust doctrine ''remains a matter of state law''). As such, the Constitution's Supremacy Clause bars it from applying to the Postal Service.

Effect on Public Participation

One group of commenters asserts that the interim final rule would reduce public participation in the facility disposal process at a time when there is great national interest in historic Post Offices. Adoption of this final rule will have no adverse effect on the existing robust avenues for public participation in Postal Service processes for disposals of historic properties. The Postal Service, itself a historic institution, highly values its historic properties and takes seriously its voluntary compliance with sections 106, 110, and 111 of the National Historic Preservation Act and the historic preservation regulations.

In particular, with respect to the occasional sale of an historic post office, the Postal Service strictly adheres to the section 106 regulations (36 CFR part 800), which provide a comprehensive, consistent, transparent, consultative process. That process requires identifying historic properties, assessing the effects of Postal Service undertakings and, in consultation with local officials and with community input, seeking ways to avoid, minimize or mitigate any adverse effects on historic properties. Additionally, for real property disposals, under its regulations implementing applicable provisions of the Intergovernmental Cooperation Act (39 CFR part 778), the Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the Postal Service's real property disposals.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

For the reasons stated in the preamble, 39 CFR part 775 is amended as follows:

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

■ 1. The authority citation for 39 CFR part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.;* 40 CFR 1500.4.

■ 2. In § 775.6, paragraph (e)(8) is revised to read as follows:

§ 775.6 Categorical exclusions.

* * * * *

(e) * * *

(8) Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–13418 Filed 6–9–14; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0738; FRL–9911–97–Region–4]

Approval and Promulgation of Implementation Plans; State of Tennessee; Knoxville; Fine Particulate Matter 2008 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the 2006 24-hour fine particulate matter ($PM_{2.5}$) 2008 base year emissions inventory portion of the State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on October 18, 2013. The emissions inventory is part of Tennessee's October 18, 2013, attainment demonstration SIP revision that was submitted to meet Clean Air Act (CAA or Act) requirements related to the Knoxville nonattainment area for the 2006 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS), hereinafter referred to as ''the Knoxville Area'' or ''Area.'' The Knoxville Area is comprised of Anderson, Blount, Knox, and Loudon Counties in their entireties and a portion of Roane County that includes the Tennessee Valley Authority's Kingston Fossil Plant.

DATES: This direct final rule is effective on August 11, 2014 without further notice, unless EPA receives relevant adverse comment by July 10, 2014. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0738, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2013–0738,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2013–0738. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you

provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9121. Mr. Majumder can be reached via electronic mail at *Majumder.joydeb@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 2006, (71 FR 61144), EPA established the 24-hour $PM_{2.5}$ NAAQS at 35.0 micrograms per cubic meter. On November 13, 2009 (74 FR 58688), EPA published its air quality designations and classifications for the 2006 24-hour $PM_{2.5}$ NAAQS based upon air quality monitoring data for calendar years 2006–2008. These designations became effective on December 14, 2009. The Knoxville Area was designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS.

Designation of an area as nonattainment starts the process for a state to develop and submit to EPA a SIP revision under title I, part D of the CAA. This SIP revision must include, among other elements, a demonstration of how the NAAQS will be attained in the nonattainment area as expeditiously as practicable, but no later than the date required by the CAA. On June 6, 2012 (77 FR 33360), EPA proposed that the Knoxville Area had attained the 2006 24-hour $PM_{2.5}$ NAAQS. The proposed determination of attainment was based upon quality-assured and certified ambient air monitoring data for the 2009–2011 time period. EPA published the final determination of attainment on August 2, 2012 (77 FR 45954).[1] In accordance with the final determination of attainment, the requirements for the Knoxville Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other SIP revisions related to attainment of the standard are suspended, so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.

The determination of attainment, however, does not suspend the emissions inventory requirement found in the CAA section 172(c)(3). On October 18, 2013, Tennessee submitted a 2008 base year emissions inventory for the 2006 $PM_{2.5}$ 24-hour NAAQS in the Knoxville Area.

II. Analysis of the State's Submittal

As discussed above, section 172(c)(3) of the CAA requires nonattainment areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such areas. Tennessee selected 2008 as the base year for the emissions inventory per 40 CFR 51.1008(b) because, at the time that the State submitted its October 18, 2013, SIP revision, it was the most recent calendar year for which the State had developed a comprehensive emissions inventory to meet the federal National Emissions Inventory requirements. The emissions inventory contained in TDEC's SIP revision covers the general source categories of point sources, non-road mobile sources, area sources, and on-road mobile sources of direct and precursor emissions of $PM_{2.5}$. The precursor emissions included in the Knoxville Area emissions inventory include ammonia (NH_3), nitrogen oxides (NO_X), sulfur dioxide (SO_2), and volatile organic compounds (VOCs). A detailed discussion of the emissions inventory development can be found in Appendix A of the Tennessee submittal found in the docket of today's rulemaking. The table below provides a summary of the annual 2008 emissions of NH_3, NO_X, VOCs, SO_2, and direct $PM_{2.5}$ included in the Tennessee submittal.

2008 Annual Emissions for the Knoxville Area

[Tons per year]

County	NO_X	SO_2	$PM_{2.5}$	VOC	NH_3
Point Sources					
Anderson	9,561.1	30,338.3	444.0	227.8	1.2
Blount	409.0	3,862.8	679.4	1,891.1	.....
Knox	1,988.7	466.1	144.8	551.2	0.1
Loudon	910.4	2,329.6	368.8	875.3	2.6
Roane*	7,927.2	50,616.2	842.0	152.1	18.8

[1] EPA's August 2, 2012, final rulemaking also finalized the determination of attaining data for the 1997 annual $PM_{2.5}$ NAAQS for the Knoxville Area. EPA published approval of the 1997 annual $PM_{2.5}$ NAAQS base year emissions inventory for the Knoxville Area on August 21, 2012 (77 FR 50378).

2008 ANNUAL EMISSIONS FOR THE KNOXVILLE AREA—Continued

[Tons per year]

County	NO_X	SO_2	$PM_{2.5}$	VOC	NH_3
Non-Road Sources					
Anderson	866.2	24.8	52.5	786.4	0.6
Blount	911.0	46.4	78.1	1,187.8	0.7
Knox	2,252.7	43.1	212.6	2,444.7	2.7
Loudon	510.1	18.1	40.8	809.6	0.5
Roane*	6.5	0.2	0.4	10.4	0.0
Area Sources					
Anderson	735.3	64.8	522.4	1,331.9	102.9
Blount	919.8	1,984.7	718.9	1,890.9	319.4
Knox	1,027.4	42.4	1,285.0	3,887.9	303.9
Loudon	413.5	361.3	344.7	686.6	281.8
Roane*	4.6	0.2	2.8	6.7	1.1
On-Road Sources					
Anderson	2,353.5	41.9	87.7	886.7	36.7
Blount	2,340.1	33.3	82.5	1,255.5	48.1
Knox	13,178.5	67.4	408.1	6,178.3	234.7
Loudon	2,979.1	62.3	121.7	784.0	34.9
Roane*	30.7	0.6	1.2	10.8	0.4

* Nonattainment portion of Roane County only.

Tennessee developed the 2008 emissions inventory for the Knoxville Area by incorporating data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the Consolidated Emissions Reporting Rule for all source categories (i.e., point, non-road mobile, area, and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also are used in the attainment demonstration modeling inventory. Such was the case in the development of the 2008 base-year emissions inventory that was submitted in TDEC's SIP revision for the Knoxville Area. The 2008 base-year emissions for the 2008 inventory included here were developed in a number of ways. Some of the information was developed at the local and state level. Some emissions data were developed by EPA as described in EPA's 2008 National Emissions Inventory, Version 2, Technical Support Document, June 2012, Draft documentation. Some data sets are a hybrid of the two—where local inputs are provided to EPA to generate emissions. Tennessee's emissions inventory data were developed according to the most recent EPA emissions inventory guidance available at the time that Tennessee submitted the October 18, 2013, SIP revision.

EPA has reviewed the 2008 base year emissions inventory for the Knoxville Area in Tennessee's October 18, 2013, SIP revision and determined that the process used to develop this inventory was consistent with the CAA, implementing regulations, and EPA guidance for emissions inventories. EPA has therefore determined that this emissions inventory is adequate for the purposes of meeting the emissions inventory requirement in section 172(c)(3).

III. Final Action

EPA is taking direct final action to approve the 2008 base year emissions inventory portion of the attainment demonstration SIP revision for the Knoxville Area submitted by the State of Tennessee on October 18, 2013. EPA determined that this action is consistent with section 110 and 172(c)(3) of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comment be filed. This rule will be effective on August 11, 2014 without further notice unless the Agency receives relevant adverse comment by July 10, 2014. If EPA receives such comments, EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will address all relevant adverse comment received during the comment period in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so by July 10, 2014. If no such comments are received, this rule will be effective on August 11, 2014 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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.

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).

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 August 11, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 22, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

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 RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry for ''Knoxville; 2006 24-hour Fine Particulate Matter 2008 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* *	* *	*	* *	*
Knoxville; 2006 24-hour Fine Particulate Matter 2008 Base Year Emissions Inventory.	Anderson, Blount, Knox, and Loudon Counties, and the portion of Roane County that falls within the census block that includes the Tennessee Valley Authority's Kingston Fossil Plant.	10/9/2013	6/10/2014 [Insert citation of publication].	

[FR Doc. 2014–13422 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0272; FRL–9911–96-Region 4]

Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve part of a revision to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on March 22, 2011. The proposed revision was submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (District), which has jurisdiction over Jefferson County, Kentucky. The portion of the revision that EPA is approving modifies the Regulation entitled ''Emissions During Startups, Shutdowns, Malfunctions and Emergencies'' in the Jefferson County portion of the Kentucky SIP. EPA is approving this portion of the March 22, 2011, SIP revision because the Agency has determined that it is in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act). EPA will act on the other portions of KDAQ's March 22, 2011, submittal, which are severable and unrelated, in a separate action. EPA is also responding to comments received on its May 21, 2013, proposed rulemaking.

DATES: This rule will be effective July 10, 2014.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0272. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Huey may be reached by phone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking?
II. What is the background for EPA's action?
III. What is EPA's response to comments?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is approving a revision to the Jefferson County portion of the Kentucky SIP to incorporate revisions to Jefferson County Regulation 1.07, ''Emissions During Startups, Shutdowns, Malfunctions and Emergencies'' (referred to hereafter as ''Rule 1.07''). The revision modifies all seven sections of the existing version of Rule 1.07 currently in the EPA-approved SIP for Jefferson County. These changes to Rule 1.07 became effective in Jefferson County on July 1, 2005. EPA believes that the changes to this rule are consistent with CAA requirements that apply to excess emissions during startup, shutdown and malfunction (SSM) events. In addition, EPA believes that these changes correct existing concerns about Rule 1.07 in the Jefferson County portion of the Kentucky SIP, as explained below. Please refer to the docket for this rulemaking for the complete text of the adopted provisions.

II. What is the background for EPA's action?

On March 22, 2011, KDAQ submitted a request for EPA approval of a SIP submittal containing proposed revisions to the Regulation entitled ''Emissions During Startups, Shutdowns, Malfunctions and Emergencies'' in the Jefferson County portion of the Kentucky SIP. In an action published on May 21, 2013 (78 FR 29683), EPA proposed to approve the proposed revisions. As noted in that proposal notice, the Louisville Metro Air Pollution Control District proactively adopted changes on June 21, 2005, with the intent of correcting inconsistencies between its rule and the CAA and EPA guidance regarding SIP provisions that apply to the treatment of excess emissions that may occur during source SSM events. The changes to Rule 1.07, which were included in the March 22, 2011, SIP revision provided to EPA by KDAQ, include: (1) Changing the name of the regulation from ''Emissions During Startups, Shutdowns, Malfunctions and Emergencies'' to ''Excess Emissions During Startups, Shutdowns, and Upset Conditions''; (2) clarifying that excess emissions from a process or process equipment due to startup, shutdown, or upset (i.e., malfunction) condition shall be deemed in violation of the applicable emission standards; (3) removing the authority of the District to grant discretionary exemptions from compliance with SIP emission standards during SSM events; (4) augmenting the source excess emission reporting requirements to assist the District in evaluating whether ambient standards and goals have been exceeded and whether enforcement actions are needed to protect public health and welfare; and (5) removing the provisions that created exemptions for excess emissions during emergencies based upon factors comparable to an affirmative defense.

III. What is EPA's response to comments?

EPA received numerous comments on the May 21, 2013, rulemaking proposing to approve a revision to the Regulation entitled ''Emissions During Startups, Shutdowns, Malfunctions and Emergencies'' in the Jefferson County portion of the Kentucky SIP. Specifically, the Louisville Gas and Electric and Kentucky Utilities Energy Company (LG&E) provided comments adverse to the proposed rulemaking, and a number of environmental organizations and approximately 74 citizens provided comments supporting the proposed rulemaking. All of the comments received by EPA are included in the docket for today's final action using Docket ID EPA–R04–OAR–2013–0272. A summary of the comments and EPA's responses are provided below.

The adverse comments provided by LG&E consist primarily of technical concerns associated with the administration of the revised version of Rule 1.07 during SSM events. These technical concerns, however, do not appear to have been raised by LG&E at earlier stages of the rulemaking process when these revisions were being

considered at the state level.[1] EPA notes that these types of concerns are more appropriately raised first during the rule development process undertaken by a state, rather than later during EPA's evaluation of a submitted SIP revision. Nevertheless, EPA has evaluated the specific technical concerns raised by the commenter, identified as comments 1 through 8 below, and provides detailed responses. EPA has determined that the revisions to Rule 1.07 are consistent with the CAA and applicable EPA guidance, and therefore the Agency is approving these revisions into the Kentucky SIP as it applies to Jefferson County.

Comment 1: The commenter asserted that the revised version of Rule 1.07 as ''written and presently enforced'' is ''having a negative and unnecessary impact on LG&E and KU Energy LLC's operations and customers'' and that ''continued enforcement could have an escalated and even more detrimental impact on electric reliability and customer costs.''

Response 1: The commenter provided no specific information supporting its contentions that the revised rule is having negative or unnecessary impacts on LG&E's operations and customers. EPA is aware of one action taken by the District in recent years to enforce SIP requirements consistent with revised Rule 1.07 and two other Jefferson County rules at the LG&E Cane Run Power Plant in Louisville. That enforcement action resulted in a requirement that the source take corrective action and pay penalties pursuant to an administrative settlement.[2] Such enforcement actions are intended to encourage better source compliance with applicable environmental regulations that are in place for the protection of the environment and human health.

With respect to how the revised Rule 1.07 is written, the revisions reflect the District's decision to bring it into compliance with CAA requirements and thus warrant approval by EPA into the Commonwealth's SIP. With respect to how the District elects to enforce SIP requirements consistent with Rule 1.07, that likewise reflects the District's proper exercise of its enforcement discretion authority, consistent with CAA requirements. By contrast, EPA believes that SIP provisions that allow for automatic and discretionary exemptions for excess emissions during SSM events, such as those eliminated by the District in the revised version of Rule 1.07, allow facilities to be less diligent in minimizing pollutant emissions during such times and that this can result in unnecessary adverse impacts on citizens, including customers of LG&E. The commenter's concern that it may be required to comply with SIP requirements as a result of the revisions to Rule 1.07 through enforcement actions is not a basis for EPA to disapprove a SIP revision that complies with CAA requirements.

Comment 2: The commenter claimed that the District's assertion that an electric generating unit (EGU) should be able to operate in compliance with emission standards during startup, shutdown and upset periods is ''technically infeasible and goes against past EPA actions and findings pertaining to emissions during these periods.''

Response 2: The commenter did not provide specific facts or information to support this broad claim regarding EGU operation. Furthermore, EPA disagrees with the basic premise stated by the commenter for multiple reasons. First, the commenter asserted that EGUs cannot operate in compliance with emission standards during startup and shutdown. EPA disagrees with this presumption. Startup and shutdown are normal modes of source operation, and it is technically feasible for sources to meet emission standards during such periods of operation. When appropriate, emission standards may entail imposition of different numerical levels or averaging periods allowed during startup and shutdown or may require imposition of different forms of emission control during startup and shutdown. Rather than allowing EGUs to have impermissible exemptions from applicable emission limits during SSM events, the District has elected to require sources to meet the applicable SIP emission limits at all times, and this decision is consistent with CAA requirements.

Second, the commenter claimed that the District's expectation that sources meet emission standards during startup and shutdown ''goes against past Agency actions.'' The commenter did not state which ''Agency actions'' it was referring to, and the commenter also failed to note that EPA's own recent regulations pertaining to various source categories do in fact impose numerical emission limits upon sources that apply at all times, including startup, shutdown and malfunction periods. For example, in 2012 EPA amended the National Emission Standards for Hazardous Air Pollutant (NESHAP) Emissions for Steel Pickling-HCl Process Facilities by adding provisions requiring that the emission limits of the rule apply at all times, including during SSM periods.[3] As a more recent example, EPA revised the NESHAPs for Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production by eliminating the exemption for SSM periods so that the emission standards in each rule apply at all times.[4]

Third, the commenter disregarded EPA's longstanding interpretation of the CAA with respect to SIP provisions addressing emissions during SSM events. Since at least 1982, EPA's interpretation of the CAA has been that periods of startup and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation or the operating procedure for the process and control equipment. Accordingly, careful planning can be reasonably expected to eliminate violations of emission limitations during such periods.[5]

Fourth, the commenter implied that because compliance with emission limits during malfunctions is ''technically infeasible,'' sources should be entitled to exemptions from applicable SIP emission limits and thus excused for violations due to excess emissions during such events. EPA has long interpreted the CAA to prohibit exemptions for excess emissions during malfunctions and to require that the excess emissions be treated as violations.[6] EPA's own recent regulations provide no such exemptions

[1] LG&E did provide comments to the Commonwealth, however, those comments did not reflect the issues raised here by the Company. *See* EPA Docket Number EPA–R04–OAR–2013–0272.

[2] *See* Agreed Board Order No. 12–01, Louisville Metro Air Pollution Control Board, Incident Nos. 05933 and 06082 regarding, among other things, failure to report excess particulate emissions from the sludge processing plant on five days in August 2011. *See* EPA Docket Number EPA–R04–OAR–2013–0272.

[3] *See* National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants; Residual Risk and Technology Review; Final Rule (77 FR 58219, September 19, 2012).

[4] *See* National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production (79 FR 17339, March 27, 2014).

[5] *See, e.g.,* Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation to Regional Administrators, Regions I–X, September 28, 1982.

[6] *See, e.g.,* State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, from Steven A, Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to Regional Administrators, Regions I–X, September 20, 1999 (the 1999 SSM Policy).

for excess emissions during malfunctions as the courts have held that no such exemptions are permissible because emission limits must apply continuously.

Finally, EPA notes that the District, in addition to be being correct that the CAA requires sources to be subject to emission limitations at all times, including during SSM events, has discretion to elect how to regulate air pollutant emissions, consistent with CAA requirements. The District has authority to develop SIP provisions that impose appropriate alternative emission limitations applicable during startup and shutdown, consistent with EPA's guidance for such provisions in the 1999 SSM Policy, but the District is not required to do so. In adopting this rule revision, the District has determined that sources do not need exemptions for SSM events and should be required to meet the otherwise applicable SIP emission limits at all times. By removing the exemptions for SSM events, the District may seek to limit the number of SSM events, the duration of such events, and the amount of excess emissions during such events in order to meet CAA requirements and to protect public health. For the District to elect to do so is reasonable and also consistent with CAA requirements. EPA's duty under section 110(k) of the CAA is to act upon submitted SIP revisions and to approve those that meet applicable CAA requirements.

Comment 3: The commenter stated that emission standards are developed as limits to assure a source does not create an issue with National Ambient Air Quality Standards (NAAQS) based on ''full load normal operation.''

Response 3: EPA disagrees with the commenter's limited view of the purpose of emission limits in SIPs. The CAA requires the imposition of SIP emission limits on sources for a variety of purposes, including for attainment and maintenance of the NAAQS, protection of PSD increments, and protection of visibility. Even with respect to attainment and maintenance of the NAAQS, however, the commenter is incorrect concerning the way in which states may devise the required emission limits. Pursuant to the CAA, each state is required to adopt and submit to the Administrator a plan that provides for implementation, maintenance, and enforcement of the NAAQS within such state. Each such plan must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the Act. *See* CAA sections 110(a)(1) and (2). Additional requirements apply in certain areas, such as requirements that sources meet a reasonably available control measure (RACM) or reasonably available control technology (RACT) level of control in areas designated nonattainment for purposes of the NAAQS. *See, e.g.,* CAA sections 172(c), 188, and 189 (applicable to areas designated nonattainment for purposes of particulate matter NAAQS).

In particular, the Agency disagrees that states must develop all emission standards to limit emissions only during ''full load normal operation.'' States have discretion as to how they arrive at appropriately protective emission limitations, and their approach may or may not be based only upon evaluation of emissions during ''full load normal operation.'' Nevertheless, the otherwise applicable emission limitations adopted by the state and approved into the SIP apply at all times unless the applicable provisions include alternative emission limitations under specific circumstances, such as during startup or shutdown.

EPA also notes that, in accordance with CAA section 302(k), SIPs must contain emission limitations that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' EPA has reiterated these requirements of the CAA with respect to SIP provisions in a recent proposal.[7] Court decisions confirm that this requirement for continuous compliance prohibits exemptions for excess emissions during SSM events.[8] Exemptions from SIP emission limits would authorize sources to emit pollutants during such periods in quantities that could interfere with attainment and maintenance of the NAAQS, protection of PSD increments, and protection of visibility.

Comment 4: The commenter stated that ''[d]uring periods of startup, certain emissions control equipment (i.e., electrostatic precipitator, selective catalytic reduction, pulsed jet fabric filters) cannot be activated until specific temperatures are reached from operation of the source.'' Based on this assertion, the commenter argued, ''[i]t follows that a source required to utilize such emission control equipment should not be held to a numerical standard that was developed for limiting emissions during full load, normal operation.''

Response 4: The main premise of the commenter's argument is that some existing control measures at a source may not function, or function as effectively, during all modes of source operation. EPA understands that certain emission control equipment at some sources are not fully operational in some circumstances, such as when sufficient temperatures have not been reached, as described by the commenter. EPA does not agree, however, that ''it follows'' automatically that sources should be excused from meeting any emission limitations during startup. As noted above, SIPs must contain emission limitations that apply on a continuous basis. EPA also does not necessarily agree that sources are incapable of meeting emission limitations that may have been developed based upon full load operation. Sources that have difficulty meeting existing emission limitations during startup should take steps to reduce emissions during such events. These steps may include changes to the facility's operations or installation of supplemental control measures. As also noted above, the District has the authority to establish appropriate alternative emission limitations to apply during startup periods but is not required to do so. The District has exercised its discretion to revise Rule 1.07 such that the SIP does not provide for exemptions to otherwise applicable emission limitations during startup events.

Comment 5: The commenter claimed that ''during periods of startup, although an emission rate may be exceeded, the mass emissions are actually very low in comparison to normal operation because volumetric flow is very low during startup.'' Based upon this assertion, the commenter argued that ''concerns with emissions that affect the NAAQS are negated.''

Response 5: As noted above, EPA's interpretation of the CAA is that periods of startup are part of the normal operation of a source. Here, EPA interprets the commenter's reference to ''normal operation'' to mean full load operation. EPA disagrees with the basis of the commenter's argument—that emissions rate exceedances are of less concern when they occur during periods of startup than during full load operation because the mass emissions may be lower in comparison to full load operation. The relatively lower flow and lower gas stream temperatures that may be associated with a startup period could result in less dispersion and transport of pollutants. As a result,

[7] *See* ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule,'' 78 FR 12460 at 12470, February 22, 2013.

[8] *See, e.g., Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (D.C. Cir. 2008); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012).

communities located close to the facility could experience greater adverse impacts during startup than during full load operation, even if the rate of total pollutant emissions is lower by mass. The District's revisions to Rule 1.07 eliminated impermissible exemptions that precluded the District, the Commonwealth, EPA and citizens from taking legal action to require sources to make reasonable efforts to reduce these emissions.

Comment 6: The commenter advocated that EPA should make clear that ''certain measures, including good engineering combustion and pollution control practices, are an appropriate limitation to apply during startup, shutdown and upset condition periods.'' The commenter asserted that EPA has promulgated work practice standards to minimize emissions during these periods in both the utility Mercury and Air Toxics Standards (MATS) and the boiler Maximum Achievable Control Technology (MACT) rules and should, to the extent possible, address such emissions in a consistent manner under all CAA regulatory programs. The implication of the commenter's statements is that EPA should require the District to adopt some other mode or means of control of sources to apply during SSM events.

Response 6: EPA agrees that states have discretion to determine how to regulate emissions during startup and shutdown events in most SIP provisions, consistent with CAA requirements, but SIP emission limits may not include exemptions for emissions during startup and shutdown events. Instead, states may include alternative emission limits for such modes of source operation so long as they are consistent with CAA requirements. EPA's 1999 SSM Policy includes guidance to states that elect to develop such alternative limits to apply during startup and shutdown. EPA notes that emission limits that apply during specific modes of source operation such as startup and shutdown do not necessarily need to be expressed as a numerical limit, so long as they meet other CAA requirements with respect to enforceability and the requisite level of control (e.g., RACT or RACM). Similarly, the emission limits applicable during startup and shutdown do not necessarily have to be set at the same numerical level as during other modes of source operation, so long as they otherwise meet all CAA requirements. By contrast, however, EPA considers it impracticable to develop alternative SIP emission limits (whether stated numerically or as requirement for a particular control or technique) that apply specifically during malfunctions because, by definition, malfunctions are events that are not reasonably foreseeable, are not avoidable through appropriate source design, operation and maintenance, and are not controllable. Accordingly, sources are required to meet the otherwise applicable SIP emission limits during malfunctions, and any excess emissions during such events are considered violations. To the extent, however, that the commenter suggests that EPA should require states to develop alternative emission limits that apply during startup and shutdown, in lieu of the otherwise applicable SIP emission limits, EPA disagrees that its role is to require states to do so.

The commenter also suggests that SIP rules should be consistent with federally promulgated standards and points to, as examples, the rules often referred to as the MATS and Boiler MACT rules. The MATS rule established standards for hazardous air pollutant (HAP) emissions from coal- and oil-fired electric utility steam generating units (40 CFR part 63 subpart UUUUU). *See* 77 FR 9304 (February 16, 2012). In the same rulemaking that promulgated the MATS rule, EPA also finalized changes to the New Source Performance Standards (NSPS) that apply to coal- and oil-fired EGUs, industrial-commercial-institutional steam generating units, and small industrial commercial-institutional steam generating units (40 CFR part 60 subparts D, Da, Db, and Dc), often referred to as the Utility NSPS rule.[9] The major source Boiler MACT rule was published on March 21, 2011 (76 FR 15608), and applies to industrial, commercial, and institutional boilers and process heaters that are located at, or are part of, a major source [10] of HAP emissions (40 CFR 63 subpart DDDDD). The area source Boiler MACT, also published on March 21, 2011 (76 FR 15554), applies to industrial, commercial, and institutional boilers that are located at, or are part of, an area source [11] of HAP emissions (40 CFR 63 subpart JJJJJJ).[12]

Under the MATS, Utility NSPS, and Boiler MACT rules, numeric emission limits generally apply for all relevant air pollutants and their surrogates (except organic HAPs) and for all periods of operation. For periods of startup and shutdown, however, these rules require facilities to comply with work practice standards [13] for minimizing emissions in lieu of numeric emission limits.

EPA understands the commenter's suggestion that regulatory requirements applicable to sources for purposes of SIPs should be consistent, ''to the extent possible,'' with the requirements of other CAA programs. On this point, EPA notes that the rules established under the NSPS and NESHAP programs are designed to achieve different objectives of the CAA than that of SIPs. They are technology-based, industry-specific standards that are nationally uniform in limiting the amount of emissions allowed from sources. Under section 111 of the CAA, an NSPS must reflect the degree of emission limitation and the percentage reduction achievable by new sources or modified existing sources through application of the best technological system of continuous emission reduction that the Administrator determines has been adequately demonstrated. Similarly, under section 112 of the CAA, a NESHAP must require the maximum degree of reduction in emissions of hazardous air pollutants achievable by new sources and existing sources as determined by the Administrator. In setting standards under sections 111 and 112, the Administrator must take into consideration the cost of achieving such emission reductions and any non-air quality health and environmental

[9] Following promulgation of the MATS NESHAP and Utility NSPS, the EPA received petitions for reconsideration of numerous provisions of both rules pursuant to CAA section 307(d)(7)(B). Subsequently, EPA proposed reconsideration of specific provisions of those rules, including the requirements applicable during periods of startup and shutdown. 77 FR 71323 (November 30, 2012). In that action, EPA proposed to revise the definitions of ''startup'' and ''shutdown'' as set forth in 40 CFR 63.10042 and to revise the work practice standard provisions as set forth in Table 3 to Subpart UUUUU. The EPA has not yet taken final action on the proposed revisions to those requirements.

[10] For the purposes of subpart DDDDD, a major source of HAPs is as defined in 40 CFR 63.2, except that for oil and natural gas production facilities a major source of HAPs is as defined in 40 CFR 63.761.

[11] For the purposes of subpart JJJJJJ, an area source of HAPs is as defined in 40 CFR 63.2, except as specified in 40 CFR 63.11195.

[12] Revisions to the major source Boiler MACT and the area source Boiler MACT were published on January 31, 2013 (78 FR 7138), and on February 1, 2013 (78 FR 7488), respectively. In those actions, EPA revised the definitions of ''startup'' and ''shutdown'' as set forth in 40 CFR 63.7575 and 40 CFR 63. 11237 and revised the work practice standard provisions as set forth in Table 3 to subpart DDDDD and in Table 3 to subpart JJJJJJ.

[13] The work practice standards under these rules are contained in Table 3 of Subpart UUUUU, Table 3 of subpart DDDDD, and Table 3 of subpart JJJJJJ. These standards require several actions by sources, such as following manufacturer's recommended procedures for minimizing startup and shutdown periods, tuning, maintaining and inspecting burners and associated combustion controls, keeping records of activity and measurements, using either natural gas or distillate oil for ignition during startup, and operating all control devices necessary to meet the normal operating standards.

impact and energy requirements; under section 112, the statute requires a minimum stringency standard for existing sources based on the average emission limitation achieved in practice by the best controlled 12 percent of sources and a minimum stringency standard for new sources based on the best controlled similar source.

In contrast to the NSPS and NESHAP programs, SIPs are EPA-approved state plans to provide for the attainment and maintenance of the NAAQS and to meet other requirements such as protecting PSD increments and visibility. Under section 110 of the Act, each state must adopt a plan that it determines will provide for air quality that meets the primary and secondary NAAQS within the state. Consequently, SIPs must be consistent with attainment and maintenance of the NAAQS and prevention of significant deterioration of air quality throughout the state. Exemptions from SIP emission limits, such as that allowed under the prior version of Rule 1.07, are not appropriate because any emissions above the SIP allowable rate may cause or contribute to violations of the ambient air quality standards and interfere with enforcement of those SIP limits. Thus, EPA's interpretation of the CAA, upheld by the courts, is that all periods of excess emissions must be considered violations.

While the NSPS and NESHAP may provide good models of emission control technology and emission limits, they do not necessarily address all of the issues relevant to SIP provisions and they do not dictate state choices with respect to control measures or emission limitations. To the extent that a particular NSPS or NESHAP imposing a specific control measure or emission limit is relevant to a given source category, states may elect to consider imposing comparable controls to meet SIP requirements, as appropriate. In addition, to the extent that imposition of a specific control measure or emission limit in an EPA regulation helps to establish that a given control measure is technologically or economically feasible for a given source category, states may need to take such controls into account when evaluating emission limits for SIP purposes. EPA emphasizes, however, that any such consideration would need to be based on the specific facts and circumstances of a given source category, as the considerations relevant to the development of the NSPS or NESHAP may or may not be useful for SIP purposes.

Further, while some emission sources may have difficulty complying with emission standards during startup, shutdown and upset periods, there are other sources of similar type that are capable of complying continuously during such events, especially events that are planned for in advance, such as startups and shutdowns. Thus, an appropriately protective SIP rule encourages compliance by all sources at all times through generally applicable emission limits that apply during full load operation as well as during startup and shutdown events. Where such generally applicable limits are not feasible for an emission source during startup or shutdown events, the SIP may contain appropriately established alternative emission limitations that apply during those events. In instances in which an exceedance of an emission limit is truly unavoidable because of a malfunction, exercise of enforcement discretion by potential enforcers, or exercise of discretion with respect to penalties by courts in the event of citizen enforcement, consistent with the provisions of CAA section 113, allows for proper consideration of the relevant circumstances during the event.

Comment 7: The commenter expressed concerns about the accuracy of emission rates that are calculated for startup and shutdown periods. The commenter stated that:

> From a technical viewpoint, emission limits with measurement units of mass per heat input (e.g., pounds per million British thermal units) pose significant concern with respect to startup and shutdown periods. Some emission rates are calculated using monitored inputs of both pollutant concentration and diluent (e.g., carbon dioxide (CO_2)) concentration. During startup of a coal-fired EGU, there is a period of time when the combustion airflow is much higher than during normal operation which inversely yields much lower CO_2 [concentration] than normal. When calculating the emission rate, [concentration of the diluent] CO_2 is used in the denominator of these calculations. The resulting low CO_2 value can yield calculated emission rates that are skewed high and are not representative of actual emission concentrations to the atmosphere. EPA should take into consideration that skewed emission indications during these periods will not have an adverse impact on NAAQS attainment or maintenance, interfere with PSD increments, or otherwise cause adverse impacts.

In essence, the commenter explains that the methodology for calculating emissions may sometimes be based upon assumptions that reflect certain modes of source operation, which would make such calculations less accurate with respect to emissions during other modes of operation.

Response 7: EPA does not dispute that emission rates calculated for a coal-fired EGU during startup and shutdown may be less accurate than during full load operation, assuming that the formula used for the calculations only reflects full load operation. In some instances, a calculated emission rate may indicate exceedance of an applicable SIP emission limit only because existing parameters, such as combustion airflow, are not consistent with the assumptions inherent to the calculation method.

To the extent that the commenter advocates that calculated emission rates should be adjusted so that they more accurately reflect the emissions that may occur during startup and shutdown, EPA believes such an approach would be appropriate and would serve to assure that emissions estimates are more accurate for the purposes of compliance determination and emissions inventories. EPA notes that some existing Federal rules provide options for dealing with the concern expressed by the commenter. For example, for computing nitrogen oxide emission rates and using CO_2 as a diluent, the continuous emission monitoring procedures of 40 CFR Part 75 allow boiler operators to substitute a minimum concentration of 5.0 percent CO_2 whenever the measured concentration is less than 5.0 percent. *See* 40 CFR Part 75, Appendix F, paragraph 3.3.4.1. This prevents the calculation of disproportionately high emission rates due to very a low CO_2 concentration, which, as indicated by the commenter, is a factor in the denominator of the calculation.

As noted in response to Comment 2 above, an appropriately protective SIP provision is designed to impose appropriate emission limits or controls and to require compliance at all times. However, if a source cannot demonstrate compliance based upon the applicable method in use, enforcement discretion may be used to determine whether to bring an enforcement action and, in the event that there is enforcement, the extent of any actual violation will be based upon all relevant factual information that is credible evidence. By eliminating the impermissible exemptions in the prior version of Rule 1.07, the District has taken steps to properly account for all emissions.

Comment 8: The commenter expressed concerns about the accuracy of PM CEMS for determining compliance with PM emission limits during startup and shutdown events. The commenter argued that:

> Sources that use PM continuous emission monitoring systems (PM CEMS) as a continuous indication of compliance are required to provide a periodic correlation of

the PM CEMs output to values derived through EPA Reference Method testing. The correlation testing occurs at three separate and distinct levels of operation and PM emissions. As PM reference method testing cannot occur during periods of startup and shutdown due to isokinetic requirements, there is no correlation provided during these periods. As a result, the output of the PM CEMS during periods of startup and shutdown will not be adequately tied to an EPA reference test method and cannot be considered accurate or representative.

Response 8: EPA disagrees that the output of the PM CEMS during periods of startup and shutdown cannot be considered representative of actual emissions, regardless of whether Reference Method stack testing has been performed during startup and shutdown periods. The accuracy of PM CEMS data would be questionable if those data were recorded when the response of the PM CEMS falls outside the correlation range obtained during Reference Method testing. During periods of startup and shutdown, at times some PM CEMS responses may fall outside the correlation range, but any data measurements recorded within that range would be considered useful in assessing PM control device performance.

Furthermore, the subject rule of this action does not require that PM CEMS data must be used to determine compliance status during startup and shutdown periods; it merely requires that that the applicable emission limit applies at all times, including SSM periods. PM CEMS data is not the only type of information that a court may find credible when evaluating whether or not a source would have been in violation of an emission standard. For example, opacity data from continuous opacity monitors (which may be required by another provision of the statute or the SIP) and recordkeeping data on emission control equipment use may also provide relevant information. The validity of all data is a consideration that must be taken into account, along with all other available credible evidence, when evaluating whether a source is in compliance with SIP emission limits.

Comment 9: One commenter, a national environmental group, submitted comments in support of EPA's proposed approval of the District's revisions to Rule 1.07. The commenter provided its own analysis of the merits of the revisions to Rule 1.07 and its own explanation of why these revisions are consistent with CAA requirements and EPA's interpretation of the CAA with respect to proper treatment of excess emissions during SSM events. In particular, the commenter supported the clarification that excess emissions are violations of emission standards, the elimination of the prior discretionary exemptions for excess emissions, and the improved notification and reporting requirements.

In addition, the commenter emphasized that these revisions to Rule 1.07 will help to reduce excess emissions during SSM events from sources that ''jeopardize[] public health and quality of life in nearby communities.'' As an example, the commenter stated that an environmental justice community in Kentucky has been impacted by such emissions from specific sources. The commenter supported the District's revisions to Rule 1.07 and EPA's approval of those revisions as a means ''to help mitigate the impacts of large pollution events on local communities in Jefferson County, directly improving people's lives.'' EPA notes that 74 individual citizens from Kentucky also filed supportive comments, echoing the key points raised by the environmental group.

Response 9: EPA agrees with the commenters who supported the Agency's approval of the District's revisions to Rule 1.07 on the grounds that this will help to assure that sources take appropriate action to reduce their emissions in order to meet CAA requirements and thereby help to protect public health and welfare. Although the commenters did not provide detailed information concerning the specific sources and specific events that they described, EPA agrees that exemptions for excess emissions during SSM events in SIP provisions have the potential to expose surrounding communities to higher levels of pollutants and to remove incentives for sources to control and minimize such emissions during SSM events. As a result of such exemptions, communities near such sources may have no adequate legal recourse to address these problems. For the protection of public health, the CAA imposes obligations upon both states and EPA. States are required to develop SIPs that meet CAA requirements; EPA is required to evaluate the SIPs to assure that they meet CAA requirements. A key CAA requirement for SIP provisions is that they must impose emission limitations upon sources that apply continuously, thereby precluding exemptions for excess emissions from sources during SSM events and allowing for effective enforcement by air agencies, EPA, and the public to assure that sources comply with CAA requirements.

IV. Final Action

EPA is approving part of a revision to the Kentucky SIP submitted by the Commonwealth of Kentucky, through KDAQ, on March 22, 2011. This approval includes the changes to Rule 1.07 in the Jefferson County portion of the Kentucky SIP noted in section II above. After review and consideration of the relevant information and data, including the comments received, EPA has determined that this portion of Kentucky's March 22, 2011, SIP revision is consistent with the CAA and EPA's SSM policy.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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 Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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).

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 August 11, 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 29, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

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 S—Kentucky

■ 2. Section 52.920(c) Table 2 is amended under ''Reg 1—General Provisions'' by revising the entry for ''1.07'' to read as follows:

§ 52.920—Identification of plan.

* * * * *

(c)* * *

TABLE 2—EPA-APPROVED JEFFERSON COUNTY REGULATIONS FOR KENTUCKY

Reg	Title/Subject	EPA Approval date	**Federal Register** notice	District effective date	Explanation
*	*	*	*	*	*
Reg 1—General Provisions					
1.07	Excess Emissions During Startups, Shutdowns, and Upset Conditions.	6/10/2014	[Insert citation of publication].	7/21/2005	
*	*	*	*	*	*

* * * * *

[FR Doc. 2014–13429 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0762; FRL–9912–01–Region 9]

Approval and Promulgation of Implementation Plans—Maricopa County PM–10 Nonattainment Area; Five Percent Plan for Attainment of the 24-Hour PM–10 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA) requirements applicable to the Maricopa County (Phoenix) PM–10 Nonattainment Area. The Maricopa County PM–10 Nonattainment Area is designated as a serious nonattainment area for the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10). The submitted SIP revision consists of the *Maricopa Association of Governments 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area* and the *2012 Five Percent Plan for the Pinal County Township 1 North, Range 8 East Nonattainment Area''* (collectively, the 2012 Five Percent Plan). EPA is approving the 2012 Five Percent Plan as meeting all relevant statutory and regulatory requirements.

DATES: This rule is effective on July 10, 2014.

ADDRESSES: You may inspect the supporting information for this action, identified by docket number EPA–R09–OAR–2013–0762, by one of the following methods:

1. Federal eRulemaking portal, *http://www.regulations.gov,* please follow the online instructions; or,

2. Visit our regional office at, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in

the index, some information may be publicly available only at the hard copy location (*e.g.,* voluminous records, large maps, copyrighted material), and some may not be publicly available in either location (*e.g.,* Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972–3959, *lo.doris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Summary of Proposed Action

On February 6, 2014 (79 FR 7118), EPA proposed to approve the 2012 Five Percent Plan,[1] which the State of Arizona submitted on May 25, 2012, as meeting all relevant statutory and regulatory requirements under the Clean Air Act (CAA). As discussed in our proposed rule, the Maricopa County (Phoenix) PM–10 nonattainment area is a serious PM–10 nonattainment area, and is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, several other smaller jurisdictions, unincorporated County lands, as well as the town of Apache Junction in Pinal County. Arizona's obligation to submit the 2012 Five Percent Plan was triggered by EPA's June 6, 2007 finding that the Maricopa PM–10 Nonattainment Area had failed to meet its December 31, 2006 deadline to attain the PM–10 NAAQS. The CAA requires a serious PM–10 nonattainment area that fails to meet its attainment deadline to submit a plan providing for attainment of the PM–10 NAAQS and for an annual emission reduction in PM–10 or PM–10 precursors of not less than five percent until attainment. Our February 6, 2014 proposed rule provides the background and rationale for this action.[2]

II. Public Comments and EPA Responses

EPA provided a 30-day public comment period on our proposed action. The comment period ended on March 10, 2014. We received 12 public comment letters from State and local agencies, industry, congressional representatives and environmental groups.[3] All of the submitted comment letters are in our docket. We respond to all the comments below.

A. Update 2002 BACM and MSM Determinations

Comment: The Arizona Center for Law in the Public Interest (ACLPI) commented that EPA's proposed action did not discuss or analyze requirements under CAA 189(b)(1)(B) for best available control measures (BACM) or requirements under CAA 188(e) for most stringent measures (MSM). ACLPI stated that these requirements apply to the Maricopa County PM–10 nonattainment area because it is a serious PM–10 nonattainment area that obtained a five-year extension of its attainment date pursuant to section 188(e) in 2001. ACLPI also asserts that EPA's 2002 approval of BACM and MSM requirements must be updated in light of EPA's statements in correspondence to ADEQ and in a proposed rulemaking in 2010 that new more stringent control measures have been adopted by air agencies in Nevada and California and that agricultural controls no longer represent BACM. ACLPI also states that addressing the question of whether existing control constitute BACM is necessary in order to evaluate ADEQ's claims that 135 exceedances qualify as exceptional events.

Response: EPA disagrees with the commenter's statement that EPA's proposed action on the 2012 Five Percent Plan did not discuss or analyze section 189(b)(1)(B) and 188(e) requirements for BACM and MSM. Our proposed action on the 2012 Five Percent Plan explained that the Maricopa County PM–10 nonattainment area was initially classified as moderate, and, when it failed to reach attainment by the attainment deadline for moderate areas, was reclassified, on May 10, 1996, as a serious PM–10 nonattainment area with a new attainment deadline of December 31, 2001. *See* 79 FR 7118–7119. Our proposed action on the 2012 Five Percent Plan also explained the criteria set forth in section 188(e) necessary to grant a five year extension of that deadline. In addition, our proposed action on the 2012 Five Percent Plan included the following statement: ''On July 25, 2002, EPA approved the serious area PM–10 plan for the Maricopa PM–10 Nonattainment Area as meeting the requirements for such areas in CAA sections 189(b) and (c), including the requirements for implementation of best available control measures (BACM) in section 189(b)(1)(B) and MSM in section 188(e). In the same action EPA approved the submission with respect to the requirements of section 188(d) and granted Arizona's request to extend the attainment date of the area to December 31, 2006.'' [4] 79 FR 7119.

We understand the comment to be more specifically directed at the issue of whether our action on the 2012 Five Percent Plan requires EPA to ''update'' or re-evaluate the BACM and MSM determinations we made when we acted on the State's serious area plan and attainment deadline extension request in 2002. EPA does not agree that the CAA requires such a reevaluation in the context of acting on a state's submission of a new plan to meet the requirements of section 189(d). We interpret CAA section 189(b)(1)(B) to provide that the requirement for BACM is triggered by a specific event: The reclassification of a moderate PM–10 nonattainment area to serious. Similarly, we interpret section CAA 188(e) to provide that the requirement for MSM is triggered by a particular event: EPA's granting of a state's request for an extension of the attainment deadline for a serious nonattainment area. If a serious nonattainment area fails to reach attainment by the applicable deadline, CAA section 189(d) requires the state to submit ''plan revisions which provide for attainment of the PM–10 air quality standard'' and ''for annual reduction in PM–10 . . . of not less than

[1] The 2012 Five Percent Plan includes the ''MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area'' (dated May 2012) (MAG 2012 Five Percent Plan) and the ''2012 Five Percent Plan for the Pinal County Township 1 North, Range 8 East Nonattainment Area'' (dated May 25, 2012) (Pinal 2012 Five Percent Plan) (collectively, the 2012 Five Percent Plan). In our proposed rule we cited primarily to the MAG 2012 Five Percent Plan; however, both plans were submitted by ADEQ on May 25, 2012 and are included in the docket for this rulemaking. See May 25, 2012 letters from Henry R. Darwin, Director, Arizona Department of Environmental Quality, to Jared Blumenfeld, Regional Administrator, U.S. Environmental Protection Agency Region IX.

[2] We have also approved Arizona statutory provisions and the Dust Action General Permit, which were submitted with the 2012 Five Percent Plan. See our proposed rule at 79 FR 7118, p. 7123 (footnote 20) and recent EPA actions at 79 FR 17878 (March 31, 2014), 79 FR 17879 (March 31, 2014) and 79 FR 17881 (March 31, 2014).

[3] Commenting organizations include: U.S. Senator Jeff Flake, Arizona Center for Law in the Public Interest (2 letters), Maricopa Association of Governments, City of Phoenix, Arizona Rock Products Association, Salt River Project, ADEQ, Arizona Association of General Contractors, Maricopa County Air Quality Department, the Arizona Chamber of Commerce, and Amanda Reeve, former Arizona State Representative and Chair of Arizona House Environment Committee.

[4] EPA's approval of BACM for this area and approval of the extension under section 188(e) were upheld in *Vigil* v. *Leavitt,* 366 F.3d 1025, amended at 381 F.3d 826 (9th Cir. 2004).

5 percent . . .'' The Act, however, does not contain a specific requirement that the state update the previously approved requirements for BACM and MSM as a consequence of failing to reach attainment by the applicable deadline for serious PM–10 nonattainment areas as an element of the plan revision required by section 189(d).

Consistent with the Act's structure of requiring increasingly stringent obligations as the severity of the air pollution problem increases, we interpret sections 189(b)(1)(B) and 188(e), as well as 189(d), as parts of a statutory scheme that imposes increasingly more stringent requirements when a PM–10 nonattainment area fails to reach attainment by applicable deadlines. *See* Addendum to the General Preamble, 59 FR 42010 (August 16, 1994). As stated previously, the Maricopa County PM–10 Nonattainment Area was initially classified as moderate. In 1996, when EPA determined that the Area failed to reach attainment by the moderate area attainment deadline, EPA reclassified the Area to serious. As a consequence of this reclassification, the Maricopa County PM–10 Nonattainment Area was subject to a new attainment deadline (December 31, 2001) as well as new requirements for a serious PM–10 attainment plan pursuant to CAA section 188(c) and for BACM pursuant to CAA section 189(b)(1)(B). Subsequently, the State's request for an extension of the serious area attainment deadline (December 31, 2006), and EPA's granting of that request in 2002, resulted in an obligation for the State to demonstrate that its SIP imposed MSM pursuant to section 188(e). In 2007, EPA's determination that the Maricopa County PM–10 Nonattainment Area had failed to reach attainment by the extended serious area deadline resulted in section 189(d)'s requirements for plan revisions and annual reductions in PM–10 of five percent until attainment. Thus, the CAA's requirements for BACM and MSM are tied to specific triggers in the Act: BACM by the reclassification to serious following the missed moderate area deadline, and MSM by the extension of the serious area deadline. For serious nonattainment areas that fail to reach attainment by an applicable deadline, the CAA specifies a particular consequence: A requirement for additional plan revisions that provide for attainment and annual five percent reductions. There is no explicit requirement in section 189(d) that a state with a serious nonattainment area that misses its attainment deadline must also reevaluate BACM and MSM provisions in its SIP that EPA has already approved. Indeed, the requirements of section 189(d) do not specify the requisite level of control and merely speak in terms of expeditious attainment and a set percentage of annual reductions from the most recent inventory, without regard to the level of control on sources needed to achieve those objectives. We note further that the commenter did not provide a legal rationale to support an interpretation of the Act that would require the state to reevaluate the existing BACM and MSM in its SIP as part of the explicit requirements of section 189(d). A state may elect to do so, and may elect to do so as a means of achieving additional emissions reductions to meet the five percent requirement, but that is not a specific requirement of section 189(d).

EPA notes that it has other discretionary authority under the CAA to address deficiencies in existing state SIPs, if that were necessary to address substantive concerns like those raised by the commenter. If EPA were to find a state SIP to be ''substantially inadequate'' to attain or maintain a standard or to meet any other requirements of the CAA, section 110(k)(5) provides a remedy by which EPA may require a state to revise its SIP to correct the identified inadequacies. In such a situation, EPA notifies a state of the inadequacies and can allow the state up to 18 months to submit revisions to the SIP to address the problems. *See* 42 U.S.C. 7410(k)(5). EPA has not made such a determination with respect to BACM or MSM for the Maricopa County PM–10 Nonattainment Area.

Finally, we note that Arizona was able to demonstrate attainment of the PM–10 NAAQS and provide for annual reductions of five percent until attainment without requiring additional BACM and MSM measures in its SIP.[5] Given that this area has demonstrated that it attained the PM–10 NAAQS by December 31, 2012 and has met the requirements of section 189(d), EPA does not see a need for the State to reevaluate its existing BACM and MSM as part of the action on the 2012 Five Percent Plan.

We address ACLPI's comments with respect to BACM and MSM as they relate specifically to agricultural controls and exceptional events below.

B. BACM for Agricultural Sources

Comment: ACLPI commented that EPA should not approve the 2012 Five Percent Plan because it does not include adequate measures for agricultural emissions. ACLPI commented that EPA has stated that ACC R 18–2–611 [Ag BMP Rule] no longer qualifies as BACM because other nonattainment areas have stronger programs for controlling agricultural emissions and do not have an enforceability issue found in the rule. ACLPI also commented that the State's 2011 revisions to the Ag BMP Rule to address concerns identified by EPA are still clearly insufficient to qualify as BACM.

Response: As explained above, CAA section 189(d) does not require the State to reevaluate the BACM and MSM determinations that were addressed in its serious area PM–10 plan for the Maricopa County PM–10 Nonattainment Area.

In addition, the 2012 Five Percent Plan satisfied all requirements for an approvable section 189(d) plan without relying on additional emissions reductions from agricultural sources. The 2012 Five Percent Plan is based on the ''2008 PM–10 Periodic Emissions Inventory for Maricopa County, Revised 2011 (2008 Inventory),'' which EPA found to be comprehensive, accurate and current. 79 FR 7120–7121. The 2008 Inventory shows that the most significant sources of emissions in the Maricopa County Nonattainment Area are unpaved roads and alleys (21 percent), construction-related fugitive dust (17 percent), paved road dust (17 percent) and windblown dust (9 percent). 79 FR 7120. Section 189(d) requires an approvable plan to show annual five percent reductions in PM–10 or PM–10 precursors until attainment. The 2012 Five Percent Plan was able to satisfy this criterion without assuming additional reductions in agricultural emissions.[6] Similarly, the 2012 Five Percent Plan demonstrated that the area would attain the standard without additional reductions in agricultural emissions.[7] Instead, the 2012 Five Percent Plan predicts that decreases in emissions from other categories, primarily construction and windblown dust from vacant and open lands, would achieve the requisite 5 percent reductions.[8]

Recent monitoring data support the attainment demonstration in the 2012

[5] *See* MAG 2012 Five Percent Plan, at p. 5–7, Table 5–3. Note that the emissions from agricultural sources (''tilling, harvesting and cotton ginning'' and ''windblown agriculture'') are constant, reflecting no reductions in emissions from 2008 to 2012.

[6] *Id.*

[7] *See* MAG 2012 Five Percent Plan, App. B, ''Technical Document in Support of the MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,'' p. V–65.

[8] *Id.* at p. III–2, Table III–1.

Five Percent Plan. 79 FR 7122. Finally, the State used no reductions in agricultural emissions for contingency measures.[9] Because the 2012 Five Percent Plan did not depend on additional emission reductions from agricultural sources and because EPA finds that the State is not required to reevaluate the BACM determinations we made in 2002 as part of meeting the requirements of section 189(d), the content of the Ag BMP rule does not determine the outcome of our action on the 2012 Five Percent Plan.

Nevertheless, EPA is continuing to work with ADEQ, Arizona stakeholders and the Governor's Agricultural BMP Committee to improve the Ag BMP rule. EPA anticipates that these improvements will be particularly important for addressing PM–10 emissions in Pinal County, a portion of which EPA re-designated as non-attainment in 2012. *See* 77 FR 32024 (May 31, 2012).

C. Dust Action General Permit

Comment: ACLPI commented that the 2012 Five Percent Plan relies on an estimate that the Dust Action General Permit (DAGP) will increase the rule effectiveness of Rule 310.01 by one percent, but argued that it is not clear that the DAGP achieves any measurable reduction in emissions. ACLPI stated that the structure of the DAGP means that its scope is unclear and that there is no way to gauge that issuance of the DAGP is actually impacting behavior in a way that reduces emissions. ACLPI stated that compliance is only measured by instances of lack of compliance discovered by inspectors who happen upon an owner or operator of a regulated activity who is not implementing a BMP. ACLPI stated that ADEQ has not yet issued a single Requirement to Operate (''RTO''), which means that it is possible that sources not already subject to permits have implemented BMPs as a result of the permit, but it is equally plausible that BMPs are not being implemented and that inspectors haven't discovered the violations, or that the universe of potential permittees under the DAGP was so small that the adoption of the permit had no practical effect whatsoever.

Response: The 2012 Five Percent Plan does not rely on assumptions regarding compliance with the DAGP *per se;* rather, the 2012 Five Percent Plan relies on an assumption that the DAGP will improve compliance with Rule 310.01. As the 2012 Five Percent Plan explains, ''[e]missions reduction credit was taken for one new measure, the Dust Action General Permit . . . *This new measure is expected to raise rule effectiveness for Rule 310.01 by one percent during high wind hours* . . .'' [10] This statement is consistent with Table 5–1 of the MAG 2012 Five Percent Plan, ''Impact of Increased Rule Effectiveness on 2008–2012 PM–10 Emissions,'' which shows that ADEQ estimated that the rule effectiveness for the category ''windblown vacant, open, test tracts,'' (the category of sources subject to Rule 310.01), would increase from 96% in 2010–2011 to 97% in 2012.[11] Table 5–1 associates this improved rate of compliance with an annual reduction in PM–10 emissions of 149 tons per year.[12]

The Maricopa County Air Quality Department's (MCAQD) compliance data for calendar year 2012 support the 2012 Five Percent Plan's assumptions that the DAGP will improve compliance with Rule 310.01. MCAQD reviewed its records of inspections during calendar year 2012, as documented in ''Evaluation of Innovative Control Measures and Existing Maricopa County Control Measures Contained in the MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area, revised,'' Maricopa County Air Quality Department, June 6, 2013 (2013 Evaluation Report).[13] It found that, out of a total of 5,431 sites inspected for compliance with Rule 310.01 in 2012, 149 citations were issued—amounting to a rule effectiveness rate of 97.62 percent. 2013 Evaluation Report at pages 3–4. This amount exceeds the compliance rate of 96% associated with previous years. MAG 2012 Five Percent Plan at p. 5–3, Table 5–1. EPA acknowledges that estimating rule compliance requires reliance on compliance information collected by reliable means. In this instance, EPA believes that the information gathered through the MCAQD's inspections program provides information to support the conclusion that most affected sources are complying with the requirements of Rule 310.01, and that compliance improved in 2012 as a result of those inspections.

The 2012 Five Percent Plan further describes the connection between Rule 310.01 and the DAGP.[14] The Plan explains that the DAGP is expected to increase compliance with Rule 310.01 because, whenever ADEQ issues a forecast of a high wind dust event, sources subject to Rule 310.01 (primarily open areas, vacant lots, and unpaved parking areas and roadways),[15] will take additional measures to stabilize open areas and unpaved surfaces by implementing the best management practices (BMPs) specified in Rule 310.01 and the DAGP.[16] Such measures might include restricting access to open areas and vacant lots, or by applying dust suppressants and/or maintaining surface gravel.[17] As specified in the DAGP, sources that fail to choose or implement a BMP when ADEQ issues a forecast of a high wind dust event may trigger applicability of the DAGP and the additional requirements it imposes.[18] Thus, the existence of the DAGP enhances compliance with Rule 310.01 because sources subject to Rule 310.01 associate noncompliance with Rule 310.01 with an adverse consequence—specifically, the obligation to apply for and comply with the DAGP. Again, MCAQD's study of the compliance rate of Rule 310.01 supports this assumption in the 2012 Five Percent Plan.

D. Exceptional Events—General

Comment: ACLPI stated that it was unable to reconcile some of the numbers of exceptional events cited by EPA. The commenter stated that the subtotals in EPA's concurrence letters add up to 131, but the subtotals in the tables in the supporting documentation add up to 135. The commenter added that if sites with double monitors are counted as only one exceedance, the total number of exceedances is 127.

Response: EPA acknowledges the discrepancy between the number of exceedances in concurrence letters and the tables in the TSDs. After closely re-

[9] *See* MAG 2012 Five Percent Plan, at p. 6–39, Table 6–22.

[10] MAG 2012 Five Percent Plan, p. ES–10 (emphasis added). *See also,* MAG 2012 Five Percent Plan at p. 6–45; App. B, ''Technical Document in Support of the MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,'' ppg. III–1 to III–8.

[11] MAG 2012 Five Percent Plan at p. 5–3, Table 5–1.

[12] *Id.*

[13] MCAQD has committed to conducting this evaluation on a triennial basis. MAG 2012 Five Percent Plan, App. C, Exhibit 2, ''Maricopa County Resolution to Evaluate Measures in the MAG 2012 Five Percent Plan for the Maricopa County Nonattainment Area.''

[14] *See* MAG 2012 Five Percent Plan, p. ES–10; p. 5–3, Table 5–1; p. 6–45. See also MAG 2012 Five Percent Plan, App. B, ''Technical Document in Support of the MAG 2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,'' ppg. III–1 to III–8. The relationship between Rule 310.01 and the DAGP is also described in ADEQ's comments on our proposed action, Letter from Eric C. Massey, Director, Air Quality Division, ADEQ to Greg Nudd, US EPA, dated March 10, 2014.

[15] S*ee* Rule 310.01, section 102; 2012 Five Percent Plan at ES–7 to ES–10.

[16] MAG 2012 Five Percent Plan at ES–10.

[17] *See* DAGP, Attachment C, ''Best Management Practice Examples''; Rule 310.01, sections 301–307.

[18] DAGP, section V.

reviewing the data, EPA has determined that the total number of exceptional events addressed by our concurrence letters dated September 6, 2012, May 6, 2013, and July 1, 2013 should be 135 exceedances.[19] These 135 exceptional event exceedances occurred on 25 days over the three year period, 2010–2012.

Comment: ACLPI commented that EPA's exclusion of such a large number of frequent and severe exceedances is unconscionable and misrepresents the extent of the particulate pollution in the Area. The commenter stated that the reported exceedances are ''frequent'' and ''severe'' within the meaning of EPA guidance, specifically, EPA's Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule, May 2013 (Interim Guidance).

Response: We note that the 135 exceptional event exceedances occurred on 25 days over a three year period from 2010 to 2012. The determinations reflected in our concurrence letters and TSDs dated September 6, 2012, May 6, 2013 and July 1, 2013 are consistent with the EER and our Interim Guidance. We considered a range of relevant factors including whether anthropogenic sources had reasonable controls in place, meteorological data such as wind speed and direction, and the spatial extent of the events. The frequency and severity of the events were considered as part of this analysis, and although we agree that some of the excluded exceedances could meet the criteria for ''frequent'' and ''severe'' suggested in our Interim Guidance, that fact alone does not disqualify an exceedance from consideration as an exceptional event. *See* Interim Guidance at 12–13 (frequency and severity of past exceedances may be a factor considered in determining the reasonableness of controls). Also, the Interim Guidance acknowledges that events do not necessarily have to be rare to qualify as exceptional events. *See* Interim Guidance at 3 and 20.

Comment: ACLPI commented that EPA's analysis of whether the events are reasonably preventable or controllable should have been more probing and not a ''cookie cutter'' approach, given the frequency and severity of the exceedances, as well as the area's status as serious nonattainment and the State's previous withdrawal of its earlier Five Percent Plan.

[19] *See* spreadsheet entitled ''EPA Exceptional Event Concurrence Sheet,'' included in the docket for this rule.

Response: The State submitted documentation on March 14, 2012, January 28, 2013, and February 13, 2013 to demonstrate to EPA that exceedances of the PM–10 NAAQS on various dates in 2011 and 2012 meet the criteria for an exceptional event in the EER. The State's submittals comprise over 1750 pages of documentation of the facts supporting each of the identified exceptional events. Our TSDs accompanying our concurrence letters dated September 6, 2012, May 6, 2013, and July 1, 2013 reflect EPA's methodical and systematic review of the State's documentation of the events and EPA's technical expertise and judgment. EPA presented its conclusions in a standardized format that was appropriate, considering the volume of information presented and reviewed, as well as the purpose of informing the public. In addition, EPA notes that we also received several comments in this rulemaking regarding the process required to document exceedances as ''exceptional events'' contending that the level of resources required to prepare and submit such documentation to EPA was too onerous.

Comment: ACLPI commented that the events excluded by EPA were predictable and seasonal in nature and could be ameliorated if the State adopted appropriate control measures for windblown dust both in the attainment (*sic*) area and statewide.

Response: For each of the events that EPA concurred with, EPA found that the event was not reasonably controllable or preventable (nRCP). EPA's Interim Guidance states that, for anthropogenic sources of dust, ''a high wind dust event may . . . be considered to be not reasonably controllable or preventable if: (1) The anthropogenic sources of dust have reasonable controls in place; (2) the reasonable controls have been effectively implemented and enforced; and (3) the wind speed was high enough to overwhelm the reasonable controls.'' *See* Interim Guidance at 10.

EPA's determinations of nRCP were primarily based on consideration of the control requirements based on the Area's serious nonattainment classification for the PM–10 NAAQS. *See* Interim Guidance at 13. ADEQ provided detailed information of required controls (including BACM-level controls for significant sources previously approved by EPA for this area), as well as information on rule implementation, rule effectiveness, compliance and enforcement, alert systems and public notification activities. A typical example is the documentation ADEQ submitted in connection with the event that occurred on August 11, 2012. *State of Arizona, Exceptional Event Documentation for the Event of August 11, 2012 for the Phoenix PM–10 Nonattainment Area,* February 2013 (AZ EE Documentation for August 11, 2012). This submittal included a list of control measures regulating sources of dust in Maricopa and Pinal counties, information about rule effectiveness, and data regarding compliance and enforcement. *See* AZ EE Documentation for August 11, 2012, Section 5.

In addition, EPA's determinations of nRCP were based on ADEQ's documentation of wind speeds. For example, the exceedances that occurred on September 11 and 12, 2011 involved wind speeds of 20 miles per hour (mph) and 25 mph, respectively. *See e.g.,* EPA Letter dated July 1, 2013, and accompanying TSD at p. 4. See also, e.g., TSD discussion of June 16, 2012 event at p. 10 (sustained wind speeds of 29 mph–32 mph); TSD discussion of June 27, 2012 event at p. 15 (sustained wind speeds of 31 mph–38 mph); TSD discussion of July 11, 2012 event at p. 20 (sustained wind speeds of 20 mph–25 mph).[20] Given the wind speeds associated with each of the events that EPA concurred upon, EPA believes ADEQ's controls assessment was appropriate and that the pre-existing and previously approved BACM level controls are adequate for meeting the requirement of ''reasonable controls'' for a PM–10 serious nonattainment area.

Additional information regarding EPA's consideration of reasonable controls can be found in EPA's TSDs for each event.

E. Exceptional Events and Reasonable Controls

Comment: ACLPI commented that BACM level controls were not in place in the nonattainment area. ACLPI commented that EPA's Interim Guidance says that BACM measures may be insufficient if the SIP has not been recently reviewed and that EPA has indicated that it will consider windblown dust BACM to be reasonable controls for purposes of exceptional events claims if the measures have been reviewed and approved in the context of a SIP revision within the past three years and if the measures are specific to

[20] The commenter did not specify particular dates or exceedances for which she found EPA's analysis deficient; therefore, EPA's response provides just a few examples from our TSDs in which we refer to the documentation of wind speeds included in the State's submittals. We reiterate, however, that our review of the State's submittals involved a methodical, case-by-case approach as documented by each of the TSDs accompanying our concurrence letters dated September 6, 2012, May 6, 2013 and July 1, 2013.

windblown dust. ACLPI commented that EPA's proposed action departs from this guidance because EPA last approved BACM for the area in 2002, with a supplemental analysis in 2006.

Response: EPA's Interim Guidance states: ''Generally, the EPA will consider windblown dust BACM to constitute reasonable controls if these measures have been reviewed and approved in the context of a SIP revision for the emission source area within the past three years.'' Interim Guidance at 15. Although our BACM determinations were made outside this recommended time frame, we believe that our determinations regarding nRCP were correct. First, the 2012 Five Percent Plan shows that the significant stationary source categories for PM–10 are: construction; unpaved roads and alleys; paved road dust; windblown dust (non-agriculture); unpaved parking lots; and off-road recreational vehicles.[21] Each of these source categories was included in our earlier BACM determinations. *See* 67 FR 48718 (July 25, 2002); *see also,* 67 FR 48733–34. Because the significant sources within the Phoenix PM–10 nonattainment area have not significantly changed since 2002, and the range of potential measures for controlling emissions from these source categories (e.g., stabilization of disturbed surface areas; spray bars to apply water or dust suppressants; track out, rumble grate and wheel washer requirements) have not significantly changed since 2002, we believe that our previous BACM determinations remain appropriate for the purposes of making exceptional event determinations, including determinations regarding nRCP.

Second, although the State has not prepared a new BACM analysis and EPA has not made new BACM determinations in the past three years, Arizona has adopted revisions to rules regulating sources of windblown dust that EPA has approved into the SIP because they are more stringent. Specifically, EPA has approved updated revisions of: Rule 310, which regulates sources of fugitive dust from dust generating operations such as construction; Rule 310.01, which regulates sources of windblown dust from open areas, vacant lots, unpaved parking lots, and unpaved roadways; and Rule 316, which regulates sources of dust from nonmetallic mineral processing.[22]

Third, to the extent the commenter interprets the Interim Guidance as stating that a BACM determination that is older than three years cannot be relied upon in a demonstration of reasonable controls, the commenter is incorrect. The Interim Guidance provides a guideline to states preparing documentation to submit to EPA that more recent BACM determinations will generally satisfy EPA's consideration of reasonable controls. It does not disqualify measures that EPA determined to be BACM more than three years previously from consideration as reasonable controls, nor does it impose an obligation on the part of the state or EPA to re-evaluate BACM.

Comment: ACLPI commented that EPA found that the 2007 Maricopa BMP Rule no longer represents BACM for agricultural emissions (referencing statements in a 2010 proposed rulemaking and in a 2010 letter to the Arizona Agricultural Best Management Practices (BMP) Committee) and that although the 2007 Maricopa BMP Rule was revised in 2011, the revisions were not implemented until March 2012. The commenter states that 98 of the 217 exceedances at issue occurred in 2011 (i.e., prior to the implementation of the 2011 Maricopa BMP Rule revisions). The commenter argued that even into 2012, the ''revised Maricopa BMP Rule'' (which EPA understands to be a reference to the 2011 Maricopa BMP Rule) is not clearly BACM because it did not include EPA's recommendations for improvement. The commenter concludes that EPA's concurrence on exceptional events was erroneous because EPA relied on its prior approval of the State's previous BACM demonstration and did not attempt to determine whether the controls in place during the event were BACM.

Response: Our response above explains why the CAA does not require EPA to reevaluate its earlier BACM determination in connection with our action on the 2012 Five Percent Plan. We understand the commenter to be asserting another basis for EPA to reevaluate BACM, in particular, that EPA's concurrence on exceptional events may be a basis to require EPA to make a determination regarding BACM. EPA's Interim Guidance, however, states that BACM for windblown dust is a measure that EPA has identified as being ''reasonable'' for the purposes of exceptional events determinations. Interim Guidance at 15. The Interim Guidance acknowledges that ''[h]aving BACM/RACM in place during the time of the event is an important consideration'' for an exceptional event determination, but more justification may be necessary if, for example, the measures are not related to windblown dust, or if the SIP has not been recently reviewed. *Id.* For the reasons set forth below, EPA's reliance on the BACM determinations it made in 2002 was a reasonable basis to concur on the State's exceptional event claims.[23]

First, the 2008 Inventory shows that agricultural sources are a very small contributor to windblown dust in Maricopa County. According to the 2008 Inventory, agricultural windblown dust comprises approximately 0.9% of the total annual windblown dust emissions in the nonattainment area (448 tons out of a total of 49,673.01 tons in 2012).[24] Other agricultural sources, such as tilling, harvesting, and cotton ginning, comprise approximately 1.8% of the total annual PM–10 emissions inventory (893 tons out of a total of 49,673.01 tons in 2012).[25] Thus, agricultural sources contribute only a relatively small percentage of the total emissions in the 2008 Inventory.

Second, in determining that the exceedances that occurred in 2011 and 2012 were nRCP, it was appropriate for EPA to find that the existing controls were ''reasonable'' because, as we explained above, the State met the requirements of section 189(d) in the 2012 Five Percent Plan without relying on additional reductions from agricultural sources. Significantly, no additional reductions from the Maricopa BMP Rule were needed to demonstrate that the area would attain the standard.[26] Therefore, our determination that existing BACM requirements were sufficient to find that emissions sources were reasonably controlled at the time the exceedances occurred was appropriate.

Third, we acknowledge that EPA has previously indicated to the State that

[21] MAG 2012 Five Percent Plan, at -. 5–7, Table 5–3.

[22] *See* 74 FR 58554 (November 13, 2009) (EPA approval of Maricopa County's revisions to Rule 316, adopted on March 12, 2008); 75 FR 78167 (December 15, 2010) (EPA approval of Maricopa County's revisions to Rule 310 and 310.01, adopted on January 27, 2010).

[23] EPA notes that it applies a weight-of-the-evidence standard in evaluating exceptional events claims. *See e.g.,* Interim Guidance at 8: ''The EPA uses a weight-of-the-evidence approach in reviewing air agency requests for data exclusion under the EER [Exceptional Events Rule]. Evidence and narrative that constitute a strong demonstration for one element can also be part of the demonstration for another element, but cannot make up for the absence of or insufficient explanation supporting another element. A strong demonstration for one requirement could, however, influence the persuasiveness of the demonstration for another.''

[24] *Id.* at p. II–3, Table II–2; *see also,* MAG 2012 Five Percent Plan at p. 5–5, Table 5–2.

[25] *Id.*

[26] *See* MAG 2012 Five Percent Plan, at p. 5–7, Table 5–3.

improvements to controls on agricultural sources should be considered. It is important to note, however, that EPA's proposed 2010 rulemaking was a proposed action to disapprove a different section 189(d) plan, the State's 2007 Five Percent Plan, in part because of EPA's concerns regarding the accuracy of the State's 2005 Periodic Emission Inventory. (We also note that the proposed rulemaking was never finalized.) It is also important to note that EPA's comments to the Ag BMP Committee predate the finalization of the 2008 Emission Inventory (May 2012) in which emissions from agricultural sources are a small part of the PM–10 emissions inventory. Further, although the 2008 Inventory indicates that agricultural sources are relatively small contributors to PM–10 emissions in the Maricopa County PM–10 Nonattainment Area, EPA believes that agriculture is a significant source in certain portions of Pinal County, which EPA recently redesignated as a PM–10 nonattainment area. *See* 77 FR 32024 (May 31, 2012). Therefore, EPA believes that it is important to continue to improve the controls on agricultural sources, and EPA is working with ADEQ, stakeholders, and the Governor's Agricultural BMP Committee to improve these controls.

Comment: ACLPI commented that ADEQ and EPA did not adequately address the issue of whether the events were reasonably controllable or preventable with respect to sources outside the Maricopa County PM–10 Nonattainment Area. ACLPI stated that EPA's Interim Guidance says that a basic controls analysis should consider all upwind areas of disturbed soil to be potential contributing sources, and that the basic controls analysis should identify all contributing sources in upwind areas and provide evidence that such sources were reasonably controlled, whether anthropogenic or natural, and include inspection reports and/or notices of violation, if available. The commenter stated that ADEQ and EPA did not indicate that control measures outside of Maricopa County were evaluated for their ''reasonableness.'' ACLPI commented that Pinal County's controls are ''minimalist rules'' that do not require controls to address emissions caused solely by high wind events and that although Pinal County was only recently designated nonattainment, Pinal County should not be excused from the requirement to show that sources in the county were subject to reasonable controls.

Response: The comment concerns the level of controls imposed on sources outside the Maricopa County PM–10 Nonattainment Area, in particular, sources located in Pinal County. As noted in our proposed action, the Maricopa County PM–10 Nonattainment Area encompasses several cities within Maricopa County (including the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, and Glendale), and several other smaller jurisdictions and unincorporated county lands. The Maricopa County PM–10 Nonattainment Area also includes the town of Apache Junction in Pinal County. Recently, EPA designated a portion of Pinal County (''West Pinal'') as a moderate PM–10 nonattainment area, which triggered nonattainment planning obligations that the State must fulfill. *See* 77 FR 32024 (May 31, 2012).[27]

EPA's Interim Guidance contemplates that a basic controls analysis should include ''a brief description'' of upwind sources. The level of detail provided in describing the Pinal County sources was adequate given relevant factors such as wind speed. Moreover, ADEQ and EPA both indicated that they evaluated control measures outside of Maricopa County. For example, ADEQ's exceptional event documentation included an analysis of reasonable controls that identified measures that apply to sources located within the Maricopa County PM–10 Nonattainment Area, and measures applicable to sources in Pinal County, outside the Maricopa County PM–10 Nonattainment Area.[28] ADEQ specifically identified two Pinal County rules, Article 2, Fugitive Dust, and Article 3, Construction Sites—Fugitive Dust, as regulatory control measures.[29] EPA's TSDs also referenced this section of ADEQ's documentation, including the discussion of rules applicable to sources in Pinal County.[30]

In addition, the level of detail describing Pinal County sources and controls was also adequate for an area such as Pinal County for which a portion was recently redesignated as a PM–10 nonattainment area and is currently undergoing the nonattainment planning process. As EPA's Interim Guidance states, an area's attainment status is an appropriate guideline for assessing the reasonableness of controls: ''Generally, the EPA does not expect areas classified as attainment, unclassifiable, or maintenance for a NAAQS to have the same level of controls as areas that are nonattainment for the same NAAQS. Also, if an area has been recently designated to nonattainment but has not yet been required to implement controls, the EPA will expect the level of controls that is appropriate for the planning stage.'' Interim Guidance at 15. EPA's recent redesignation of a portion of Pinal County as a moderate PM–10 nonattainment area triggered CAA planning obligations for the State to develop regulations to implement controls such as Reasonably Available Control Measures (RACM) for existing sources of PM–10 and a section 173 preconstruction permitting program for new and modified sources of PM–10. EPA concurred with exceedances that occurred in 2011 and 2012; the latest exceedance occurred on September 6, 2012, well before the CAA's deadline for Arizona to submit an implementation plan to EPA for approval into the Arizona SIP. *See* 77 FR 32030.

Comment: ACLPI commented that claims that events were caused by ''winds transporting dust from desert areas of Pima and Pinal Counties'' are not substantiated and that the State's demonstrations do not determine source locations, as required by EPA's 2013 Interim Guidance (referencing 3.1.5.1). ACLPI conducted its own analysis of the event that occurred on July 18, 2011. ACLPI commented that its analysis indicates that dust sources included agricultural sources in Pinal and Maricopa Counties, and that four downdrafts and four outflows impacted the monitors from multiple locations, in contrast to the State's assertion that one thunderstorm outflow transported dust from desert portions of Pinal and Pima counties into the Phoenix PM–10 nonattainment area. ACLPI stated that although the State claims that specific source areas are difficult to determine because of the less dense monitoring network in the general source area, ACLPI's analysis shows that likely source locations can be determined using meteorological modeling and observational data. Therefore, EPA should require the state to make a more concerted effort to identify the actual sources and adopt controls to avoid or ameliorate future events.

[27] We note that our action on the 2012 Five Percent Plan relates to our concurrences with the State's exceptional event claims for exceedances at monitors for the Maricopa County PM–10 Nonattainment Area dated September 6, 2012, May 6, 2013, and July 1, 2013. Our action on the 2012 Five Percent Plan does not depend on data from monitors located within the newly redesignated West Pinal PM–10 Nonattainment Area or on any exceptional events claims regarding data from such monitors.

[28] *See e.g., ADEQ EE Documentation for July 3–8, 2011* at 39–45; in particular, ppg. 40–41, Tables 4–1 and 4–3 (sources within the Maricopa PM–10 Nonattainment Area) and Table 4–2 (sources outside the Maricopa PM–10 Nonattainment Area).

[29] *Id.* at 41, Table 4–2.

[30] *See e.g.,* EPA Letter dated Sept. 9, 2012 and accompanying TSD at 3.

Response: Although a more refined analysis of the location of thunderstorm downdrafts and source areas is potentially helpful for certain high wind dust events, this additional analysis is not necessary to analyze the specific events that EPA concurred on. EPA reviewed the commenter's analysis and concluded that it does not contradict ADEQ's documentation, but rather corroborates the evidence presented in ADEQ's demonstration. ADEQ's documentation states that the contributing source regions were somewhat widespread, but that the ''majority'' of the PM that was transported into Maricopa County likely originated from areas within Pinal County to the south and southeast of Maricopa County.[31] ADEQ also explained that it is likely that some dust was generated within the Maricopa County PM–10 Nonattainment Area as gusts from the thunderstorm outflows passed through the area.[32] Thus, ADEQ did not claim that all the emissions were specifically caused by a single thunderstorm outflow. ADEQ's statement that the ''majority'' of the emissions were transported from areas of Pinal County and southeast Maricopa County is supported by the visualization of images from the Phoenix visibility camera included in the July 18, 2011 demonstration, which shows a large dust storm approaching from the south of the Maricopa County PM–10 Nonattainment Area.[33]

Comment: ACLPI commented that the fact that some of the sources are located outside of the Maricopa County PM–10 Nonattainment Area does not absolve the State of its responsibility to ensure that they are reasonably controlled. The commenter stated that ADEQ is the single responsible actor for air quality control in Arizona and had the responsibility to address the public health risk presented by sources in Pinal County, particularly given high wind events experienced in 2008 and 2009.

Response: EPA agrees that the State has a responsibility to ensure that sources outside the Maricopa County PM–10 Nonattainment Area are reasonably controlled. Our action with respect to exceedances at Maricopa County PM–10 Nonattainment Area monitors does not absolve in any way the State's responsibility to address PM–10 emissions in the West Pinal PM–10 Nonattainment Area. Our July 2012 redesignation of West Pinal to nonattainment triggers Clean Air Act nonattainment planning obligations that Arizona must fulfill. *See* 77 FR 32030. We note that our action on the 2012 Five Percent Plan relates to our concurrences with the State's exceptional event claims for exceedances at monitors for the Maricopa County PM–10 Nonattainment Area dated September 6, 2012, May 6, 2013, and July 1, 2013, and does not depend on the treatment of data for monitors located within the newly redesignated West Pinal PM–10 Nonattainment Area.

F. Exceedances in 2013

Comment: ACLPI commented that the Maricopa County PM–10 Nonattainment Area experienced 30 exceedances over six days in 2013, which ADEQ has flagged and for which ADEQ is preparing EE documentation, and that EPA is simply assuming that it will concur with these EE demonstrations. The commenter stated that this is unsupportable, particularly in light of EPA's failure to require mitigation measures and that there are frequent and severe violations of the standard at multiple monitors, many of which are located in low income neighborhoods.

Response: The 2012 Five Percent Plan was based on a projection that that the Area would attain the NAAQS in 2012. If, upon review of the available evidence, EPA finds that the exceedances of the standard in 2013 constitute a new violation of the PM–10 NAAQS, we have the authority to require the state to submit a SIP revision with additional controls and a demonstration that the new controls will bring the area back into attainment with the standard.[34]

G. Contingency Measures

Comment: ACLPI stated that EPA's proposal acknowledges that the contingency measures in the 2012 Five Percent Plan are already being implemented. The commenter stated that CAA (175(d)) envisions additional measures that are automatically and immediately implemented if a milestone for reasonable further progress or attainment is not met. The commenter stated that if contingency measures are already being implemented when a milestone is missed, continued implementation will not ensure that the situation will be corrected. The commenter argues that *LEAN* v. *EPA* is not binding on the 9th Cir. and is contrary to the plain language of the CAA. The commenter stated that approval of the 2012 Five Percent Plan without meaningful and appropriate contingency measures is contrary to law.

Response: EPA disagrees with the comment. Contingency measures must provide for additional emission reductions that are not relied on for RFP or attainment and that are not included in the attainment demonstration. Nothing in the statute precludes a state from implementing such measures before they are triggered. See, e.g., LEAN v. EPA, 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

EPA has approved numerous SIPs under this interpretation—i.e., SIPs that use as contingency measures one or more Federal or local measures that are in place and provide reductions that are in excess of the reductions required by the attainment demonstration or RFP plan. See, e.g., 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

The scenario described by the commenter that already-implemented contingency measures will be a problem if the Maricopa County PM–10 Nonattainment Area misses a deadline for RFP or attainment is mitigated by the fact that monitoring data for 2010–2012 show that the Area already attained the 24-hour PM–10 NAAQS as of December 12, 2012. See 79 FR 7122. Our approval of the contingency measures is also consistent with EPA guidance that ''the potential nature and extent of any attainment shortfall for the area'' is relevant to the determining the level of required emission reductions and that contingency measures ''should represent a portion of the actual emission reductions necessary to bring about attainment in area.'' 72 FR 20586, 20643; *see also* PM–10 Addendum at 42015 (the emission reductions anticipated by the contingency measures should be equal to approximately one-year's worth of

[31] State of Arizona Exceptional Event Documentation for the Event of July 18, 2011, for the Phoenix PM–10 Nonattainment Area, Jan. 23, 2013 at p. 9.

[32] *Id.* at 18.

[33] *Id.* at 27.

[34] E.g., under CAA section 110(k)(5) EPA may require a state to revise its SIP if we find it to be substantially inadequate to maintain the relevant air quality standard. In such a situation, EPA notifies a state of the inadequacies and can allow the state up to 18 months to submit revisions to the SIP to address the problems. See 42 U.S.C. 7410(k)(5).

emission reductions needed to achieve RFP for the area.) EPA's approval of contingency measures that are already being implemented is particularly appropriate where, as is the case for the Maricopa County PM–10 Nonattainment Area, there are no future RFP or attainment deadlines.

H. Other Comments

Comment: ADEQ asked that EPA clarify that this action applies to the entire nonattainment area, including the portion in Pinal County, and not just to the Maricopa County portion.

Response: EPA has made this clarification.

Comment: Several commenters noted that the plan was developed through a cooperative discussion among the many stakeholders in the plan. According to the commenters, this process led to innovative strategies that are appropriate to the local conditions and consistent with EPA requirements.

Response: EPA acknowledges these comments.

Comment: Several commenters expressed concerns about the resources required to demonstrate that measured exceedances of the standard are due to exceptional events. These commenters recommended changing the Exceptional Events Rule to address this issue.

Response: EPA will consider these comments in future rulemakings on the Exceptional Events Rule.

III. EPA's Final Action

As a result of our proposed rule and our response to comments above, we are finalizing our proposal to approve the 2012 Five Percent Plan as meeting the requirements of the CAA for the Maricopa County PM–10 nonattainment area. Specifically, we are approving:

(A) The 2008 baseline emissions inventory and the 2007, 2009, 2010, 2011 and 2012 projected emission inventories as meeting the requirements of CAA section 172(c)(3);

(B) the attainment demonstration as meeting the requirements of CAA sections 189(d) and 179(d)(3);

(C) the five percent demonstration as meeting the requirements of CAA section 189(d);

(D) the reasonable further progress and quantitative milestone demonstrations as meeting the requirements of CAA sections 172(c)(2) and 189(d);

(E) the contingency measures as meeting the requirements of CAA section 172(c)(9); and

(F) the motor vehicle emissions budget as compliant with the budget adequacy requirements of 40 CFR 93.118(e).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act; 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 it does not 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.

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).

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 August 11, 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 may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: May 30, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(157)(ii)(A)(*1*) and (*2*) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(157) * * *

(i) * * *

(ii) *Additional materials.*

(A) Arizona Department of Environmental Quality.

(*1*) *2012 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area,* and Appendices Volume One and Volume Two, adopted May 23, 2012.

(*2*) *2012 Five Percent Plan for PM–10 for the Pinal County Township 1 North, Range 8 East Nonattainment Area,* adopted May 25, 2012.

* * * * *

[FR Doc. 2014–13495 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0311; FRL–9911–90–Region–4]

Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Alabama State Implementation Plan (SIP) submitted by the Alabama Department of Environmental Management (ADEM) on September 3, 2013. The revision modifies the definition of ''volatile organic compounds'' (VOCs). Specifically, the revision adds four hydrofluoropolyethers (HFPEs) compounds, to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. ADEM is updating its SIP to be consistent with EPA rule finalized on February 12, 2013, which excludes these compounds from the regulatory VOC definition.

DATES: This rule is effective on August 11, 2014 without further notice, unless EPA receives relevant adverse comment by July 10, 2014. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0311, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2014–0311,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2014–0311.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Richard Wong may be reached by phone at (404) 562–8726 or by electronic mail address *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO_X that can be released into the atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

It has been EPA's policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone. *See* 42 FR 35314, July 8, 1977. EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these compounds in its

regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On February 12, 2013, EPA issued a final rule approving the addition of four HFPEs to the list of those compounds excluded from the regulatory definition of VOC. *See* 78 FR 9823. The four HFPEs—HCF2OCF2H (HFE–134), HCF2OCF2OCF2H (HFE–236cal2), HCF2OCF2CF2OCF2H (HFE–338pcc13), and HCF2OCF2OCF2CF2OCF2H (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180)), have been used in some heat transfer applications (as refrigerants) and as fire suppressants. Because HFPEs do not contain chlorine or bromine, these compounds do not contribute to the depletion of the ozone layer and have ozone depletion potential values of zero. ADEM is updating its SIP to be consistent with federal regulations.

II. Analysis of the State's Submittal

On September 3, 2013, ADEM submitted a SIP revision [1] to EPA for review and approval. The revision modifies the definition of VOCs found at Alabama Administrative Code section 335–3–1–.02(gggg). Specifically, the revision adds four HFPEs compounds—HCF2OCF2H (HFE–134), HCF2OCF2OCF2H (HFE–236cal2), HCF2OCF2CF2OCF2H (HFE–338pcc13), and HCF2OCF2OCF2CF2OCF2H (H-Galden 1040X and H-Galden ZT 130 (or 150 or 180)) to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

This action amends Rule 335–3–1–.02(gggg) to update the definition of VOC to be consistent with EPA regulations. These changes are consistent with the section 110 of the Clean Air Act (CAA or Act).

III. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP revising the VOC definition. EPA has evaluated Alabama's September 3, 2013, submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations and is consistent with EPA policy. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 11, 2014 without further notice unless the Agency receives adverse comments by July 10, 2014. If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 11, 2014 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this 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.

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).

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 August 11, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that

[1] Alabama's September 3, 2013 submission to EPA also included changes to Chapters 335–3–10 New Source Performance Standards and 335–3–11 National Emissions Standards for Hazardous Air Pollutants which are not part of the Alabama federally approved SIP.

EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 28, 2014.

Heather McTeer Toney.

Regional Administrator, Region 4.

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 B—Alabama

■ 2. Section 52.50(c) is amended by revising the entry for ''Section 335–3–1–.02'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335–3–1—General Provisions				
* *	*	*	* * *	*
Section 335–3–1–.02	Definitions	9/24/2013	6/10/2014 [Insert citation of publication].	
* *	*	*	* * *	*

* * * * *

[FR Doc. 2014–13428 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 14–671]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division amends the FM Table of Allotments (''FM Table''), to remove certain vacant FM allotments that were auctioned in FM Auction 68 and FM Auction 70 that are currently considered authorized stations. FM assignments for authorized stations and reserved facilities will be reflected solely in Media Bureau's Consolidated Database System (CDBS).

DATES: Effective June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* DA 14–671, adopted May 15, 2014, and released May 16, 2014. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* The Commission will not send a copy of this *Report and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

As stated in the preamble, the Federal Communications Commission amends 47 CFR part as follows:

PART 73—RADIO BROADCASTING SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Amend § 73.202(b) Table of FM Allotments as follows:

■ a. Remove New Hope, under Alabama, Channel 278A; Pine Level, Channel 248A; and Saint Florian, Channel 274A.

■ b. Remove Aguila, under Arizona, Channel 297C3; Chino Valley, Channel 223A; Heber, Channel 288C2; Huachuca City, Channel 232A; Parker, Channel 247C3; Patagonia, Channel 251A; Rio Rico, Channel 300A; Taylor, Channel 278C3.

■ c. Remove Arkadelphia, under Arkansas, Channel 228A and Paragould, Channel 257A.

■ d. Remove Burney, under California, Channel 225A; Covelo, Channel 245A; Channel 236C3 at McKinleyville; Channel 291A at Tecopa; and Channel 253A at Willow Creek.

■ e. Remove Arriba, under Colorado, Channel 240A; Aspen, Channel 228A; Cheyenne Wells, Channel 224C1; Flagler, Channel 283C3; and Hugo, Channel 222A.

■ f. Remove Cedar Key, under Florida, Channel 261A; Key West, Channel 244A; and Perry, Channel 228A.

■ g. Remove Lincolnton, under Georgia, Channel 254A; Patterson, Channel 296A; Pineview, Channel 226A; Plainville, Channel 285A; Wadley, Channel 227A; Woodbury, Channel 233A; and Young Harris, Channel 236A.

■ h. Remove Kailua-Kona, under Hawaii, Channel 244A and Channel 298C2 at Kihei.

■ i. Remove North English, under Iowa, Channel 246A.
■ j. Remove Burgin, under Kentucky, Channel 290A; Morgantown, Channel 256A; and Science Hill, Channel 291A.
■ k. Remove Leesville, under Louisiana, Channel 224A.
■ l. Remove Monticello, under Maine, Channel 234A.
■ m. Remove Frederic, under Michigan, Channel 237A and Paradise, Channel 234A.
■ n. Remove Greenwood, under Mississippi, Channel 277A; Holly Springs, Channel 243A; and Marietta, Channel 250A.
■ o. Remove Doolittle, under Missouri, Channel 283A; Grandin, Channel 283A; Lowry City, Channel 285A; Madison, Channel 247C3; Marceline, Channel 256A; Marquand, Channel 295A.
■ p. Remove Lewistown, under Montana, Channel 300C1 and Montana City, Channel 293A; and Outlook, Channel 289C.
■ q. Remove Firth, under Nebraska, Channel 229A; Hyannis, Channel 250C1; and Pierce, Channel 248C2.
■ r. Remove Pittsburg, under New Hampshire, Channel 246A.
■ s. Remove under New Mexico, Channel 283C2 at Las Vegas.
■ t. Remove Garysburg, under North Carolina, Channel 276A and Ocracoke, Channel 224C1.
■ u. Remove Pawhuska, under Oklahoma, Channel 233A and Sayre, Channel 269C2.
■ v. Remove Meyersdale, under Pennsylvania, Channel 253A and Sykesville, Channel 240A.
■ w. Remove Pendleton, under South Carolina, Channel 240A.
■ x. Remove Wall, under South Dakota, Channel 299C
■ y. Remove Linden, under Tennessee, Channel 267A; Oliver Springs, Channel 291A; and Pigeon Forge, Channel 292A.
■ z. Remove Baird, under Texas, Channel 243C3; Ballinger, Channel 238A; Benavides, Channel 282A; Big Wells, Channel 271A; Camp Wood, Channel 271A; Childress, Channel 281C2; Channel 242A at Cotulla; Channel 229A at Dilley; Eagle Lake, Channel 237C3; Channels 285A and 293A at Eldorado; Channel 273A at Encinal; Grapeland, Channel 232C3; Hamilton, Channel 299A; Channel 254A at Hebbronville; Hewitt, Channel 294A; Mason, Channel 269C3; Pineland, Channel 256A; Sabinal, Channel 296A; Savoy, Channel 297A; and Sweetwater, Channel 221C3.
■ aa. Remove Parowan, under Utah, Channel 300C2.
■ bb. Remove Glenville, under West Virginia, Channel 299A.
■ cc. Remove Ephraim, under Wisconsin, Channel 295A and Rosholt, Channel 263A.
■ dd. Remove Reliance, under Wyoming, Channel 254C3 and Sinclair, Channel 267C.

[FR Doc. 2014–13537 Filed 6–9–14; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0023; 4500030113]

RIN 1018–AY50

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the New Mexico Meadow Jumping Mouse Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) found in Arizona, New Mexico, and Colorado. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife. We have also determined that critical habitat for the New Mexico meadow jumping mouse is prudent and determinable and will soon publish in the **Federal Register** our final designation of critical habitat for the New Mexico meadow jumping mouse.

DATES: This rule becomes effective July 10, 2014.

ADDRESSES: This final rule is available on the internet at *http://www.fws.gov/southwest/es/NewMexico/index.cfm,* and *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0023. Comments and materials received, as well as some supporting documentation used in the preparation of this final rule, are available for public inspection at *http://www.regulations.gov.* Some supporting documentation is also available at *http://www.fws.gov/southwest/es/NewMexico/index.cfm.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542.

FOR FURTHER INFORMATION CONTACT: Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species or subspecies may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered or threatened species can only be completed by issuing a rule. On June 20, 2013 (78 FR 37363; 78 FR 37328), we proposed to list the New Mexico meadow jumping mouse under the Act as an endangered species and proposed to designate critical habitat. We found that the species currently faces numerous threats of high magnitude, and, therefore, qualifies for listing, and we requested additional information and comments on the proposed listing. This final rule considers all comments received by peer reviewers, tribes, State agencies, Federal agencies, and the public regarding the proposed rule to list the New Mexico meadow jumping mouse.

This rule will finalize the listing of the New Mexico meadow jumping mouse as endangered.

The basis for our action. Under the Act, a species may be determined to be an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We have determined that the New Mexico meadow jumping mouse meets the definition of an endangered species primarily because of the present or threatened destruction, modification, or curtailment of its habitat or range; the inadequacy of existing regulatory mechanisms; and other natural and manmade factors affecting its continued existence. Our consideration of these factors is described in section 5.1 ''Habitat Loss'' and section 5.3

''Protective Regulations'' of the SSA Report. The other two of the five factors are not contributing to the current status of the species. See section 5.2 ''Other Factors'' in the SSA Report for our consideration of these factors.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We also considered all comments and information received during the comment period.

Previous Federal Actions

Please refer to the proposed listing rule for the New Mexico meadow jumping mouse (78 FR 37363, June 20, 2013) for a detailed description of previous Federal actions concerning this species.

We determined that critical habitat for the New Mexico meadow jumping mouse is prudent and determinable and will soon publish in the **Federal Register** our final determination designating critical habitat for the New Mexico meadow jumping mouse.

Background

Species Information

The Final New Mexico Meadow Jumping Mouse Species Status Assessment Report (SSA Report; Service 2014, entire), available online at *www.regulations.gov,* Docket No. FWS–R2–ES–2013–0023, provides a thorough assessment of New Mexico meadow jumping mouse biology and natural history, and assesses demographic risks (such as small population sizes), threats, and limiting factors in the context of determining viability and risk of extinction for the New Mexico meadow jumping mouse. In the SSA Report, we compile biological data and a description of past, present, and likely future threats (causes and effects) facing the species. Because data in these areas of science are limited, some uncertainties are associated with this assessment. Where we have substantial uncertainty, we have attempted to make our necessary assumptions explicit in the SSA Report. We base our assumptions in these areas on the best available information. Importantly, the SSA Report does not represent a decision by the Service on whether this taxon should be listed as a threatened or endangered species under the Act. The SSA Report does however, provide the scientific basis that informs our regulatory decision (see *Summary of Biological Status and Threats*), which involves the application of standards within the Act and its implementing regulations, and Service policies (see Determination).

Summary of Biological Status and Threats

Our SSA Report documents the results of the comprehensive biological status review for the New Mexico meadow jumping mouse and provides a thorough account of the species' overall viability and, conversely, extinction risk (Service 2014, entire). The SSA Report contains the data on which this final rule is based. The following is a summary of the results and conclusions from the SSA Report.

The New Mexico meadow jumping mouse is a small mammal whose historical distribution likely included riparian wetlands along streams in the Sangre de Cristo and San Juan Mountains from southern Colorado to central New Mexico, including the Jemez and Sacramento Mountains and the Rio Grande Valley from Espanola to Bosque del Apache National Wildlife Refuge, and into parts of the White Mountains in eastern Arizona.

In conducting our status assessment we first considered what the New Mexico meadow jumping mouse needs to ensure viability. We generally define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. We next evaluated whether the identified needs of the New Mexico meadow jumping mouse are currently available and the repercussions to the subspecies when provision of those needs is missing or diminished. We then consider the factors that are causing the species to lack what it needs, including historical, current, and future factors. Finally, considering the information reviewed, we evaluate the current status and future viability of the species in terms of resiliency, redundancy, and representation.

Resiliency is the ability of the species to withstand stochastic events (arising from random factors such as drought, flooding, or wildfire) and, in the case of the New Mexico meadow jumping mouse, is best measured by habitat size. Redundancy is the ability of a species to withstand catastrophic events within part of its range, and can be provided by the duplication and distribution of resilient populations across the range of the New Mexico meadow jumping mouse. Representation is the ability of a species to adapt to changing environmental conditions and can be measured by the breadth of genetic diversity within and among populations, and the ecological diversity of populations across the species' range. In the case of the New Mexico meadow jumping mouse, we evaluate representation based on the extent of the geographical range as an indicator of genetic and ecological diversity. The main areas of uncertainty in our analysis include the minimum amount of suitable habitat needed to support resilient populations and the number of redundant populations needed to provide for adequate redundancy and representation.

Our assessment concluded that the New Mexico meadow jumping mouse has an overall low viability (probability of persistence) in the near term (between now and the next 10 years) and a decreasing viability in the long-term future (beyond 10 years). The New Mexico meadow jumping mouse occurs within eight geographic management areas, which are defined by the external boundaries of the geographic distribution of historical populations. We use the term geographic management area to describe the geographic region where populations of jumping mice are located. For the subspecies to be viable, the New Mexico meadow jumping mouse needs to have multiple resilient populations distributed throughout different drainages within the eight geographic management areas. In this summary, we present an overview of the comprehensive biological status review. A detailed discussion of the information supporting this overview can be found in the SSA Report (Service 2014, entire).

For the New Mexico meadow jumping mouse to be considered viable, individual mice need specific vital resources for survival and completion of their life history. One of the most important aspects of the New Mexico meadow jumping mouse's life history is that it hibernates about 8 or 9 months out of the year, which is longer than most other mammals. Conversely, it is only active 3 or 4 months during the summer. Within this short timeframe, it must breed, birth and raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, jumping mice only live 3 years or less, and have one small litter annually, with seven or fewer young, so the subspecies has limited capacity for high population growth rates due to this low fecundity (reproductive potential). As a result, if resources are not available in a single season, jumping mice populations would be greatly stressed and would likely have lower reproduction and over-winter survival during hibernation.

The New Mexico meadow jumping mouse has exceptionally specialized

habitat requirements to support these life-history needs and maintain adequate population sizes. Habitat requirements are characterized by tall (averaging at least 61 centimeters (cm) (24 inches (in)), dense riparian herbaceous vegetation (plants with no woody tissue) primarily composed of sedges (plants in the Cyperaceae Family that superficially resemble grasses but usually have triangular stems) and forbs (broad-leafed herbaceous plants). This suitable habitat is found only when wetland vegetation achieves full growth potential associated with perennial flowing water. This vegetation is an important resource need for the New Mexico meadow jumping mouse because it provides vital food sources (insects and seeds), as well as the structural material for building day nests that are used for shelter from predators. New Mexico meadow jumping mice must have rich, abundant food sources during the summer so they can accumulate sufficient fat reserves to survive their long hibernation period. In addition, individual jumping mice also need intact upland areas (areas up gradient and beyond the floodplain of rivers and streams) adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter. Some uncertainty exists about the particular location of hibernation sites relative to riparian areas.

These suitable habitat conditions need to be in appropriate locations and of adequate sizes to support healthy populations of the New Mexico meadow jumping mouse. Historically, these wetland habitats would have been in large patches (movements of 200 to 700 meters (m) (656 to 2,297 feet (ft)) to disperse to other habitat patches within stream segments) located intermittently along long stretches of streams. Connectivity between patches of suitable habitat is necessary to facilitate daily and seasonal movements, and dispersal to increase the likelihood of long-term viability of jumping mouse populations. The ability of New Mexico meadow jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated (the loss of a population or a species from a particular geographic region). Counting individual mice to assess population sizes is very difficult because the subspecies is trap-wary and hibernates for an extended time; thus, data are unavailable. We can best measure population health by the size of the intact, suitable habitat available.

Our assessment uses the best available information to estimate the minimum length of specific stream reaches or segments of ditches and canals, and the corresponding suitable habitat patch sizes that we think will provide a high likelihood of long-term persistence for the New Mexico meadow jumping mouse. Because the subspecies has limited daily and seasonal movements, dense riparian herbaceous habitat along streams, ditches, and canals needs to be of sufficient length to support large population sizes and multiple local populations dispersed throughout specific waterways. This continuous spatial arrangement is necessary to support breeding, nonbreeding, and daily and seasonal movements of New Mexico meadow jumping mice.

In considering the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events (such as floods or wildfire), we estimate that resilient populations of jumping mice need connected areas of suitable habitat in the range of at least about 27.5 to 73.2 hectares (ha) (68 to 181 acres (ac)), along 9 to 24 kilometers (km) (6 to 15 miles (mi)) of flowing streams, ditches, or canals. The minimum area needed is given as a range due to the uncertainty of an absolute minimum and because local conditions within drainages will vary. This distribution and amount of suitable habitat would allow for multiple subpopulations of New Mexico meadow jumping mice to exist along drainages and would provide for sources of recolonization if some areas were extirpated due to disturbances. The suitable habitat patches must be relatively close together, no more than about 100 m (330 ft) apart, because the New Mexico meadow jumping mouse has limited movement and dispersal capacity for natural recolonization. Rangewide, we determined that the New Mexico meadow jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic management areas. This number and distribution of resilient populations is expected to provide the subspecies with the necessary redundancy and representation to provide for viability.

The New Mexico meadow jumping mouse life history (short active period, short lifespan, low fecundity, specific habitat needs, and low movement and dispersal ability) makes populations highly vulnerable to extirpations when habitat is lost and fragmented. Based on historical (1980s and 1990s) and current (from 2005 to 2012) data, the distribution and abundance of the New Mexico meadow jumping mouse has declined significantly rangewide. The majority of local extirpations have occurred since the late 1980s to early 1990s, as we found about 70 formerly occupied locations are now considered to be extirpated.

Since 2005, researchers have documented 29 remaining populations spread across the 8 geographic management areas (2 in Colorado, 15 in New Mexico, and 12 in Arizona). Nearly all of the current populations are isolated and widely separated, and all of the 29 populations located since 2005 have patches of suitable habitat that are too small to support resilient populations of New Mexico meadow jumping mouse. None of them are larger than the needed 27.5 to 73.2 ha (68 to 181 ac), and over half of them are only a few acres in size. In addition, 11 of the 29 populations documented as extant since 2005 have been substantially compromised since 2011 (due to water shortages, excessive grazing, or wildfire and postfire flooding), and these populations could already be extirpated. Seven additional populations in Arizona may also be compromised due to postfire flooding following recent large wildfires. For example, the population at Sugarite Canyon State Park has been significantly impacted since the 2011 Track Wildfire (Frey and Kopp 2013, entire; Service 2013c, entire). Additionally, no New Mexico meadow jumping mice were captured at Bosque del Apache National Wildlife Refuge in 2013, despite intensive surveys within suitable habitat (Frey 2013, entire; Service 2013, entire; 2013a, entire; 2013b, entire). At this rate of population extirpation (based on known historical population losses and possible recent population losses) the probability of persistence of the subspecies as a whole is severely compromised in the near term.

Four of the eight geographic management areas have two or more locations known to be occupied by the New Mexico meadow jumping mouse since 2005, but all are insufficient (too small) to support resilient populations. The remaining four geographic management areas each have only one location of the New Mexico meadow jumping mouse known to be occupied since 2005, and each population is insufficient (too small) to be resilient. Therefore, although researchers have some uncertainty about population sizes of extant localities, the New Mexico meadow jumping mouse does not currently have the number and distribution of resilient populations needed to provide the needed levels of

redundancy and representation (genetic and ecological diversity) for the subspecies to demonstrate viability.

We next analyzed the past, present, and likely future threats (causes and effects) that may put New Mexico meadow jumping mouse populations at risk of future extirpation. Because the New Mexico meadow jumping mouse requires such specific suitable habitat conditions, populations have a high potential for extirpation when habitat is altered or eliminated. In addition, because of the current conditions of isolated populations, when localities are extirpated, there is little or no opportunity for natural recolonization of the area due to the subspecies' limited movement and dispersal capacity.

We found a significant reduction in occupied localities likely due to cumulative habitat loss and fragmentation across the range of the New Mexico meadow jumping mouse. The past and current habitat loss has resulted in the extirpation of historical populations, reduced the size of existing populations, and isolated existing small populations. Ongoing and future habitat loss is expected to result in additional extirpations of more populations. The primary sources of current and future habitat losses include grazing pressure (which removes the needed vegetation) and water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from scouring floods, loss of beaver, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

These multiple sources of habitat loss are not acting independently, but produce cumulative impacts that magnify the effects of habitat loss on New Mexico meadow jumping mouse populations. Historically, larger connected populations of New Mexico meadow jumping mice would have been able to withstand or recover from local stressors, such as habitat loss from drought, wildfire, or floods. However, the current condition of small populations makes local extirpations likely more common. In addition, the isolated state of existing populations makes natural recolonization of impacted areas highly unlikely or impossible in most areas.

Considering the subspecies' biological status now and its likely status into the future, without active conservation (i.e., grazing management and water management) existing populations are vulnerable to extirpation (at least 11 have already undergone substantial impacts since 2011) and, therefore, the subspecies as a whole is currently at an elevated risk of extinction. None of the 29 populations known to exist since 2005 are of sufficient size to be resilient. Assuming this rate of population loss continues similar to recent years, the number of populations could be severely curtailed in the near term, eliminating the level of redundancy needed to withstand catastrophic drought and wildfire, along with the additive impacts of multiple threats. In addition to past sources of habitat loss, ongoing grazing, water shortages, and high-impact wildfire (the latter two exacerbated by climate change) will continue to put all of the remaining locations at considerable risk of extirpation in the near-term (between now and the next 10 years) and increasing over the long term. In considering the needed level of representation, while sufficient diversity likely still exists across the eight geographic management areas, the subspecies representation is relatively low because none of these geographic management areas currently have resilient populations. Therefore, we conclude that the overall probability of persistence is low in the near term and decreasing in the future due to the lack of adequate resiliency, redundancy, and representation.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule during a comment period that opened on June 20, 2013 (78 FR 37363), and closed on August 19, 2013. We contacted appropriate Federal and State agencies, tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. During the comment period, a newspaper notice inviting general public comment was published in the Albuquerque Journal. On August 15, 2013, we also held an informational meeting in Durango, Colorado, after receiving requests from interested parties. We did not receive any requests for a public hearing.

During the comment period, we received 24 comment letters, including 3 peer review comment letters, addressing the proposed listing of the New Mexico meadow jumping mouse. In this final rule, we address only the comments regarding the proposed listing of the New Mexico meadow jumping mouse. Comments addressing the proposed critical habitat designation will be fully addressed in a separate rulemaking action, and published in the **Federal Register** at a later date. All substantive information provided during the comment period has either been incorporated directly into this final determination, the SSA Report, or addressed below.

Comments From Peer Reviewers

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise that are familiar with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from three of the four peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of the New Mexico meadow jumping mouse. All three of the peer reviewers agreed that the information presented in the proposed rule to list the New Mexico meadow jumping mouse as an endangered species is scientifically sound; that the assumptions, analyses, and conclusions are well reasoned; and that the information is complete and the best available, and the risks or threats to the subspecies are not undervalued. In addition, two of the three peer reviewers provided clarifications and suggestions to improve the final rule to list the New Mexico meadow jumping mouse as endangered. These comments are addressed in the following summary and incorporated into the final rule as appropriate.

(1) *Comment:* New information documents the possible extirpation of the Bosque del Apache National Wildlife Refuge population (Frey 2013, entire); the continued loss of New Mexico meadow jumping mice and habitat from the 2011 Track Wildfire in Sugarite Canyon (Frey and Kopp 2013, entire); additional survey efforts within the Sacramento Mountains that failed to document any new populations (Frey 2013c, entire); and new genetic data that continues to support the validity of the New Mexico meadow jumping mouse as a subspecies and its imperiled status (Malaney *et al.* 2012, entire; Malaney and Cook 2013, entire).

Our Response: We have incorporated this new information in the SSA Report (see 4.3 Population Estimates and Status in the SSA Report; Service 2014, entire). The data continue to support our determination that the subspecies is endangered.

(2) *Comment:* We received comments pertaining to dispersal distances. One suggestion, to plan for the

interconnectivity of populations, was that the Service should consider dispersal distances from studies on the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) of up to 4.3 km (2.7 mi), whereas another suggestion found our characterization of dispersal distances and home range sizes of the New Mexico meadow jumping mouse appropriate.

Our Response: Schorr (2003, p. 10; 2012, p. 1279) did report the Preble's meadow jumping mouse can move up to 4.3 km (2.7 mi). However, as stated in the SSA Report (Service 2014, entire), studies indicate that the New Mexico meadow jumping mouse does not appear to travel as great a distance as the Preble's meadow jumping mouse. Further, movement data is available on the New Mexico meadow jumping mouse. The maximum distance travelled between two successive points by all radio-collared jumping mice on Bosque del Apache National Wildlife Refuge was 744 m (2,441 ft), but most regular daily and seasonal movements were less than 100 m (328 ft) (Frey and Wright 2012, pp. 16, 109; Figure 9). See 2.6 Movements and Home Range in the SSA Report for additional information.

The conservation of New Mexico meadow jumping mice should plan for interconnectivity between populations using movement distances that are likely more common, rather than the maximum possible distance (see Trakhtenbrot *et al.* 2005, p. 175). As opposed to using the phrase, ''maximum dispersal distance'' in the draft SSA Report, we have clarified this as the distance between patches of suitable habitat to provide for population connectivity for the New Mexico meadow jumping mouse. In the SSA Report, we found that appropriately sized patches of suitable habitat should be no more than about 200 m (656 ft) apart within waterways, which would encompass the majority of regular (daily and seasonal) movements of individuals.

(3) *Comment:* The proposed rule and SSA Report provide virtually no information on the historical (pre-1980) distribution of the New Mexico meadow jumping mouse. These reports use only two time periods, historical (1980 to 1999) and current records (2005 forward). Almost no records of the subspecies obtained prior to 1980 were included in the SSA Report. The distribution and status of the 1980 to 1999 period was likely already significantly compromised.

Our Response: While the historical and current distributional data for the New Mexico meadow jumping mouse is categorized into two time periods in the SSA Report (Service 2014, entire), we did include all known distribution records. While we did not provide a map or table detailing the pre-1980 distribution of the subspecies in the SSA Report, we summarized the comprehensive reports of the New Mexico meadow jumping mouse's historical range and distribution (i.e., Frey 2008c, entire; Hafner *et al.* 1981). These authors (Frey 2008c, pp. 35, 46; Hafner *et al.* 1981, pp. 501–502) reported that the historical range and distribution of the New Mexico meadow jumping mouse likely included riparian wetlands along the Sangre de Cristo and San Juan Mountains from southern Colorado to central New Mexico and into parts of the White Mountains of Arizona.

We found no capture records of jumping mice between 1996 and 2005. Surveys conducted since 2005 documented locations where the subspecies was historically present, but is now apparently absent or at levels too low for detection. Based on this information and previous reviews, we continue to find that the comparison between historical (1980 to 1999) and current New Mexico meadow jumping mouse records (2005 forward) is appropriate and the pre-1980 records were sufficiently considered and incorporated in the SSA Report.

The Service agrees that the distribution and status of the subspecies was compromised by 1999. However, the Service's analysis of the five factors threat analysis listed in section 4(a)(1) of the Act includes the consideration of present threats and threats anticipated into the near future. We evaluated whether the subspecies is in danger of extinction throughout all or a significant portion of its range (endangered) or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (threatened).

Comments From Federal Agencies

(4) *Comment:* Snap traps have a higher capture success rate than live traps. As such, historical data collected by Morrison should not be compared with current data collected using nonlethal means.

Our Response: As noted in the SSA Report, use of live traps for inventory and monitoring are preferable, because some New Mexico meadow jumping mouse populations are likely extremely small, and killing and removal of even a few individuals from the population using snap traps could be detrimental. Further, the Service is required to use the best available scientific and commercial data. Data collected using live traps were not designed to estimate population size, but, to locate populations (Morrison 1988, pp. 47, 52; 1989, p. 3; 1990, p. 138; 1991, pp. 3–4). Frey (2005a, p. 68; 2011, p. 9; 2013d, pp. 24, 28) recommended targeted survey efforts to determine presence or absence of jumping mice should be 400 to 700 trap-nights over 3 consecutive nights using Sherman live traps baited with sweet grain mixture. Although Morrison used both Sherman and snap traps, these efforts resulted in locating populations (1988, pp. 47, 52; 1991, pp. 3–4). Consequently, we believe comparing data from Morrison's studies to current information on population presence is valid.

(5) *Comment:* Some surveys have not been completed on areas that contained suitable habitat because they were deemed too small or disjunct; yet, the Lincoln National Forest recently documented presence of the New Mexico meadow jumping mouse in areas that were thought to be ''too small.''

Our Response: The Service does not have any records documenting the presence of the New Mexico meadow jumping mouse in areas that were considered too small or disjunct on the Lincoln National Forest or other areas. The information the Service has indicates the Lincoln National Forest has only documented the New Mexico meadow jumping mouse in two new areas, Cox Canyon and Mauldin Spring in Wills Canyon (United States Forest Service (USFS) 2012h, pp. 2–3, 2013a, entire), since Frey (2005, entire) completed surveys. The Cox Canyon site was surveyed in 2005 by Frey (2005, pp. 9, 20, 33), with no New Mexico meadow jumping mice captured at the time, likely because no suitable habitat was present. However, in 2012, New Mexico meadow jumping mice were captured at Cox Canyon, following the cessation of grazing for 2 years (USFS 2012h, pp. 2–4; Service 2012d, p. 2; U.S. Army Corps of Engineers 2012, entire; 2012a, entire). The Mauldin Spring area was not deemed to be too small during Frey's 2005 surveys, but is located in a remote area over 0.4 mi (0.6 km) from a road.

(6) *Comment:* Some sites on the Lincoln National Forest that had New Mexico meadow jumping mice in the 1980s (Morrison 1989, entire) have not been surveyed recently. The presence of New Mexico meadow jumping mice was confirmed in these areas in the 1990s by Ward (2001) and there is a still a high potential for New Mexico meadow jumping mice to be present. The most recent trapping efforts conducted on the Lincoln National Forest have

demonstrated that the New Mexico meadow jumping mouse is present.

Our Response: Since 2005, all of the previously occupied sites on USFS lands from the 1980s have been resurveyed. The USFS did not provide information on who conducted the recent trapping efforts or the specific sites from the 1980s that were not surveyed. However, since 2005, we are aware of the following survey efforts on the Lincoln National Forest: (1) Frey (2005a, entire (2,375 trap nights of effort) and 2013c, entire (1,280 trap nights of effort)); and (2) USFS (2010, entire (1,310 trap nights of effort); 2012h, entire (3,480 trap nights of effort); and 2013, entire (2,494 trap nights of effort)). Through these surveys, all of the historical Morrison (1989, entire) sites on public lands and other areas that contained potentially suitable habitat were surveyed (Frey and Malaney 2009, p. 33; USFS 2010, entire; 2012h, entire; 2013, entire). Frey (2005, p. 38) only found the New Mexico meadow jumping mouse present at two historical locations, Silver Springs and Agua Chiquita. The Lincoln National Forest (2012h, entire; 2013a, entire) found the New Mexico meadow jumping mouse present at two additional locations, Cox Canyon and Mauldin Spring. Only the Cox Canyon population found by the USFS was a historical location reported by Morrison (1989, entire). Ward ((2005, entire) cited by Frey 2005a, pp. 9, 22, 73; Frey and Malaney 2009, p. 44)) confirmed New Mexico meadow jumping mice at only one location (Mauldin Spring) in the 1990s, and there is no longer suitable habitat present at this location. Consequently, all sites with suitable habitat on the Lincoln National Forest have been surveyed since 2005, and only 4 locations (3 historical and 1 new) have been confirmed as extant.

(7) *Comment:* What will the delisting factors be for the New Mexico meadow jumping mouse?

Our Response: We have not developed delisting criteria yet for the New Mexico meadow jumping mouse. Now that the subspecies is listed as endangered, a draft and final recovery plan will be prepared. The recovery plan will identify site-specific management actions, including measurable criteria that determine when the subspecies may be downlisted or delisted, and methods for monitoring recovery progress.

(8) *Comment:* The term ''excessive grazing'' is never clearly defined in the SSA Report or proposed rules.

Our Response: Our use of the phrase excessive grazing is in the context of suitable New Mexico meadow jumping mouse habitat. Excessive ungulate grazing in this context occurs when there is an inadequate amount of tall dense herbaceous riparian vegetation to support the New Mexico meadow jumping mouse (see ''Specific Microhabitat Requirements'' section in the SSA Report; Service 2014, entire). Indications of excessive grazing are: trampling of streambanks, loss of riparian cover, soil compaction, modification of riparian plant communities, lowering water tables, and the resulting changes to New Mexico meadow jumping mouse microhabitat. Excessive grazing in riparian areas can result in changes to the hydrology and soils, leading to downcutting or headcutting, which can further degrade New Mexico meadow jumping mouse habitat.

(9) *Comment:* There is no mention of whether feral hogs or wild horses are considered threats to the New Mexico meadow jumping mouse. What would be expected and allowed for trapping and removal of these animals?

Our Response: The USFS did not provide any specific information on feral hogs or wild horses for us to consider and we did not receive any information regarding this topic during the public comment period. We have no information concerning feral hogs or wild horses currently occurring within New Mexico meadow jumping mouse habitat. There are confirmed feral hog populations in Otero and Socorro Counties, New Mexico, but there is no information indicating their presence in New Mexico meadow jumping mouse habitat or of impacts to the subspecies (APHIS 2010, p. 10; USFS 2011d). We acknowledge that both animals have the potential to impact riparian areas and New Mexico meadow jumping mouse habitat, but have no data on if or where this is occurring or how much habitat may be affected now or in the future.

Under Section 7(a)(1) of the Act, Federal agencies, such as the USFS, could utilize their existing authorities by carrying out programs such as the removal of feral hogs or wild horses for the conservation of the New Mexico meadow jumping mouse.

(10) *Comment:* What will the herbicide use or non-use expectation be for non-native invasive plant control?

Our Response: Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. If a Federal agency proposes to use herbicide to control nonnative plants and it may affect the New Mexico meadow jumping mouse or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The prohibitions of section 9(a)(2) of the Act make it illegal for any person to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. A list of activities that could potentially result in a violation of section 9 of the Act is in this final rule under Available Conservation Measures section. This list is not comprehensive. The Service can also work with private landowners to provide technical assistance or we may issue permits for incidental take of a species in connection with otherwise lawful activities.

(11) *Comment:* What will be allowable for piping water from streams or springs to water troughs for wildlife or cattle? Will travel corridors that assist in moving cattle from winter to summer pastures be allowed across streams so that cattle can move and access water troughs?

Our Response: If a Federal agency implements, authorizes, or funds water use or livestock grazing activities that may affect the New Mexico meadow jumping mouse, then they must enter into consultation with the Service. Consultation would analyze and determine to what degree the subspecies is impacted by the proposed action. Each consultation is evaluated on a case-by-case basis following our regulations (50 CFR part 402). See our response to comment (10) above regarding the prohibitions of section 9(a)(2) of the Act.

(12) *Comment:* How does the Service intend to manage livestock grazing and associated actions such as fencing riparian areas and providing water points?

Our Response: The Service does not intend to manage livestock grazing or associated actions. Rather the Service will work with Federal agencies during consultation under section 7 of the Act, to ensure that any actions they fund, authorize, or carry out would not jeopardize the continued existence of the New Mexico meadow jumping mouse. These section 7 consultations

will determine whether the management of a Federal livestock permit jeopardizes the continued existence of the New Mexico meadow jumping mouse. Our regulations require that we use the best scientific and commercial data available for consultations (50 CFR 402.14(d)). This information is used to update and analyze the effects of past and ongoing human and natural activities or events that have led up to the current status of the subspecies and its habitat. Consequently, any requirements to minimize the effects of livestock grazing and associated activities will be appropriately applied through section 7 provisions 7(a)(1) and 7(a)(2), which can be changed if new information reveals effects to the subspecies or critical habitat in a manner or extent not previously considered (see 50 CFR 402.16(b)).

The Service can also work with private landowners to provide technical assistance or we may issue permits for incidental take of a species in connection with otherwise lawful activities.

(13) *Comment:* Roads are not listed as a factor affecting the New Mexico meadow jumping mouse; however, dirt roads can cause indirect effects through sedimentation or by impeding spring flows.

Our Response: We acknowledge that it is possible for roads to indirectly or directly impact riparian areas, springs, or New Mexico meadow jumping mouse habitat. However, the USFS did not provide any specific information for us to consider and the best available scientific and commercial data does not indicate how or where dirt roads may be causing indirect effects to New Mexico meadow jumping mouse habitat through sedimentation or by impeding spring flows now or in the future.

Comments From States

(14) *Comment:* A lack of probabilistic sampling designs and estimation of detection probabilities for New Mexico meadow jumping mouse survey efforts prevents using occupancy data in determining distribution and populations trends through time.

Our Response: Counting individual mice to estimate population sizes is very difficult and data are currently unavailable. Recent surveys have relied on detection or nondetection (sometimes called presence or absence) data to determine whether New Mexico meadow jumping mice persist in areas that contained historical populations or areas that currently contain suitable habitat. As we found in the SSA Report, species-specific surveys have been useful for determining occupancy, but are limited in their usefulness for capture probabilities and, therefore, estimating population size. We recognize that detection or nondetection data may not provide conclusive evidence of the true population status at each of the 29 locations found since 2005; however, the failure to detect New Mexico meadow jumping mice in areas where they were located in the 1980s and loss of previously suitable habitat at over 70 historical sites since this period are likely representative of real population extirpations.

As a result, detection or nondetection surveys represent the best scientific and commercial data we have regarding the rangewide distribution and persistence of populations. Based on these data, we find that the New Mexico meadow jumping mouse has declined sharply due to the extirpation of populations and is generally restricted to small, isolated patches of suitable habitat. We acknowledge that research is needed to determine the size and demographics of remaining populations, but the best scientific and commercial data available on the threats to this subspecies is sufficient to make a listing determination (For a full discussion, see Summary of Factors Affecting the Species and Determination sections, below).

(15) *Comment:* Without conducting rigorous experiments, it is scientifically indefensible and speculative to attribute the loss of New Mexico meadow jumping mouse habitat to livestock grazing and recreation. There were no experimental controls used to make comparisons and too many extraneous variables to conclude that these activities were the cause of habitat and population loss.

Our Response: We agree that it would be useful to have more information on the New Mexico meadow jumping mouse. However, the best available scientific and commercial data indicate what the habitat requirements of the mouse are, including vegetation type and size. Further, it is evident that livestock grazing and recreational activities can negatively impact the required vegetation for mouse habitat, without doing further experimentation. In fact, such experimentation with a scarce, potentially endangered species may further imperil the species. In the SSA Report (Service 2014, entire), we present the best commercial and scientific data available, albeit observational evidence, to conclude that livestock grazing, recreation, and other causal factors have resulted in the alteration and destruction of New Mexico meadow jumping mouse habitat.

(16) *Comment:* The Service assumed a correlation between habitat patch size and New Mexico meadow jumping mouse populations without providing documentation.

Our Response: We acknowledge that the best available information regarding New Mexico meadow jumping mouse population abundance is not complete. However, because the New Mexico meadow jumping mouse requires specialized habitat requirements to support its life-history needs, they would not be found in areas that lack suitable habitat. Consequently, we estimated the size of intact, suitable habitat surrounding capture locations of jumping mice found since 2005 as a the best proxy to evaluate population viability. We think this is a reasonable approach, because it is probable that small areas of suitable habitat can support only a limited number of New Mexico meadow jumping mice, and small population sizes are more vulnerable to extirpation than large population sizes. Moreover, studies conducted on the similar Preble's meadow jumping mouse found smaller patches of habitat are unable to support as many Preble's as larger patches of habitat (Service 2003, p. 11). Schorr (2012, p. 1279) suggested that habitat connectivity and the incorporation of immigrants may be vital to the persistence of Preble's meadow jumping mouse populations, indicating that degradation of surrounding habitat and geographic isolation likely increase the vulnerability of some populations. Therefore, our conclusion that small isolated areas of New Mexico meadow jumping mouse habitat are expected to have small populations with a high risk of extinction is based upon Preble's meadow jumping mouse studies, general conservation biology principles, and metapopulation theory (Hanski 1999, entire; Service 2003, entire).

(17) *Comment:* A lack of knowledge about New Mexico meadow jumping mouse population sizes and dynamics should be a concern to the Service. Determinations of endangered or threatened status should use the best available scientific and commercial information and should not be based upon conjecture.

Our Response: It is often the case that data is limited for rare species, but we have used the best available scientific and commercial data. As we found in the SSA Report (Service 2014, entire), jumping mice population sizes are assumed to be naturally regulated by the amount of suitable habitat available to support them. Jumping mice populations probably expand and contract in response to fluctuations in

riparian vegetation from flooding, inundation, drought, and the resulting changes in the extent and location of floodplains and river channels (Service 2002, pp. D13–D15). For populations to persist over the long term, habitat patches need to be of sufficient size and configuration to accommodate these fluctuations in habitat availability. When the suitable habitat patches are small and isolated, periods of drought or other disturbances can cause New Mexico meadow jumping mouse habitats to shrink or become fragmented and lead to reductions in population sizes or even extirpation of New Mexico meadow jumping mouse populations. Therefore, New Mexico meadow jumping mice need suitable habitat sufficient in size to support the natural fluctuations of populations as they expand and contract, to reduce the risk of local extirpation and extinction, and to attain the densities necessary to persist through catastrophic events and seasonal fluctuations of food resources (i.e., maintain healthy resilient populations). Based on our review of the best available scientific and commercial data, we conclude that the New Mexico meadow jumping mouse is currently in danger of extinction throughout all of its range, and therefore, meets the definition of an endangered species (see Determination, below). The analysis used to make this decision was subject to peer-review to ensure sound science and decisionmaking. See 2.7.2 Habitat Patch and Population Sizes in the SSA Report for additional information on this subject.

(18) *Comment:* The SSA Report contains ''substantial areas of uncertainty'' and is not a ''thorough assessment.'' The Service should not make assumptions; assumptions are not scientific data and should not be used in a listing determination.

Our Response: We did not base our listing decision on the areas of uncertainty. The main areas of uncertainty in our analysis include the minimum amount of suitable habitat needed to support resilient populations and the number of redundant populations needed to provide for adequate redundancy and representation. The proposed rule and SSA Report (Service 2014, entire) were peer reviewed, and found to be an accurate representation of the status of the New Mexico meadow jumping mouse. The peer reviewers agreed that the scientific and commercial data available on the threats to this subspecies is adequate to make a listing determination. As a result, we have found that the New Mexico meadow jumping mouse is presently in danger of extinction throughout all of its range based on the severity of threats.

(19) *Comment:* The SSA Report lists livestock grazing as a threat to the New Mexico meadow jumping mouse within Lake Dorothey State Wildlife Area in Colorado; however, the area is not grazed by domestic livestock and there are no plans to begin such a use.

Our Response: We understand that the Lake Dorothey State Wildlife Area in Colorado is closed to domestic livestock grazing, but unauthorized livestock use has occurred. The Lake Dorothey State Wildlife Area is in the Sugarite Canyon in Colorado and New Mexico, which burned in the 2011 Track Wildfire. The Lake Dorothey State Wildlife Area borders Sugarite Canyon State Park in New Mexico. The fire resulted in downed fences between private lands and Sugarite Canyon State Park, allowing cattle to access the area. Trespass cattle that entered Sugarite Canyon State Park in New Mexico accessed the Lake Dorothey State Wildlife Area. Employees of Sugarite Canyon State Park noted at least 30 trespass cattle within their park (Service 2013, pp. 1–2; Wildermuth 2012, entire). Trespass cattle have been consistently observed within Soda Pocket Creek Campground and Segerstrom Creek of the Sugarite Canyon State Park, sites that were previously occupied by the New Mexico jumping mouse (Service 2012c, pp. 2, 10; 2013, pp. 1–2). We have clarified this information in the SSA Report.

(20) *Comment:* The SSA Report lists livestock grazing and development as threats within the Sambrito Creek Geographic Management Area in Colorado. This area is within Navajo State Park and is not grazed by domestic livestock and unlikely to be developed due to ownership by the Bureau of Reclamation and management by Colorado Parks and Wildlife.

Our Response: We understand that Navajo State Park is closed to domestic livestock grazing, but unauthorized livestock use has occurred repeatedly at several locations within the geographic management area (Bureau of Reclamation 2008, p. 3–62; Colorado Natural Heritage Program 2006, p. 261). This unauthorized use is due to the lack of fences, incomplete fences, and poorly constructed or maintained fences. Areas with high incidences of livestock trespass include the Miller Mesa-Sambrito area, and the upper river arms (Bureau of Reclamation 2008, p. 3–62), which also includes New Mexico meadow jumping mouse locations and proposed critical habitat.

Sambrito Creek is surrounded on three sides by privately owned lands that are partially developed, including agricultural fields, pastures, residences, and oil and gas wells (Colorado Natural Heritage Program 2006, p. 261). We acknowledge that the occupied area of Sambrito Creek is within Navajo State Park; however, the potential for further residential or oil and gas development on the surrounding private lands is high, which would likely result in less hydrologic input, and, therefore, shrinking and drying of the wetland area (Colorado Natural Heritage Program 2006, p. 261) and New Mexico meadow jumping mouse habitat.

(21) *Comment:* The description of activities that could result in take under section 9 is too vague. The Service should provide specific dates for the active season of the jumping mouse. Further, the Service should clarify whether destruction of habitat by any means is illegal, which implies that a land owner would be responsible for controlling against natural modifications such as browsing by native wildlife, flooding, drought, wildfire, or the diversion of water rights, wildfire restoration, grazing, and spread of invasive plants, even if these actions were occurring on other properties within the watershed.

Our Response: The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 9 applies to persons that carry out or attempt to carry out the actions listed above, not actions such as weather events and native wildlife foraging.

The intent of describing potential section 9 violations is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of a listed species. We have clarified the list of potential section 9 violations below (see Available Conservation Measures). These may include, but are not limited to, the alteration or removal of specific microhabitat components (as described in this rule or within the May 2013 SSA Report (Service 2013) through new construction, livestock grazing, or

dredging or filling in streams or wetlands.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities (including but not limited to grazing, construction, and wetland alterations). Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Service's Ecological Services Field Office in the State where the proposed activities will occur.

We have generally defined the active season of the New Mexico meadow jumping mouse in the SSA Report (Service 2014, entire) as May through October.

(22) *Comment:* The size and stream length range of estimates for resilient populations of New Mexico meadow jumping mice have no citations, or justification of how these were determined.

Our Response: In the SSA Report (Service 2014, entire), we estimate how much suitable habitat is likely necessary to support healthy, resilient populations of the New Mexico meadow jumping mouse by considering information regarding the Preble's meadow jumping mouse and information from Frey (2006d, pp. 18–21; 2011, p. 29; 2012b, p. 16) for the New Mexico meadow jumping mouse. For examples, the Recovery Team for the Preble's meadow jumping mouse recommended that at least several medium-sized populations (at least 500 mice) should be protected with each population distributed along a 14- to 26-km (to 16-mi) network of connected streams whose hydrology supports riparian vegetation (Service 2003, pp. 24–25). Following fires, we found that, depending on fire intensity and the subsequent ash and debris flow within stream reaches, New Mexico meadow jumping mouse populations can be significantly affected and likely extirpated, even when 15 km (9 mi) of continuous suitable habitat existed prior to the fire (Sugarite Canyon; Frey 2006d, pp. 18–21; 2012b, p. 16). Therefore, we estimate that stream lengths should be at least two to three times of those characterized by Frey (2011, p. 29) in order to have adequate population sizes necessary to persist through these types of stochastic and catastrophic events. After reviewing this information, we conclude that current New Mexico meadow jumping mouse populations need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of continuous suitable habitat to support viable populations of jumping mice with a high likelihood of long-term persistence. See 2.7.2 Habitat Patch and Population Sizes in the SSA Report for additional information on this subject.

Comments From the Public

(23) *Comment:* Is there observer bias associated with using primarily information from the Frey surveys and conclusions? Have there been any other groups or individuals providing data or information on the New Mexico meadow jumping mouse?

Our Response: The Act requires that we identify species of wildlife and plants that are endangered or threatened based on the best scientific and commercial data available. We did not primarily use information from Frey, but relied on a variety of information including State wildlife agencies, other researchers, and Federal agencies (e.g., see Museum of Southwestern Biology 1960, entire; 2007, entire; 2007a, entire; Findley *et al.* 1975, pp. 271–272; Hafner *et al.* 1981, pp. 501–502; Hink and Ohmart 1984, p. 96; Dodd 1987, entire; Morrison 1988, pp. 9–28; 1991, pp. 14–16; 1992, pp. 308–310; 2012, entire; VanPelt 1993, p. 8; Najera 1994, entire; Jones 1999, entire; Frey 2003, pp. 38–39; 2005a, pp. 6–10, 58–59; 2006, p. 54; 2006c pp. 1–2; 2006d, pp.65–78; 2007b, pp. 9–13, 25–27; 2008, p. 3; 2008c, entire; 2010, entire; 2011, entire; 2012a, entire; 2012, entire; 2012e, entire; 2013, entire; 2013a, entire; Frey *et al.* 2007a p. 1; Frey and Malaney 2009, pp. 33–34; Frey and Kopp 2013, entire; Frey and Wright 2012, pp. 22–23; Underwood 2007, pp. 1–4; USFS 2009, entire; 2012h, entire; 2013a, entire; AGFD 2012a, p. 3; Colorado Parks and Wildlife 2012, entire; 2013, entire; 2013a, entire; Malaney *et al.* 2012, entire; Service 2013, entire; 2013a, entire; 2013b, entire). Based on this information, we find there is unbiased and sound scientific and commercial data to reach our final determination that the species is endangered.

(24) *Comment:* The SSA Report indicates that the New Mexico meadow jumping mouse is difficult to capture because individuals are trap wary, but then uses the recent survey information to justify listing as endangered. This seems contradictory.

Our Response: Please see our responses to comments (4) and (14) above. Although the subspecies is difficult to capture, surveyors (Jones 1999, entire; Frey 2005a, pp. 6–10, 58–59; 2006d, pp. 65–78; 2007b, pp. 9–13, 25–27; 2008, p. 3; 2008c, pp. 36, 42; 2010, entire; 2011, entire; 2012, entire; Frey *et al.* 2007a, p. 1; Frey and Malaney 2009, entire; Museum of Southwestern Biology 2007, entire; 2007a, entire; Underwood 2007, entire; Frey and Wright 2012, pp. 22–23; Forest Service 2009, entire; 2010, p. 2; 2012a, entire; 2012b, entire; 2012h, entire; Colorado Parks and Wildlife 2012, entire, 2013, p. 1) have been able to provide information on presence or absence in specific areas, and using this best available information, we are able to make a status determination for the New Mexico meadow jumping mouse. Since 2003, New Mexico meadow jumping mouse surveys in New Mexico, Arizona, and Colorado involved 200 localities and 68,102 trap nights (over 100 historically occupied sites plus 136 localities that appeared to have the highest quality potentially suitable habitat) (see ''Current Records of Localities Found Since 2005'' in the SSA Report; Service 2014).

(25) *Comment:* Information is insufficient or lacking on the New Mexico meadow jumping mouse, and more research is needed prior to listing, including more surveys. The proposed rule and SSA Report are based on assumptions rather than the best scientific information available as required. Peer reviewing the information would ensure the listing decision and critical habitat determination are based on scientifically sound data, assumptions, and analyses.

Our Response: We acknowledge that additional study on some life-history aspects of the New Mexico meadow jumping mouse would be helpful, but as required by the Act, we based our proposal and this final rule on the best available scientific and commercial data. We requested new information on our June 20, 2013 (78 FR 37363; 78 FR 37328) proposed rule during the open public comment period. We reviewed information in our files and other available published and unpublished information, and we consulted with recognized species experts, State agencies, tribes, and other Federal agencies. Peer reviewers indicated that we used the best available science and our assessment correctly concluded the New Mexico meadow jumping mouse should be classified as an endangered species. We must make listing determinations on the basis of the best scientific and commercial information available at this time, and we may not delay our decision until more information about the subspecies and its habitat are available (see *Southwest*

Center for Biological Diversity v. *Babbitt,* 215 F.3d 58 (D.C. Cir. 2000)).

(26) *Comment:* Livestock grazing has been reduced over the last 20 years on many areas of the Apache-Sitgreaves National Forest, Arizona, due to listing the southwestern willow flycatcher (*Empidonax traillii extimus*), loach minnow (*Tiaroga cobitis*), Little Colorado spinedace (*Lepidomeda vittata*), and spikedace (*Meda fulgida*); however, the New Mexico meadow jumping mouse has declined during this same period. What other actions could have caused its decline?

Our Response: Please refer to the SSA Report (Service 2014, entire) for review of the past, present, and likely future threats (causes and effects) to New Mexico meadow jumping mouse populations in Arizona and throughout its range. We found the primary sources of past and future habitat losses are from grazing pressure, water management and use, lack of water due to drought, and wildfires. Current USFS forage utilization guidelines are 30 to 40 percent, meaning 60 to 70 percent of forage should not be removed by livestock (USFS 2005, p. 4; 2013, entire; Service 2005a, entire). This amount of utilization has limited the availability of adequate vertical cover of herbaceous vegetation and significantly affected New Mexico meadow jumping mouse habitat in areas that are not protected from livestock (i.e., outside of livestock exclosures). Current grazing practices in many areas of the Apache-Sitgreaves National Forest, Arizona, have resulted in the removal of dense riparian herbaceous vegetation that historically provided New Mexico meadow jumping mouse habitat and caused the loss of historical populations (Frey 2011, entire). Additional sources of habitat loss are likely to occur from scouring floods, loss of beaver, highway reconstruction, and unregulated recreation.

(27) *Comment:* Recreation is a greater threat to the New Mexico meadow jumping mouse populations within the Jemez Mountains, New Mexico than livestock grazing as it is practiced on the San Diego Allotment along the Rio Cebolla and Rio de las Vacas within the Jemez Mountains.

Our Response: Throughout the Rio Cebolla and Rio de las Vacas drainages, riparian habitat is fragmented and isolated as a result of both livestock grazing and recreation (USFS 2003, entire; 2004a, entire; Frey 2005a, pp. 25–29, 58–63, 67; Service 2012a, entire). Current grazing practices in many areas have resulted in the removal of dense riparian herbaceous vegetation that historically provided New Mexico meadow jumping mouse habitat and caused the loss of historical populations. For example, the New Mexico meadow jumping mouse has been extirpated entirely from 3 of 13 (Jemez Mountains, New Mexico) historical montane riparian sites over the last 2 decades (Frey 2003, entire; 2005a, entire; 2011, entire; 2012a, pp. 42, 46, 52; Frey and Malaney 2009, entire; USFS 2012h, entire; Figure 15). Importantly, the presence of a functioning livestock exclosure has been reported as the best predictor of New Mexico meadow jumping mouse occupancy in montane riparian areas (Frey 2005a, pp. 59–60; Frey and Malaney 2009, pp. 35, 37). However, livestock grazing continues to be documented within many of the fenced exclosures surrounding the recently documented New Mexico meadow jumping mouse populations when fencing was cut or not maintained, gates were open, or wildfire burned and eliminated fences, and cattle entered the area (Frey 2005a, pp. 25–26, 29, 36; 2006, p. 1; 2011, pp. 41–42; Colorado Natural Heritage Program 2006, p. 260; U.S. Bureau of Reclamation 2008, pp. 3–62; USFS 2007, p. 1; 2010, p. 2; 2011c, pp. 1–5; 2012h, p. 2; ADGF 2012a, entire; Service 2012a, pp. 1–2; 2012c, pp. 1, 6–8; 2012d, p. 2). See 5.1.1 Livestock Grazing and 5.1.10 Recreation in the SSA Report (Service 2014, entire) for additional detail on these threats.

Within the Jemez Mountains Geographic Management Area for the New Mexico meadow jumping mouse, specific forms of management (e.g., fencing of riparian areas) may be required through formal consultation with the Forest Service to provide areas containing functionally connected patches of currently suitable or restorable habitat. Management may also be needed to address livestock use, the reduction in the distribution and abundance of beaver, and recreational use.

(28) *Comment:* The SSA Report (Service 2014, entire) indicates that climate change and drought affect the New Mexico meadow jumping mouse. How would listing the subspecies affect these threats?

Our Response: The Service acknowledges that listing the subspecies as endangered cannot fully address some of the natural threats facing the subspecies (e.g., climate change and drought). However, climate change and drought can exacerbate other threats such as wildfire and grazing, and can lower the resiliency of populations to withstand other threats. Listing of species can focus attention on these other threats to improve the overall status and increase the likelihood that the New Mexico meadow jumping mouse can be recovered.

Once a species is listed as either endangered or threatened, the Act provides many tools to advance the conservation of listed species; available tools include recovery planning under section 4 of the Act, interagency cooperation and consultation under section 7, grants to the States under section 6, and safe harbor agreements and habitat conservation plans under section 10. In addition, recovery funds may become available, which could facilitate recovery actions (e.g., funding for additional surveys, management needs, research, captive propagation and reintroduction, monitoring) (see Available Conservation Measures, below). Because we are listing the New Mexico meadow jumping mouse as endangered, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, under to section 6 of the Act, the States of Arizona, Colorado, and New Mexico would be eligible for Federal funds to implement management actions that promote the protection and recovery of this subspecies. Information on our grant programs that are available to aid species recovery can be found at *http://www.fws.gov/grants.*

(29) *Comment:* A plan in the 1990s removed dispersed recreation and limited campsites along the East Fork of the Black River, Arizona. Is the subspecies threatened by other activities in this area?

Our Response: The commenter does not identify a specific plan for us to reference. As noted in the SSA Report (Service 2014, entire), the New Mexico meadow jumping mouse is also threatened by climate change, wildfire, flooding, loss of beaver, and recreation in this area (Please see the SSA Report, Table 3).

(30) *Comment:* Contrary to what is presented in the SSA Report (Service 2014, entire), the adverse impacts from livestock grazing, water diversion, and recreation were halted in Arizona in 1980s and 1990s when other species were listed as endangered.

Our Response: The commenter did not provide information demonstrating that livestock grazing, water diversion, and recreation are not threats to the New Mexico meadow jumping mouse in Arizona. The best scientific and commercial information demonstrates the continuing threats of livestock grazing, recreation, and other sources of

past and future habitat losses in Arizona. See the SSA Report for additional information.

We did identify water diversion as a threat to the New Mexico meadow jumping mouse in Arizona. However, reliance on such water sources for development and maintenance of suitable herbaceous riparian vegetation may be problematic because the availability (in quantity, timing, and quality) is often subject to dramatic changes based on precipitation and irrigation use patterns associated with water rights. Other recently located populations (e.g., Florida River, Sugarite Canyon, Coyote Creek in New Mexico) are located in areas where surface water is diverted into irrigation canals and ditches, rather than the natural flow remaining within the stream drainage (ADGF 2006, p. 473; Frey 2005a, p. 63; 2006d, p. 55; 2011, p. 19; U.S. Bureau of Reclamation 1995, entire). The suitable habitat along Sambrito Creek in Colorado is associated with wetlands that are fed by irrigation water return flows (Colorado Natural Heritage Program 2006, p. 261; U.S. Bureau of Reclamation 2008, pp. 3–23). These changes in hydrology degrade and eliminate potentially suitable New Mexico meadow jumping mouse habitat, to the point that so much water is being diverted in some streams that they no longer support an herbaceous zone of riparian habitat (Frey 2005a, p. 63; 2006d, p. 55).

(31) *Comment:* In the SSA Report, Figure 13 compares a grazed area to an ungrazed area. If a fire were to burn in the ungrazed area during drought conditions, the tall dense vegetation would burn completely, eliminating the riparian habitat and killing all of the New Mexico meadow jumping mice. Alternatively, the grazed area that lacks tall dense grass would not burn completely, suggesting grazing may be beneficial for the New Mexico meadow jumping mouse.

Our Response: Although the grazed area in Figure 13 is unlikely to burn completely, it does not provide suitable habitat for the New Mexico meadow jumping mouse, because grazing eliminated dense riparian vegetation. So, whether the grazed area burns or not, the subspecies will not be able to use this grazed area. Excessive livestock grazing has not only eliminated the fine fuel load that historically contributed to frequent low-intensity fires (see discussion in the SSA Report under ''Livestock Grazing'' section; Service 2014, entire)), but has also altered the suitability of habitat for the New Mexico meadow jumping mouse, which is a significant threat to the subspecies, demonstrated by Figure 13. Further, if the ungrazed portion burns and remains ungrazed this area will return to pre-burn vegetation conditions depicted in Figure 13, generally within a year.

(32) *Comment:* How would listing the New Mexico meadow jumping mouse complement or contradict consultation or recovery actions of other threatened or endangered species such as the southwestern willow flycatcher or Rio Grande silvery minnow (*Hybognathus amarus*)?

Our Response: Some native species that share ecosystems often face a suite of common factors that may be a threat to them, and ameliorating or eliminating these threats for one species will benefit multiple species, often with the implementation of similar management actions. Effective management of these threats often requires implementation of complementary conservation actions to enhance or restore critical ecological processes and native habitat, and provide for long-term viability of those species in their native environment. In some of the geographic management areas, we will likely consider the need to address other listed species in our future recovery planning efforts for the New Mexico meadow jumping mouse. This will also be the case for section 7 consultations when a proposed action affects multiple species.

(33) *Comment:* Trapping and livestock grazing are not contributing factors to loss of beaver ponds.

Our Response: Baker and Hill (2003, p. 303) indicated that beaver are highly vulnerable to overharvest from trapping because their slow rate of reproduction and delayed sexual maturity preclude reproduction as a means to offset intensive annual harvest. As noted in the SSA Report (see 5.1.6 Loss of Beaver of the SSA Report; Service 2014, entire), the decline and near elimination of beaver due to overharvesting is well documented (Naiman *et al.* 1988, entire; Baker and Hill 2003, p. 288; Crawford *et al.* 1993, p. 39). Moreover, beaver continue to be subject to extensive management and removal (U.S. Department of Agriculture, Animal and Plant Health Inspection Service 2011, entire; Wild 2011, p. 5).

Limiting factors for beaver populations are typically related to the availability of food resources (e.g., trees, tubers, roots, shoots, and many herbaceous plants) (Boyle and Owens 2007, p. 21). Intense herbivory by ungulates or livestock can disrupt beaver populations (Baker *et al.* 2005, p. 117) because grazing can reduce or eliminate adequate herbaceous and riparian plants that are required for beaver food. Sufficient food is necessary to sustain beaver populations. Beaver continue to be lost from across the range of the New Mexico meadow jumping mouse; therefore, we consider this another causative factor in the ongoing loss of suitable New Mexico meadow jumping mouse habitat now and into the future (Please see the SSA Report for further information).

(34) *Comment:* If the New Mexico meadow jumping mouse is listed as endangered, are private landowners obliged to follow the Act? Is this a taking of private property rights?

Our Response: Section 9 of the Act makes it illegal for anyone to ''take'' (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any of these actions) an endangered species (see section 9 of Available Conservation Measures, below). However, the mere promulgation of a regulation, like listing a species under the Act, does not take private property, unless the regulation on its face denies the property owners all economically beneficial or productive use of their land, which is not the case with the listing of this subspecies. Programs are available to private landowners for managing habitat for listed species, as well as permits that can be obtained to protect private landowners from the take prohibition when such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Private landowners may contact their local Service field office to obtain information about these programs and permits.

(35) *Comment:* There is a fixation on livestock grazing in the proposed rule and no consideration of other types of ungulate grazing such as feral horses or elk.

Our Response: In the SSA Report (Service 2014, entire, we found that livestock and elk grazing within New Mexico meadow jumping mouse habitat affects individual mice by reducing the availability of food resources (Morrison 1987, p. 25; Morrison 1990, p. 141; Frey 2005a, p. 59; 2011, p. 70). Cattle and sometimes elk, have contributed substantially to alterations of riparian ecosystems throughout the range of the New Mexico meadow jumping mouse. However, there is a strong tendency for livestock to congregate in riparian habitat, whereas elk may range farther from water sources and riparian areas than cattle (USFS 2006, pp. 76–77). Timing of livestock grazing also coincides with the active season of the New Mexico meadow jumping mouse. We note that grazing is only one of several concerns for the New Mexico meadow jumping mouse. Please see the SSA Report for further information. See

our response to comment (9) above for additional information on feral horses.

(36) *Comment:* Some of the information used in the SSA Report comes from documents that indicate the New Mexico meadow jumping mouse is ''endangered'' (e.g., Frey, J.K. 2006. Capture of the endangered New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) at Coyote Creek State Park, New Mexico. Frey Biological Research, Radium Springs, New Mexico). This report was produced prior to the Service considering the animal for endangered status. Because ''endangered'' was used in the title of the report, is there a potential for bias?

Our Response: Use of the term ''endangered'' in the Frey (2006) report does not indicate bias. The New Mexico meadow jumping mouse is classified as an endangered species under the New Mexico Wildlife Conservation Act of 1974 (i.e., State Endangered Species Act) (19 New Mexico Administrative Code 33.6.8). This is an entirely different process and statute than the Act. We adhered to the requirements of the Act in order to determine whether the New Mexico meadow jumping mouse meets the definition of an endangered species under the Act, based on our assessment of the five listing factors and using the best available scientific and commercial data.

(37) *Comment:* If the New Mexico meadow jumping mouse is listed as endangered, fuels treatments to reduce the risk of fire may be inhibited due to the complexity and additional time required to complete consultation with the Service. In this example, the Federal agency would likely reduce the size of the forest treatment (e.g., prescribed burn), or the project would be stopped altogether when the subspecies is listed.

Our Response: Listing the New Mexico meadow jumping mouse is unlikely to reduce proactive treatments necessary to alleviate the risk of catastrophic wildfire because the majority of treatments are likely to be confined to forested lands and not within riparian and adjacent upland habitat used by the species. However, the USFS or other Federal agency will need to determine whether any fuels treatments may affect the subspecies in accordance with section 7 of the Act. If a Federal agency funds, authorizes, or carries out an action that may affect the New Mexico meadow jumping mouse, the agency is required to consult with the Service. The regulatory requirements under the Act were determined by Congress to ensure that otherwise lawful actions that affect species listed under the Act are not likely to jeopardize the continued existence of those listed species. Consultations analyze and determine to what degree the species is impacted by a proposed action. Each consultation is evaluated on a case-by-case basis following our regulations (50 CFR part 402). In the SSA Report (Service 2014, entire), we identify opportunities for habitat improvement, which includes reducing fuels to minimize the risk of severe wildland fire.

(38) *Comment:* New Mexico meadow jumping mouse habitat has been lost in some areas following the Wallow Wildfire, but habitat for the subspecies has been gained in other areas. Although the Wallow Wildfire had a huge impact on the landscape, the New Mexico meadow jumping mouse continues to be found in areas following the fire. In fact, post-fire flooding carried sediments to some areas where herbaceous vegetation now meets 60-cm (24-in) stubble height.

Our Response: The commenter did not provide any specific information on areas where jumping mouse habitat may have been gained following the Wallow Wildfire. We also did not receive any information regarding this topic from the Arizona Game and Fish Department (AGFD 2012, entire; 2014, entire). New Mexico meadow jumping mouse habitat is located within riparian areas that are subject to dynamic changes from flooding such as the loss and regrowth in the quantity and location of dense riparian herbaceous vegetation over time. If suitable habitat has been gained or restored in some areas and the habitat is beyond the movement or dispersal capabilities of the New Mexico meadow jumping mouse, it is unlikely to become occupied. New Mexico meadow jumping mice are generally believed to have limited vagility (ability to move) and possibly limited dispersal capabilities (Morrison 1988, p. 13; Frey and Wright 2012, pp. 43, 109). Consequently, suitable habitat should be no more than about 200 m (656 ft) from existing populations, which would increase the likelihood of emigrating individuals repopulating sites that have been extirpated due to natural or manmade events or moving into areas where suitable habitat has been restored.

Severe wildland fires, such as the Wallow Wildfire, can have dramatic, long-lasting impacts on jumping mice and their habitat (See SSA Report for additional information). We continue to find that the 2011 Wallow and Track Wildfires have significantly impacted the New Mexico meadow jumping mouse, resulting in extirpation of some populations and further loss of habitat, including loss of beaver (AGFD 2012, entire; Colorado Parks and Wildlife 2013a, p. 1; Frey and Kopp 2013, entire; Service 2013c, entire).

(39) *Comment:* More sampling and surveys of the New Mexico meadow jumping mouse need to be completed to determine whether populations are confined to true livestock exclosures.

Our Response: Since 2003, New Mexico meadow jumping mouse surveys in New Mexico, Arizona, and Colorado involved 200 localities and 68,102 trap nights (over 100 historically occupied sites plus 136 localities that appeared to have the highest quality potentially suitable habitat) (see ''Current Records of Localities Found Since 2005'' in the SSA Report; Service 2014). In all but one case where the jumping mouse was found since 2005, livestock were being excluded (Frey 2005a, pp. 58–62; Frey 2006d, pp. 49, 55; Frey and Malaney 2009, p. 37; Frey 2011, pp. 41–42; 2012, entire; Colorado Parks and Wildlife 2012, entire; Service 2012a, pp. 1–2; 2012c, pp. 1, 6–8; 2012d, p. 2). The habitat conditions at this one locality where livestock grazing was occurring were suitable for New Mexico meadow jumping mice occupancy and similar to fenced New Mexico meadow jumping mouse localities because the presence of beaver naturally inhibited livestock grazing (Frey and Malaney 2009, p. 37).

Moreover, additional areas that contained potentially suitable New Mexico meadow jumping mouse habitat were also surveyed, with many of the survey locations outside of livestock exclosures in which no individuals were captured (Frey 2003, entire; 2005a, entire; 2007b, entire; 2011, p. 42; 2013c, entire; Chambers 2012, entire; USFS 2012h, entire). As we found in the SSA Report, the presence of a functioning livestock exclosure has been reported as the best predictor of New Mexico meadow jumping mouse occupancy in montane riparian areas (Frey 2005a, pp. 59–60; Frey and Malaney 2009, pp. 35, 37). However, unauthorized livestock grazing continues to be documented within 15 of 29 existing New Mexico meadow jumping mouse populations when fencing was cut or not maintained, gates were open, or wildfire burned and eliminated fences, and cattle entered the area (ADGF 2012a, entire; USFS 2007, p. 1; 2010, p. 2; 2011c, pp. 1–5; 2012h, p. 2; Frey 2005a, pp. 25–26, 29, 36, 58–62; 2006, p. 1; 2006d, pp. 49, 55; 2011, pp. 41–42; Frey and Malaney 2009, p. 37; Frey 2011, pp. 41–42; 2012, entire; Colorado Natural Heritage Program 2006, p. 260; Colorado Parks and Wildlife 2012, p. entire; Service 2012a, pp. 1–2; 2012c, pp. 1, 6–

8; 2012d, p. 2; U.S. Bureau of Reclamation 2008, pp. 3–62).

(40) *Comment:* Listing a species may reduce beneficial management activities or obstruct or prevent entities from executing conservation agreements and partnerships to protect the species. The Service should recognize ongoing conservation efforts.

Our Response: The Service does recognize ongoing conservation efforts. The Act requires us to make a determination using the best available scientific and commercial data after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation to protect such species, whether by predatory control protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction. The only conservation actions implemented since the species became a candidate for listing in 2007 were the installation of Langemann water control structures and restoration of habitat on Bosque del Apache National Wildlife Refuge, and the replacement of one barbed-wire livestock exclosure with a pipe fence on the Lincoln National Forest. These few actions did not reduce or eliminate threats to the subspecies, and the jumping mouse still meets the definition of an endangered species under the Act.

Further, the listing of a species does not obstruct the development of conservation agreements or partnerships to conserve the species. Once a species is listed as either endangered or threatened, the Act provides many tools to advance the conservation of listed species. Conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities, including the voluntary cooperation of non-Federal landowners. Building partnerships and promoting cooperation of landowners are essential to understanding the status of species on non-Federal lands, and may be necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy (see *http://www.fws.gov/landscape-conservation/lcc.html* for more information). Once a species is listed, for private or other non-Federal property owners we offer voluntary Safe Harbor Agreements that can contribute to the recovery of species, Habitat Conservation Plans that allows activities (e.g., grazing) to proceed while minimizing effects to species, funding through the Partner's for Fish and Wildlife Program to help promote conservation actions, and grants to the States under section 6 of the Act.

(41) *Comment:* The Service should recognize the economic impact of listing the New Mexico meadow jumping mouse. Listing the mouse could result in short-term, long-term, and cumulative impacts for species on human activities.

Our Response: The Act requires us to use the best scientific and commercial data available in our listing determinations. The Act does not allow us to consider the impacts of listing on economics or humans activities whether over the short term, long term, or cumulatively.

(42) *Comment:* Will recreation sites be shut down or Federal land use be greatly restricted if the New Mexico meadow jumping mouse is listed as endangered?

Our Response: Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the subspecies or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. During consultation with the Federal agency, we will analyze and determine to what degree the subspecies would be impacted by proposed recreational activities and will work with the Federal agency to determine necessary modification of planned activities, in order to avoid and minimize adverse impacts to the subspecies.

(43) *Comment:* There is no scientific justification for defining the historical (1980s and 1990s) baseline for the subspecies' distribution. There must have been some other challenging environmental changes that the New Mexico meadow jumping mouse survived to reach population levels in the 1980s. Therefore, what scientific basis is there for presuming the species could not survive now without endangered species protection?

Our Response: Please see our response to comment number (3), above. While the historical and current distributional data for the New Mexico meadow jumping mouse is categorized into two time periods in the SSA Report (Service 2014, entire), we included all known distribution records and summarized the comprehensive reports regarding the New Mexico meadow jumping mouse (i.e., Frey 2008c, entire; Hafner *et al.* 1981). We found no capture records of New Mexico meadow jumping mice between 1996 and 2005. Surveys conducted since 2005 in locations where the subspecies was historically present indicate that the subspecies is now apparently absent or at levels too low for detection. Based on this information and previous reviews, we continue to find that the comparison between historical (1980 to 1999) and current New Mexico meadow jumping mouse records (2005 forward) is appropriate, and the pre-1980 records were sufficiently considered and incorporated in the SSA Report.

We evaluated whether the subspecies is in danger of extinction throughout all or a significant portion of its range (endangered), or is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (threatened). Also, please see our Determination section, below for a detailed explanation of why this subspecies meets the definition of an endangered species under the Act. Finally, see the SSA Report for our analysis of long-term viability and extinction risk for the New Mexico meadow jumping mouse. (see Chapter 6. Viability of the SSA Report)

(44) *Comment:* The Service should include a special 4(d) rule, similar to Preble's meadow jumping mouse that exempts take of the subspecies under section 9 of the Act for any continued use of water rights.

Our Response: Section 4(d) of the Act pertains only to threatened species, not endangered species. Section 4(d) of the Act reads that, whenever any species is listed as a threatened species, the Secretary shall issue such regulations, as she deems necessary and advisable to provide for the conservation of such species. Because we are listing the New Mexico meadow jumping mouse as endangered and not threatened, a 4(d) rule is not applicable.

(45) *Comment:* According to Wikipedia, the jumping mouse is capable of having two to three litters per year.

Our Response: Although jumping mice (*Zapus hudsonius*) in Minnesota and New York average two to three litters (Quimby 1951, p. 69; Whitaker 1963, p. 244), the New Mexico meadow jumping mouse only has one litter each year (Morrison 1987, pp. 14–15; 1989, p. 22; Frey 2011, p. 69; 2012b, p. 5).

(46) *Comment:* Over the last few years, mowing along irrigation ditches has ceased and the vegetation grows over the areas, especially along those in the middle Rio Grande.

Our Response: The commenter did not provide any information demonstrating mowing has ceased. The

information we reviewed indicates that mowing continues to be part of regular maintenance activities along irrigation ditches and canals on Bosque del Apache National Wildlife Refuge and throughout the middle Rio Grande (Bureau of Reclamation 2013, pp. 55–59, 62; Frey and Wright 2012, pp. 6, 35; SSA Report pp. 88–91). Moreover, neither the Florida Water Conservancy District, nor the Middle Rio Grande Conservancy District indicated in their public comments that mowing has ceased as part of their normal maintenance operations (Florida Water Conservancy District 2013, entire; Middle Rio Grande Conservancy District 2013, entire).

(47) *Comment:* Were the jumping mice captured along the Florida River positively identified as New Mexico meadow jumping mice using genetic analyses?

Our Response: Yes. The Florida River individuals were confirmed as New Mexico meadow jumping mice using mitochondrial DNA (genetic) analyses (Museum of Southwestern Biology 2007, entire; 2007a, entire; Malaney *et al.* 2012, p. 695, Appendix S1).

(48) *Comment:* The Service fails to provide a scientific basis for the unrealistic vegetation cover requirements.

Our Response: Based on the best available scientific evidence, the New Mexico meadow jumping mouse has exceptionally specialized requirements for dense herbaceous riparian habitat as described in the ''Specific Microhabitat Requirements'' section of our SSA Report (Service 2014).

(49) *Comment:* There is no scientific historical baseline to compare habitat or populations to in order to determine whether New Mexico meadow jumping mouse populations have been impacted. The Service did not use actual population numbers or long-term trends to make a determination to list the New Mexico meadow jumping mouse as endangered.

Our Response: In the SSA Report (Service 2014, entire), we used historical and current data to determine that the distribution and number of populations of the New Mexico meadow jumping mouse has declined significantly rangewide with the majority of local extirpations occurring since the late-1980s and early 1990s. At least 70 former locations occupied by the New Mexico meadow jumping mouse are considered no longer occupied (Frey 2005a, pp. 6–10; 2007b, pp. 23–27; 2011, pp. 26–27; 2012e, entire; AGFD 2012, entire; Frey and Kopp, 2013, entire; Frey and Wright 2012, p. 28; Frey 2013, entire). See also our response to comment number 3 above.

(50) *Comment:* High predation rates or disease may cause high mortality and reduce New Mexico meadow jumping mouse populations.

Our Response: As we found in 5.2.2 Disease or Predation of our SSA Report (Service 2014), we did not identify predation and disease as significant risk factors for the New Mexico meadow jumping mouse.

(51) *Comment:* The Service has failed to address the conflict between the New Mexico meadow jumping mouse and already listed predators such as the Mexican spotted owl (*Strix occidentalis lucida*) and Mexican gray wolf (*Canis lupus baileyi*), which could be significant sources of mortality.

Our Response: We acknowledge that the Mexican spotted owl and Mexican gray wolf could eat jumping mice, because they can be highly sought-after food sources as prey for these species. However, the best scientific and commercial data available does not indicate that either of these species are significant predators on the New Mexico meadow jumping mouse. Nevertheless, predation is a naturally occurring event in the life history of the New Mexico meadow jumping mouse, and, as we found in 5.2.2 Disease or Predation of our SSA Report (Service 2014), predation is not a significant risk factor.

(52) *Comment:* No data are provided for the assumption that only limited portions of New Mexico meadow jumping mouse habitat would be affected by natural disturbances (flood, wildfire, or drought). These natural disturbances operate at the landscape scale, which would decimate habitat patches that are small and localized.

Our Response: As we noted in the 5.1 Habitat Loss section of the SSA Report (Service 2014), natural disturbances can vary from small to large-scale events. Large-scale disturbances can have dramatic, long-lasting impacts on New Mexico meadow jumping mice and their habitat, while small-scale disturbances may help maintain riparian communities in an early seral stage, which would provide suitable habitat for the New Mexico meadow jumping mouse. The New Mexico meadow jumping mouse may exhibit some natural resiliency to small disturbances when populations were larger and well-connected to one another, but there is cause for concern because many of the New Mexico meadow jumping mouse populations are either extremely small or highly fragmented. As a result, we found that these natural disturbances are an important causal factor in the ongoing and future loss of New Mexico meadow jumping mouse suitable habitat, making all of the remaining small and fragmented populations of the New Mexico meadow jumping mouse more vulnerable to extirpation.

(53) *Comment:* Coal bed methane development should be removed from the list of potential threats to the New Mexico meadow jumping mouse because there are no wellpads or associated non-well facilities near the populations in Colorado (Florida River, Sambrito Creek, or Sugarite Canyon). Moreover, existing regulations at the State (Colorado Oil and Gas Conservation Commission) and local levels (La Plata County land use code, Chapter 90; Archuleta County land use code, Section 9) have resulted in no oil or gas wells or facilities within these areas.

Our Response: The areas surrounding the Florida River and Sambrito Creek contain extensive gas fields, and, based on the best available scientific and commercial data, production from coalbed methane is projected to increase (Bureau of Land Management and USFS 2006, entire; Papadopulos and Associates 2006, entire). In 2005, there were about 1,650 production wells in production in the Colorado portion of the San Juan Basin (Papadopulos and Associates 2006, p. 1). Projections are that this number will increase because future gas production wells have already been permitted (Papadopulos and Associates 2006, p. 92, Figure 6–2; Bureau of Reclamation 2007, pp. 3–55–3–60). Similarly, coalbed methane development will likely continue to expand in the Raton Basin, which includes the Sugarite Canyon, New Mexico (Hoffman and Brister 2003, p. 110).

Future impacts may occur to riparian habitat in these watersheds or result in the alteration of hydrological regimes (Bureau of Land Management and USFS 2006, Appendix H, p. 27). For example, recent data indicates that existing coalbed methane development has depleted 80,176 cubic m (65 ac ft) of water per year from the Animas, Florida, and Pine Watersheds (Bureau of Land Management and USFS 2006, Appendix H, p. 27). We also queried the Colorado Oil and Gas Database (*http://cogcc.state.co.us/*) and located at least 10 producing wells within 91 to 221 m (300 to 725 ft) of the active Florida River channel and 5 producing wells within 61 to 609 m (200 to 2,000 ft) of Sambrito Creek (Service 2013d, entire). These distances have the potential to affect New Mexico meadow jumping mouse habitat from ground disturbance for roads, drilling pads, pipelines, and other utilities and infrastructure (e.g.,

see Bureau of Reclamation 2007, pp. 3–55–3–60, 4–5, 4–26). There may also be longer-term water table issues, irrigation water changes, and nonnative plant infestations in areas that are developed for coal bed methane extraction, which would contribute to further loss of dense herbaceous riparian vegetation that constitutes jumping mouse habitat (National Park Service 2003, p. 2).

We found that La Plata and Archuleta Counties only provide protection to wildlife resources and floodplains, wherever it is reasonably practicable, to avoid, minimize, or mitigate adverse impacts from coal bed methane development (Colorado Oil and Gas Conservation Commission 2008, entire; La Plata County 2001, entire; Archuleta County 2012, entire). For example, the La Plata County land use code requires new development to be located no less than 15 m (50 ft) from wetlands, which may still result in indirect effects to wetland and riparian habitat (2001, pp. 6.7–6.8) that would then impact the New Mexico meadow jumping mouse and its habitat. Moreover, the regulations are intended to balance oil and gas development with wildlife conservation by incorporating best management practices (Colorado Oil and Gas Conservation Commission 2008, entire) or standard operating procedures (Archuleta County 2012, entire). Consequently, it is unclear whether this will fully or even partially protect the New Mexico meadow jumping mouse and its habitat. Finally, we found no regulations that might provide some protection to the New Mexico meadow jumping mouse population in Sugarite Canyon, New Mexico from coalbed methane development.

Based on this information, development of coalbed methane gas in the Raton and San Juan Basins is projected to continue into the future, potentially impacting the Florida River, Sambrito Creek, and Sugarite Canyon, Colorado, New Mexico meadow jumping mouse populations. All of this information demonstrates that coalbed methane development and related infrastructure have the potential to affect New Mexico meadow jumping mouse populations within the Florida River, Sambrito Creek, and Sugarite Canyon, Colorado.

(54) *Comment:* Rio Arriba County, New Mexico, has taken measures to protect and enhance the habitat required by the New Mexico meadow jumping mouse by adopting the Rio Arriba County Flood Damage Prevention Ordinance 2012–004 (Floodplain Ordinance).

Our Response: Although Rio Arriba County's comments indicate that the Floodplain Ordinance aims to foster sound land use activities in federally designated floodplains and riparian areas, we are not aware of any areas that are currently occupied by the New Mexico meadow jumping mouse within Rio Arriba County. The only critical habitat proposed for the New Mexico meadow jumping mouse in the County was located along the Rio Grande within Ohkay Owingeh, which would not be subject to the Floodplain Ordinance.

(55) *Comment:* The comment period was too brief. Local governments and interested individuals were not notified in writing of the proposal to list the New Mexico meadow jumping mouse.

Our Response: We provided the normal 60-day comment period associated with the publication of the proposed rule, which opened on June 20, 2013 (78 FR 37363), and closed on August 19, 2013. We sent letters to State congressional representatives, local governments, and interested parties; we published public notices in area newspapers; and we issued a news release on our Web site.

(56) *Comment:* One commenter encouraged the Service to invest additional resources in public outreach for the Florida River Geographic Management Area because most of the Florida River is under private ownership.

Our Response: On August 15, 2013, we held an informational meeting in Durango, Colorado, as part of our public outreach for the Florida River Geographic Management Area, to answer questions about the implications of the potential listing and critical habitat designation of the New Mexico meadow jumping mouse.

(57) *Comment:* The Service should not settle legal actions with activist groups that appear to create arbitrary listings of threatened or endangered species.

Our Response: On July 12, 2011, the Service filed a multiyear work plan as part of a settlement agreement with the Center for Biological Diversity and others, in a consolidated case in the U.S. District Court for the District of Columbia. A settlement agreement in *In re Endangered Species Act Section 4 Deadline Litigation,* No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011) was approved by the court on September 9, 2011. The settlement enables the Service to systematically, over a period of 6 years, review and address the needs of more than 250 candidate species to determine if they should be added to the Federal Lists of Endangered and Threatened Wildlife and Plants.

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. We adhered to the requirements of the Act, to determine whether a species warrants listing based on our assessment of the five-factor threats analysis using the best available scientific and commercial data. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. We already determined, prior to the court settlement agreement, that the New Mexico meadow jumping mouse warranted listing under the Act, but was precluded by the necessity to commit limited funds and staff to complete higher priority species actions. The New Mexico meadow jumping mouse has been included in our annual Candidate Notices of Review for multiple years, during which time scientific literature and data have and continue to indicate that the subspecies is detrimentally impacted by ongoing threats, and we continued to find that listing was warranted but precluded. The listing process is not arbitrary, but uses the best available scientific and commercial data and peer-review to ensure sound science and sound decisionmaking.

(58) *Comment:* The purpose of listing this highly specialized subspecies is only in support of the preservationists' philosophy of radical environmental organizations. Most often listing has forced land management agencies to totally abandon their missions in favor of a hands-off, do-nothing approach.

Our Response: The commenter did not provide any additional information for the Service to consider. Land management agencies continue to provide for multiple use activities on their lands, including the conservation of federally listed species.

Determination

Standard for Review

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make threatened or endangered determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is threatened or endangered are provided in section 3 of the Act. An endangered species is any species that is ''in danger of extinction throughout all or a significant portion of its range.'' A threatened species is any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definitions of threatened or endangered, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

Until recently, the Service has presented its evaluation of information under the five listing factors in an outline format, discussing all of the information relevant to any given factor and providing a factor-specific conclusion before moving to the next factor. However, the Act does not require findings under each of the factors, only an overall determination as to status (e.g., threatened, endangered, not warranted). Ongoing efforts to improve the efficiency and efficacy of the Service's implementation of the Act have led us to present this information in a different format that we believe leads to greater clarity in our understanding of the science, its uncertainties, and the application of our statutory framework to that science. Therefore, while the presentation of information in this rule differs from past practice, it differs in format only. We have evaluated the same body of information we would have evaluated under the five listing factors outline format, we are applying the same information standard, and we are applying the same statutory framework in reaching our conclusions.

Final Listing Status Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the New Mexico meadow jumping mouse. Based on our review of the best available scientific and commercial information, we conclude that the New Mexico meadow jumping mouse is currently in danger of extinction throughout all of its range and, therefore, meets the definition of an endangered species. This finding, explained below, is based on our conclusions that the subspecies exhibits low viability as characterized by having no resilient populations, resulting in low overall representation across the subspecies' entire range and no redundancy. We found the New Mexico meadow jumping mouse to be at an elevated risk of extinction now and no data indicate that the situation will improve without significant conservation intervention. We, therefore, find that the New Mexico meadow jumping mouse warrants an endangered species listing status determination.

On the basis of our biological review documented in the SSA Report, we found that the subspecies is inherently vulnerable to population extirpations due to its short active period, short lifespan, low fecundity, specific habitat needs, and low movement and dispersal ability (Factor E). The subspecies is currently known to be limited to, at most, 29 small, isolated populations, all of which are incapable of withstanding adverse events, and, therefore, are not resilient (Factor E). This total is reduced from nearly 70 locations known historically. Of these 29 populations where the New Mexico meadow jumping mice have been found extant since 2005, at least 11 populations have been substantially compromised in the past 2 years and 7 others may have been affected by recent wildfires. Because these populations have been compromised, the actual current number of extant populations may already be less than 29, placing the subspecies at a higher risk of extinction. At this rate of population extirpation (based on known historical population losses and possible recent population losses) the probability of persistence of the subspecies as a whole is severely compromised in the near term.

The remaining small, isolated New Mexico meadow jumping mouse populations are particularly threatened with extirpation from habitat loss and modifications (Factor A). The main sources of habitat loss, degradation, and modification, include grazing pressure (which removes the needed vegetation), water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from floods, loss of beaver, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

Each of the 29 remaining locations where the jumping mouse has been found recently is vulnerable to at least 4 of these 10 sources of habitat loss. Some populations are at risk from as many as 8 of these sources (Service 2014, Table 3). As a result, these multiple sources of habitat loss are not acting independently, but may produce cumulative impacts that magnify the effects of habitat loss on jumping mouse populations. Historically larger connected populations of jumping mice would have been able to withstand or recover from local stressors, such as habitat loss from drought, wildfire, or floods. However, the current condition of small populations makes local extirpations more common. Further, the isolated state of existing populations makes natural recolonization of impacted areas highly unlikely or impossible in most areas. With each of these sources of habitat loss, the probability increases of the future reduction in size of existing populations of jumping mice and eventual additional losses of additional populations. With each population lost in the future, a decrease in viability of the subspecies will occur as species redundancy and representation are reduced.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We evaluated whether the New Mexico meadow jumping mouse is an endangered species or a threatened species. The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. A key statutory difference between a threatened species and an endangered species is the timing of

when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is ''in danger of extinction'' now. In the case of the New Mexico meadow jumping mouse, the best available information indicates that, while major range reductions (that is the overall geographic extent of the subspecies occurrences) have not happened, habitat destruction and isolation have resulted in significant loss of populations and reductions in total numbers of individuals. These losses are ongoing as at least 11 of the 29 known populations have been significantly compromised since 2011. Without substantial conservation efforts, this trend of population loss is expected to continue and result in an elevated risk of extinction of the subspecies. Many of the threats faced by the subspecies would not have historically been significant, but past reductions in population size and fragmentation (mainly due to habitat loss from grazing) causing isolation of populations makes the current threats particularly severe. As a result, the subspecies is currently at an elevated risk that stochastic events (e.g., drought, wildfire, and floods) will affect all known extant populations putting the New Mexico meadow jumping mouse at a high risk of extinction. Therefore, because no resilient populations currently exist to support persistence of the New Mexico meadow jumping mouse, it is in danger of extinction throughout all of its range now, and appropriately meets the definition of an endangered species (i.e., in danger of extinction). Therefore, on the basis of the best available scientific and commercial information, we determine endangered status for the New Mexico meadow jumping mouse in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The threats to the survival of this species occur throughout its range and are not restricted to any particular significant portion of its range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

In conclusion, as described above, the New Mexico meadow jumping mouse has experienced significant reductions in populations (based on habitat reductions and fragmentation), is especially vulnerable to impacts due to its life history and ecology, and is subject to significant current and ongoing threats now. After a review of the best available scientific information as it relates to the status of the subspecies and the five listing factors, we find the New Mexico meadow jumping mouse is in danger of extinction now. Therefore, on the basis of the best available scientific and commercial information, we determine endangered status for New Mexico meadow jumping mouse, in accordance with section 3(6) of the Act. We find that a threatened species status is not appropriate for the New Mexico meadow jumping mouse because the overall risk of extinction is high at this time because none of the existing populations are sufficiently resilient to support viable populations, and this subspecies is currently in danger of extinction.

Available Conservation Measures

Regulations at 50 CFR 424.18 require final rules to include a description of conservation measures available under the rule. Following is an explanation of the measures which may be implemented for the conservation of the jumping mouse under this final rule.

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the draft recovery plan and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). We have completed a Recovery Outline that provides an interim strategy to guide the conservation and recovery of the New Mexico meadow jumping mouse until a final recovery plan is finalized. The Recovery Outline is based on the SSA Report, as well as preliminary objectives and actions needed for recovery. The Recovery Outline can be downloaded at: *http://www.fws.gov/southwest/es/NewMexico/index.cfm, http://www.fws.gov/endangered,* or *http://www.regulations.gov.*

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribe, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may not occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Because this subspecies is listed as endangered, funding for recovery actions will be available from a variety

of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Colorado, New Mexico, and Arizona would be eligible for Federal funds to implement management actions that promote the protection and recovery of the New Mexico meadow jumping mouse. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for this subspecies. Additionally, we invite you to submit any new information on this subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species habitat that may require consultation as described in the preceding paragraph include livestock grazing, irrigation ditch maintenance and repair, recreational activities associated with Federal agencies or State parks that may affect habitat or the species; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Unauthorized modification or manipulation of riparian habitat, including mowing or prescribed burning of occupied habitats, especially during the active season (generally May through October).

(3) Activities that take or harm the New Mexico meadow jumping mouse on public or private lands by causing significant habitat modification or degradation such that the activities cause actual injury by significantly impairing the species' essential behavior patterns, without authorization or coverage under the Act for these impacts. This may include, but is not limited to, the alteration or removal of specific microhabitat components (as described in this rule or within the SSA Report) through new construction, livestock grazing, or dredging or filling in streams or wetlands.

(4) Unauthorized modification of any stream or water body or removal or destruction of herbaceous vegetation in any stream or water body in which the New Mexico meadow jumping mouse is known to occur.

(5) Unlawful destruction or alteration of New Mexico meadow jumping mouse habitats (e.g., unpermitted instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that impairs essential behaviors such as breeding, feeding, or sheltering, or results in killing or injuring a New Mexico meadow jumping mouse.

(6) Capture, survey, or collection of specimens of this taxon without a permit from us under to section 10(a)(1)(A) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal

Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

References Cited

A complete list of references used in support of this rulemaking is available on the Internet at *http://www.regulations.gov* within the Final SSA Report (Service 2014, Literature Cited) and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Mouse, New Mexico meadow jumping'' in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	
Mouse, New Mexico meadow jumping.	*Zapus hudsonius luteus.*	U.S. (AZ, CO, NM)	Entire	E	838	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: May 27, 2014.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–13094 Filed 6–9–14; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 79, No. 111
Tuesday, June 10, 2014

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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA14

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: OGE is issuing a proposed rule to revoke the designation of one departmental component of one agency and designate a new bureau as a departmental component for purposes of the one-year post-employment conflict of interest restriction in the United States Code; to revoke the designation of two departmental components of another agency and designate their successor bureau as a departmental component; to change the name of an existing departmental component; and to revoke the designation of a departmental component that was abolished.

DATES: Comments are invited and must be received on or before July 10, 2014.

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209–AA14, by any of the following methods:

E-Mail: usoge@oge.gov. Include the reference ''Proposed Rule Revising Departmental Component Designations'' in the subject line of the message. Fax: 202–482–9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: Amy E. Braud, Associate Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA14, for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Amy E. Braud, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion: Revocation and Addition of Departmental Components

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director of OGE determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a ''parent'' department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director of OGE regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director ''shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.'' 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent. 5 CFR 2641.302(c)(1).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), two departments have forwarded written requests to OGE to amend their listings in appendix B. After carefully reviewing the requested changes in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), OGE is proposing to grant these requests and amend appendix B to 5 CFR part 2641 as explained below.

The Department of Health and Human Services has requested that OGE remove the Administration on Aging (AoA) from its list of component designations and designate in its place the Administration for Community Living as a distinct and separate component of the Department of Health and Human Services for purposes of 18 U.S.C. 207(c). On April 18, 2012, the AoA ceased to be an operating division within the Department of Health and Human Services and became a subcomponent of a new operating division within the Department, the Administration for Community Living.

The mission of the Administration for Community Living is to maximize the self-determination, well-being, and health of older adults, people with disabilities, and their families and caregivers. The Administration for Community Living is the primary entity within the Department to direct development, administration, and advancement of aging and disability programs.

In addition to the AoA, the Administration for Community Living is composed of the Administration on Intellectual and Developmental Disabilities and the Center for Disability and Aging Policy. The Administration

on Intellectual and Developmental Disabilities advises the Secretary of the Department of Health and Human Services on issues that relate to individuals who have intellectual and developmental disabilities. It provides support to the States and to local communities for programs that increase the independence and productivity of these individuals. The Center for Disability and Aging Policy plans and oversees the implementation of policies, programs, and special initiatives that address the needs of older Americans and persons with disabilities.

According to the Department of Health and Human Services, the Administration for Community Living exercises functions that are distinct and separate from the functions of the parent Department and from every other agency within the Department.

The Department of the Treasury has requested that OGE remove the Financial Management Service (FMS) and the Bureau of Public Debt (BPD) from its list of component designations and in their place designate the Bureau of the Fiscal Service as a distinct and separate component of the Department of the Treasury for purposes of 18 U.S.C. 207(c). The Department of the Treasury consolidated FMS and BPD into a new entity, the Bureau of the Fiscal Service. This consolidation was effective on October 7, 2012. *See* Treas. Order 136–01 (October 7, 2012). The new bureau will carry out the functions of the FMS and the BPD, which include borrowing the money needed to operate the Federal government, administering the public debt, receiving and disbursing public monies, and maintaining government accounts.

According to the Department of the Treasury, the functions of the Bureau of the Fiscal Service are distinct and separate from the functions of the parent Department and from every other agency within the Department. This distinction was previously recognized when OGE designated its predecessor bureaus, the FMS and the BPD, as components for purposes of 18 U.S.C. 207(c).

Accordingly, OGE is proposing to grant the request of the Department of the Treasury and is proposing to amend the Department of the Treasury listing in appendix B to part 2641 to remove the FMS and the BPD from the component designation list and to designate the Bureau of the Fiscal Service as a new component as discussed.

The Department of the Treasury has also requested that OGE revise the name of one component currently listed in appendix B to part 2641, the Bureau of the Mint. According to the Department, since the 1992 amendments to 31 U.S.C. 304, the statutory name, and the name used in all official publications, of this bureau is the ''United States Mint.'' OGE is proposing to amend the Department of the Treasury listing in appendix B to reflect the current name of this component.

Additionally, the Department of the Treasury has requested that OGE remove the Office of Thrift Supervision (OTS) from its list of component designations. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376, all OTS functions were distributed to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Bureau of Consumer Financial Protection. Under Title III of the Dodd-Frank Act, all OTS functions relating to Federal savings and loan associations and the rulemaking authority of OTS relating to all savings associations, both Federal and State, were transferred to the Office of the Comptroller of the Currency as of July 21, 2011. Also as of July 21, 2011, the other functions of OTS were transferred to the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Bureau of Consumer Financial Protection. Pursuant to Section 313 of the Dodd-Frank Act, OTS was abolished 90 days after the date of the transfer of its functions to other agencies.

Because OTS has been abolished, OGE is proposing to grant the request of the Department of the Treasury and is proposing to amend the Department of the Treasury listing in appendix B to part 2641 to remove OTS from the component designation list. The Office of the Comptroller of the Currency has been designated as a component since January 1, 1991 and would remain designated as a component.

As indicated in 5 CFR 2641.302(f), a designation ''shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date.'' Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this proposed rule, as well as the name corrections being reflected herein (which do not affect the underlying component designation date), would be effective on the date the final rule is published in the **Federal Register**.

As also indicated in 5 CFR 2641.302(f), revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocations made in this proposed rule would take effect 90 days after the date the final rule is published in the **Federal Register**. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

OGE has determined that this proposed rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time the final rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In proposing this rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 since it deals with agency organization, management,

and personnel matters and is not ''significant'' thereunder.

Executive Order 12988

As Director of OGE, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: June 2, 2014.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, OGE proposes to amend 5 CFR part 2641 as follows:

PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

■ 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 CFR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Appendix B to part 2641 is amended by revising the listings for the Department of Health and Human Services and the Department of the Treasury to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Health and Human Services

Components:

Administration on Aging (effective May 16, 1997; expires 90 days after the date of publication of the final rule in the **Federal Register**).

Administration for Children and Families (effective January 28, 1992).

Administration for Community Living (effective upon publication of the final rule in the **Federal Register**).

Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).

Agency for Toxic Substances and Disease Registry (effective May 16, 1997).

Centers for Disease Control and Prevention (effective May 16, 1997).

Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).

Food and Drug Administration.

Health Resources and Services Administration (effective May 16, 1997).

Indian Health Service (effective May 16, 1997).

National Institutes of Health (effective May 16, 1997).

Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

* * * * *

Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective upon publication of the final rule in the **Federal Register**).

Bureau of the Public Debt (expires 90 days after the date of publication of the final rule in the **Federal Register**).

Comptroller of the Currency.

Financial Crimes Enforcement Center (FinCEN) (effective January 30, 2003).

Financial Management Service (expires 90 days after the date of publication of the final rule in the **Federal Register**).

Internal Revenue Service.

Office of Thrift Supervision (expires 90 days after the date of publication of the final rule in the **Federal Register**).

United States Mint (formerly listed as Bureau of the Mint).

* * * * *

■ 3. Appendix B to part 2641 is further amended by removing the Administration on Aging from the listing for the Department of Health and Human Services and by removing the Bureau of the Public Debt, the Financial Management Service, and the Office of Thrift Supervision from the listing for the Department of the Treasury.

[FR Doc. 2014–13273 Filed 6–9–14; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0366; Notice No. 25–14–04–SC]

Special Conditions: Embraer S.A.; Model EMB–550 Airplane; Flight Envelope Protection: High Incidence Protection System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This action proposes special conditions for the Embraer S.A. Model EMB–550 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology and design envisioned in the airworthiness standards for transport category airplanes. This design feature is a high incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation. 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 July 10, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0366 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 Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue

SW., Renton, Washington 98057–3356; telephone (425) 227–2011; facsimile (425) 227–1149.

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 special conditions based on the comments we receive.

Background

On May 14, 2009, Embraer S.A. applied for a type certificate for its new Model EMB–550 airplane. The Model EMB–550 airplane is the first of a new family of jet airplanes designed for corporate flight, fractional, charter, and private owner operations. The airplane has a configuration with low wing and T-tail empennage. The primary structure is metal with composite empennage and control surfaces. The Model EMB–550 airplane is designed for 8 passengers, with a maximum of 12 passengers. It is equipped with two Honeywell AS907–3–1E medium bypass ratio turbofan engines mounted on aft fuselage pylons. Each engine produces approximately 6,540 pounds of thrust for normal takeoff.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB–550 meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–127 thereto.

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 EMB–550 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 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 special conditions, the Model EMB–550 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, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model EMB–550 will incorporate the following novel or unusual design features: A high incidence protection system that replaces the stall warning system during normal operating conditions, prohibits the airplane from stalling, limits the angle of attack at which the airplane can be flown during normal low speed operation, and that cannot be overridden by the flightcrew. The application of this angle-of-attack limit impacts the stall speed determination, the stall characteristics and stall warning demonstration, and the longitudinal handling characteristics. The current regulations do not address this type of protection feature.

Discussion

The high incidence protection function prevents the airplane from stalling at low speeds, and, therefore, a stall warning system is not needed during normal flight conditions. However, if there is a failure of the high incidence protection function that is not shown to be extremely improbable, stall warning must be provided in a conventional manner. Also the flight characteristics at the angle of attack for maximum lift coefficient (C_{Lmax}) must be suitable in the traditional sense.

Special conditions are proposed to address this novel or unusual design feature on the EMB–550. These special conditions, which include airplane performance requirements, will establish a level of safety equivalent to the current regulations for reference stall speeds, stall warning, stall characteristics, and miscellaneous other minimum reference speeds.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB–550. Should Embraer S.A. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of 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 Embraer S.A. Model EMB–550.

Flight Envelope Protection: High Incidence Protection System

The current airworthiness standards do not contain adequate safety standards for the unique features of the high incidence protection system on the Embraer EMB–550. Part I of the following proposed special conditions are in lieu of the specified paragraphs of §§ 25.21, 25.103, 25.145, 25.201, 25.203, 25.207, and 25.1323. Part II are in lieu of the specified paragraphs of §§ 25.103, 25.105, 25.107, 25.121, 25.123, 25.125, 25.143, and 25.207.

Special Conditions Part I

Stall Protection and Scheduled Operating Speeds

The following special conditions are in lieu of §§ 25.21(b), 25.103, 25.145(a), 25.145(b)(6), 25.201, 25.203, 25.207, and 25.1323(d).

Foreword

In the following paragraphs, ''in icing conditions'' means with the ice accretions (relative to the relevant flight phase) as defined in 14 CFR part 25, Amendment 121, appendix C.

1. Definitions

These special conditions address a novel or unusual design feature of the EMB–550 airplane and use terminology that does not appear in 14 CFR part 25.

These terms relating to the novel or unusual design feature addressed by these special conditions are the following:

- High incidence protection system: A system that operates directly and automatically on the airplane's flying controls to limit the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.
- Alpha-limit: The maximum angle of attack at which the airplane stabilizes

with the high incidence protection system operating and the longitudinal control held on its aft stop.

• V_{min}: The minimum steady flight speed in the airplane configuration under consideration with the high incidence protection system operating. See section 3 Part I of these special conditions.

• $V_{min}1g$: V_{min} corrected to 1g conditions. See section 3 of Part I of these special conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min}.

2. Capability and Reliability of the High Incidence Protection System

The capability and reliability of the high incidence protection system can be established by flight test, simulation, and analysis as appropriate. The capability and reliability required are proposed as follows:

1. It must not be possible during pilot-induced maneuvers to encounter a stall, and handling characteristics must be acceptable, as required by section 5 of Part I of these special conditions.

2. The airplane must be protected against stalling due to the effects of wind-shears and gusts at low speeds as required by section 6 of Part I of these special conditions.

3. The ability of the high incidence protection system to accommodate any reduction in stalling incidence must be verified in icing conditions.

4. The high incidence protection system must be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures.

5. The reliability of the system and the effects of failures must be acceptable in accordance with § 25.1309.

3. Minimum Steady Flight Speed and Reference Stall Speed

In lieu of § 25.103, we propose the following requirements:

(a) The minimum steady flight speed, V_{min}, is the final stabilized calibrated airspeed obtained when the airplane is decelerated until the longitudinal control is on its stop in such a way that the entry rate does not exceed 1 knot per second.

(b) The minimum steady flight speed, V_{min}, must be determined in icing and non-icing conditions with:

(1) The high incidence protection system operating normally;

(2) Idle thrust and automatic thrust system (if applicable) inhibited;

(3) All combinations of flap settings and landing gear position for which V_{min} is required to be determined;

(4) The weight used when reference stall speed, V_{SR}, is being used as a factor to determine compliance with a required performance standard;

(5) The most unfavorable center of gravity allowable; and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(c) The 1-g minimum steady flight speed, $V_{min}1g$, is the minimum calibrated airspeed at which the airplane can develop a lift force (normal to the flight path) equal to its weight, while at an angle of attack not greater than that at which the minimum steady flight speed of subparagraph (a) was determined. It must be determined in icing and non-icing conditions.

(d) The reference stall speed, V_{SR}, is a calibrated airspeed defined by the applicant. V_{SR} may not be less than a 1g stall speed. V_{SR} must be determined in non-icing conditions and expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

where—

V_{CLmax} = Calibrated airspeed obtained when the load factor-corrected lift coefficient $\left(\frac{n_{zw}W}{qS}\right)$ is first a maximum during the maneuver prescribed in paragraph (e)(8) below.

N_{zw} = Load factor normal to the flight path at V_{CLmax}

W = Airplane gross weight;

S = Aerodynamic reference wing area; and

q = Dynamic pressure.

(e) V_{CLmax} is determined in non-icing conditions with:

(1) Engines idling, or, if that resultant thrust causes an appreciable decrease in stall speed, not more than zero thrust at the stall speed;

(2) The airplane in other respects (such as flaps and landing gear) in the condition existing in the test or performance standard in which V_{SR} is being used;

(3) The weight used when V_{SR} is being used as a factor to determine

compliance with a required performance standard;

(4) The center of gravity position that results in the highest value of reference stall speed;

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}; and

(6) The high incidence protection system adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system.

(7) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed 1 knot per second.

4. Stall Warning

In lieu of § 25.207, we propose the following requirements:

4.1 Normal Operation

If the capabilities of the high incidence protection system are met, then the conditions of section 2, ''Capability and Reliability of the High Incidence Protection System,'' are satisfied. These conditions provide safety equivalent to § 25.207, *Stall warning,* so the provision of an additional, unique warning device is not required.

4.2 High Incidence Protection System Failure

Following failures of the high incidence protection system, not shown to be extremely improbable, such that the capability of the system no longer satisfies items (a), (b), and (c) of section 2, ''Capability and Reliability of the High Incidence Protection System,'' stall warning must be provided and must protect against encountering unacceptable stall characteristics and against encountering stall.

(a) Stall warning with the flaps and landing gear in any normal position must be clear and distinctive to the pilot and meet the requirements specified in paragraphs (d) and (e) below.

(b) Stall warning must also be provided in each abnormal configuration of the high lift devices that is likely to be used in flight following system failures.

(c) The warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself. If a warning device is used, it must provide a warning in each of the airplane configurations prescribed in paragraph (a) above and for the conditions prescribed in paragraphs (d) and (e) below.

(d) In non-icing conditions stall warning must provide sufficient margin to prevent encountering unacceptable stall characteristics and encountering stall in the following conditions:

(1) In power off straight deceleration not exceeding 1 knot per second to a speed 5 knots or 5 percent calibrated airspeed, whichever is greater, below the warning onset.

(2) In turning flight stall deceleration at entry rates up to 3 knots per second when recovery is initiated not less than 1 second after the warning onset.

(e) In icing conditions stall warning must provide sufficient margin to prevent encountering unacceptable characteristics and encountering stall, in power-off straight and turning flight decelerations not exceeding 1 knot per second, when the pilot starts a recovery maneuver not less than three seconds after the onset of stall warning.

(f) An airplane is considered stalled when the behavior of the airplane gives the pilot a clear and distinctive indication of an acceptable nature that the airplane is stalled. Acceptable indications of a stall, occurring either individually or in combination are:

(1) A nose-down pitch that cannot be readily arrested;

(2) Buffeting, of a magnitude and severity that is strong and effective deterrent to further speed reduction; or

(3) The pitch control reaches the aft stop and no further increase in pitch attitude occurs when the control is held full aft for a short time before recovery is initiated.

(g) An aircraft exhibits unacceptable characteristics during straight or turning flight decelerations if it is not always possible to produce and to correct roll and yaw by unreversed use of aileron and rudder controls, or abnormal nose-up pitching occurs.

5. Handling Characteristics at High Incidence

In lieu of both §§ 25.201 and 25.203, we propose the following requirements:

5.1 High Incidence Handling Demonstration

In lieu of § 25.201:

(a) Maneuvers to the limit of the longitudinal control, in the nose-up pitch, must be demonstrated in straight flight and in 30° banked turns with:

(1) The high incidence protection system operating normally;

(2) Initial power conditions of:

i. Power off; and

ii. The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with flaps in approach position, the landing gear retracted, and maximum landing weight;

(3) Flaps, landing gear, and deceleration devices in any likely combination of positions;

(4) Representative weights within the range for which certification is requested; and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(b) The following procedures must be used to show compliance in non-icing and icing conditions:

(1) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed 1 knot per second until the control reaches the stop;

(2) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques;

(3) Maneuvers with increased deceleration rates:

(i) In non-icing conditions, the requirements must also be met with increased rates of entry to the incidence limit, up to the maximum rate achievable; and

(ii) In icing conditions, with the anti-ice system working normally, the requirements must also be met with increased rates of entry to the incidence limit, up to 3 knots per second; and

(4) Maneuver with ice accretion prior to operation of the normal anti-ice system. With the ice accretion prior to operation of the normal anti-ice system, the requirements must also be met in deceleration at 1 knot per second up to full back stick.

5.2 Characteristics in High Incidence Maneuvers

In lieu of § 25.203:

In icing and non-icing conditions:

(a) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30° banked turns, the airplane's characteristics must be as follows:

(1) There must not be any abnormal nose-up pitching.

(2) There must not be any uncommanded nose-down pitching, which would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at Alpha limit as the longitudinal control reaches the stop would be acceptable.

(3) There must not be any uncommanded lateral or directional motion and the pilot must retain good lateral and directional control, by conventional use of the controls, throughout the maneuver.

(4) The airplane must not exhibit buffeting of a magnitude and severity that would act as a deterrent from completing the maneuver specified in paragraph 5.1(a).

(b) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized Alpha limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal control on the stop for a period of time appropriate to the maneuver.

(c) It must always be possible to reduce incidence by conventional use of the controls.

(d) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds such as V_2 and V_{REF} up to Alpha limit must not be unduly damped or be significantly slower than can be achieved on conventionally controlled transport airplanes.

5.3 Characteristics up to Maximum Lift Angle of Attack

Also in lieu of § 25.201:

(a) In non-icing conditions:

Maneuvers with a rate of deceleration of not more than 1 knot per second up to the angle of attack at which V_{CLmax} was obtained as defined in section 3, ''Minimum Steady Flight Speed and Reference Stall Speed,'' must be demonstrated in straight flight and in 30° banked turns in the following configurations:

(1) The high incidence protection deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

(2) Automatic thrust increase system inhibited (if applicable);

(3) Engines idling;

(4) Flaps and landing gear in any likely combination of positions; and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(b) In icing conditions:

Maneuvers with a rate of deceleration of not more than 1 knot per second up to the maximum angle of attack reached during maneuvers from paragraph 5.1(b)(3)(ii) must be demonstrated in straight flight with:

(1) The high incidence protection deactivated or adjusted, at the option of the applicant, to allow higher incidence than is possible with the normal production system;

(2) Automatic thrust increase system inhibited (if applicable);

(3) Engines idling;

(4) Flaps and landing gear in any likely combination of positions, and

(5) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(c) During the maneuvers used to show compliance with paragraphs (a) and (b) above, the airplane must not exhibit dangerous characteristics, and it must always be possible to reduce angle of attack by conventional use of the controls. The pilot must retain good lateral and directional control, by conventional use of the controls, throughout the maneuver.

6. Atmospheric Disturbances

Operation of the high incidence protection system must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind-shear. This must be demonstrated in non-icing and icing conditions.

7. Proof of Compliance

We propose the following requirement be added in lieu of § 25.21(b), [Reserved]:

(b) The flying qualities must be evaluated at the most unfavorable center-of-gravity position.

8. Sections 25.145(a), 25.145(b)(6), and 25.1323(d)

We propose the following requirements:

- For § 25.145(a), add ''V_{min}'' in lieu of ''stall identification.''
- For § 25.145(b)(6), and ''V_{min}'' in lieu of ''V_{SW}.''
- For § 25.1323(d), add ''From 1.23 V_{SR} to V_{min} . . . ,'' in lieu of, ''1.23 V_{SR} to stall warning speed . . . ,'' and, ''. . . speeds below V_{min} . . .'' in lieu of, ''. . . speeds below stall warning . . .''

Special Conditions Part II

Credit for Robust Envelope Protection in Icing Conditions

The following special conditions are in lieu of the specified paragraphs of §§ 25.103, 25.105, 25.107, 25.121, 25.123, 25.125, 25.143, and 25.207.

1. Define the stall speed as provided in these special conditions, Part I, in lieu of § 25.103.

2. We propose the following requirements in lieu of § 25.105(a)(2)(i):

In lieu of § 25.105(a)(2)(i) Takeoff:

(i) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration, or

3. In lieu of § 25.107(c) and (g) we propose the following requirements, with additional sections (c′) and (g′):

In lieu of § 25.107(c) and (g) Takeoff speeds:

(c) In non-icing conditions V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(b) but may not be less than—

(1) V_{2MIN};

(2) V_R plus the speed increment attained (in accordance with § 25.111(c)(2)) before reaching a height of 35 feet above the takeoff surface; and

(3) A speed that provides the maneuvering capability specified in § 25.143(h).

(c′) In icing conditions with the ''takeoff ice'' accretion defined in part 25, appendix C, V_2 may not be less than—

(1) The V_2 speed determined in non-icing conditions; and

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

(g) In non-icing conditions, V_{FTO}, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by § 25.121(c), but may not be less than—

(1) 1.18 V_{SR}; and

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

(g′) In icing conditions with the ''final takeoff ice'' accretion defined in part 25, appendix C, V_{FTO}, may not be less than—

(1) The V_{FTO} speed determined in non-icing conditions.

(2) A speed that provides the maneuvering capability specified in § 25.143(h).

4. In lieu of §§ 25.121(b)(2)(ii)(A), 25.121(c)(2)(ii)(A), and 25.121(d)(2)(ii), we propose the following requirements:

In lieu of § 25.121(b)(2)(ii)(A):

(A) The V_2 speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the takeoff configuration; or

In lieu of § 25.121(c)(2)(ii)(A):

(A) The V_{FTO} speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en-route configuration; or

In lieu of § 25.121(d)(2)(ii):

(d)(2) The requirements of subparagraph (d)(1) of this paragraph must be met: (ii) In icing conditions with the approach ice accretion defined in appendix C, in a configuration

corresponding to the normal all-engines-operating procedure in which $V_{min}1g$ for this configuration does not exceed 110% of the $V_{min}1g$ for the related all-engines-operating landing configuration in icing, with a climb speed established with normal landing procedures, but not more than 1.4 V_{SR} (V_{SR} determined in non-icing conditions).

5. In lieu of § 25.123(b)(2)(i) we propose the following requirements:

In lieu of § 25.123(b)(2)(i):

(i) The minimum en-route speed scheduled in non-icing conditions does not provide the maneuvering capability specified in § 25.143(h) for the en-route configuration, or

6. In lieu of § 25.125(b)(2)(ii)(B) and § 25.125(b)(2)(ii)(C), we propose the following requirement:

(B) A speed that provides the maneuvering capability specified in § 25.143(h) with the landing ice accretion defined in part 25, appendix C.

7. In lieu of § 25.143(j)(2)(i), we propose the following requirement:

(i) The airplane is controllable in a pull-up maneuver up to 1.5 g load factor or lower if limited by angle of attack protection; and

8. In lieu of § 25.207, Stall warning, to read as the requirements defined in these special conditions Part I, Section 4.

Issued in Renton, Washington, on June 2, 2014.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–13528 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2014–0134]

RIN 2120–AF90

Proposal To Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Proposed policy; notice of public meeting and extension of comment period.

SUMMARY: The FAA will hold a public meeting to discuss its proposal to consider the impact of one engine inoperative procedures during aeronautical studies. This proposal was published in the **Federal Register** on April 28, 2014. During the meeting, the FAA will explain the proposal and respond to questions seeking clarification of the proposed policy. In addition, the FAA is extending the time period for which the public may submit written comments for an additional 30 days.

DATES: The comment period for the proposed policy published April 28, 2014 (79 FR 23300), is extended. The meeting will be held online with a teleconference on Wednesday, June 25, 2014, from 2:00 p.m. to 4:00 p.m. eastern time. Written public comments regarding this FAA proposed policy should be submitted by July 28, 2014.

FOR FURTHER INFORMATION CONTACT: John Speckin, Airport Obstruction Standards Committee, Region and Center Operations, Office of Finance and Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (816) 329–3053; email: *7-ACE-Federal-Registry-Notice@faa.gov*.

SUPPLEMENTARY INFORMATION: On April 28, 2014, the FAA published for public comment a proposal to amend its policy concerning the impacts of certain structures during aeronautical studies conducted under Title 14 of the Code of Federal Regulations Part 77. Specifically, the FAA proposed to consider the impact of one engine out procedures when studying new structures or modifications to existing structures at certain airports that have a defined departure area for each runway end supporting commercial service operations. FAA is proposing to factor these impacts into the aeronautical study process because the encroachment of airspace by structures surrounding certain airports appears to be significantly limiting options available to airlines to establish OEI procedures. Registration for the meeting is required by June 23, 2014. To register, email *7-ACE-Federal-Registry-Notice@faa.gov* with your name and the company or organization you are representing. In a response email, the attendees will be provided with instructions on how to connect to the online meeting and the teleconference. In the public meeting, the FAA will provide a slide presentation to further explain the proposed policy. Participants will be able to submit questions utilizing the instant message application of the online tool. In addition, the FAA is extending the time period for which the public may submit written comments for an additional 30 days.

Issued in Washington, DC, on June 3, 2014.

Raymond Towles,

Deputy Assistant Administrator for Regions and Center Operations, Office of Finance and Management, Federal Aviation Administration.

[FR Doc. 2014–13484 Filed 6–5–14; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

17 CFR Part 420

[Docket No. Treas–DO–2014–0002]

Government Securities Act Regulations: Large Position Reporting Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this notice of proposed rulemaking to solicit public comment on proposed amendments to Treasury's rules for reporting large positions in certain Treasury securities. The large position reporting rules are issued under the Government Securities Act (GSA) for the purposes of monitoring the impact in the Treasury securities market of concentrations of positions in Treasury securities and otherwise assisting the Securities and Exchange Commission (SEC) in enforcing the GSA. In addition, the large position reports provide Treasury with information to better understand supply and demand dynamics in certain Treasury securities. The proposed amendments are designed to improve the information available to Treasury and simplify the reporting process for many entities subject to the large position reporting rules.

DATES: Submit comments on or before August 9, 2014.

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

Electronic Comments

Use the Federal eRulemaking Portal (*www.regulations.gov*) and follow the instructions for submitting comments through the Web site. You may download this proposed rule from *www.regulations.gov* or *www.treasurydirect.gov*.

Paper Comments

Send paper comments to Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, 401 14th Street SW., Washington, DC 20227.

Please submit your comments using only one method, along with your full name and mailing address. We will post all comments to *www.regulations.gov* and on the TreasuryDirect Web site at *www.treasurydirect.gov.* The proposed rule and comments will also be available for public inspection and copying at the Treasury Department Library, Treasury Annex Room 1020, 1500 Pennsylvania Avenue NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director, or Kevin Hawkins, Government Securities Advisor, Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, (202) 504–3632 or email us at *govsecreg@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION: Treasury is proposing amendments to the large position reporting (LPR) rules to improve the information reported so that Treasury can better understand supply and demand dynamics in certain Treasury securities. Specifically, the proposed amendments would: (1) Request that central banks (including U.S. Federal Reserve Banks for their own account), foreign governments, and international monetary authorities voluntarily submit large position reports (Reports) when they meet or exceed the reporting threshold(s); (2) replace the current $2 billion minimum reporting threshold with a percentage standard; (3) replace the concept of the ''reportable position'' with a requirement that defined reporting entities [1] must file a Report if any one of seven criteria is met; (4) revise the format for the reporting of positions in the specified Treasury security and establish a two-column format for the reporting of gross ''obligations to receive'' and gross ''obligations to deliver;'' (5) expand the components of a position to include futures, options on futures, and options; (6) provide an option for reporting entities to identify the type(s) of business engaged in by the reporting entity and any of its aggregating entities with positions in the specified Treasury security, and to identify their overall investment strategy with respect to positions in the specified Treasury security; and (7) consolidate relevant guidance in the LPR rules.

The proposed amendments to the LPR rules reflect Treasury's continuing need to obtain relevant information from reporting entities while minimizing the cost and burden on those entities. We believe these amendments are consistent with the findings of Congress that ''(1) the liquid and efficient operation of the government securities market is essential to facilitate government borrowing at the lowest possible cost to taxpayers; and (2) the fair and honest treatment of investors will strengthen the integrity and liquidity of the government securities market.'' [2] In this proposed rule, we first provide background on the current LPR rules and then describe the proposed amendments to those rules.

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I. Background

A. Statutory Authority

In response to short squeezes in two-year Treasury notes that occurred in the government securities market in 1990–1991,[3] Congress included a large position reporting provision in the 1993 amendments to the GSA.[4] This provision grants Treasury the authority to prescribe rules requiring specified persons holding, maintaining, or controlling large positions in to-be-issued or recently-issued [5] Treasury securities to file reports regarding such positions and to keep records when required by Treasury. The provision was intended to improve the collection of information by Treasury regarding large positions in Treasury securities held by market participants. Such information allows Treasury to monitor the impact of concentrations of positions in the Treasury securities market. This information is also made available to the Federal Reserve Bank of New York (FRBNY), as Treasury's agent, and the SEC.[6] Treasury believes that large positions in Treasury securities are not inherently problematic and there is no presumption of manipulative or illegal intent merely because a reporting entity's position is large enough to be subject to Treasury's LPR rules.

The GSA specifically provides that Treasury shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempted by the GSA from disclosure under the Freedom of Information Act.[7]

B. Who Is Subject to the Large Position Reporting Rules

Treasury's LPR rules apply to all persons and entities, foreign and domestic, that control a reportable position in a Treasury security, including: Government securities brokers and dealers; registered investment companies; registered investment advisers; custodians, including depository institutions, that exercise investment discretion; hedge funds; pension funds; insurance companies; and foreign affiliates of U.S. entities.

The current rules provide an exemption for foreign central banks, foreign governments, and international

[1] 17 CFR 420.2(i).

[2] Public Law 103–202, 107 Stat. 2344 (1993) [15 U.S.C. 78o–5(f)].

[3] *Joint Report on the Government Securities Market,* Department of the Treasury, Securities and Exchange Commission, and Board of Governors of the Federal Reserve System (1992). *See www.treasurydirect.gov.* Market participants use the term ''squeeze'' to refer to a shortage of supply relative to demand for a particular security, as evidenced by a movement in its price to a level that is out of line with prices of comparable securities—either outright trading quotations or in financing arrangements.

[4] *See* note 2, *supra.*

[5] Treasury may request information on securities that fall outside of these timeframes if such ''information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.'' (*See* 17 CFR 420.2(g)(5)).

[6] 15 U.S.C 78o–5(f)(1).

[7] 15 U.S.C. 78o–5(f)(6).

monetary authorities (collectively, ''foreign official organizations'').[8] U.S. Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account.[9]

C. Rulemaking

Treasury published final rules in 1996 that established recordkeeping and reporting requirements related to large positions in certain Treasury securities.[10] The LPR rules were subsequently amended in 2002 to improve the collection of information in the Report by requiring more detailed reporting of certain components of the formula for determining a reportable position, adding a second memorandum item that requires the reporting of the gross par amount of ''fails to deliver,'' and modifying the definition of ''gross financing position'' to eliminate the optional exclusion in the calculation of the amount of securities received through certain financing transactions.[11]

II. Current Large Position Reporting Rules

A. Reporting and Recordkeeping Requirements

1. On-Demand Reporting System

An ''on-demand'' reporting system, rather than a regular, ongoing system of reporting, provides Treasury with the information necessary to understand supply and demand dynamics in the Treasury securities market, while minimizing the potential impact on the market's efficiency and liquidity and the cost to taxpayers of funding the federal debt. It also minimizes the cost and burden to those reporting entities affected by the LPR rules.

2. Notice Requesting Large Position Reports

Reports must be filed with FRBNY in response to a notice [12] from Treasury requesting large position information on a specific issue of a Treasury security. The Reports must be filed by defined reporting entities controlling positions that equal or exceed the reporting threshold specified in the notice. FRBNY must receive the Reports before noon Eastern time on the fourth business day after the issuance of the notice calling for large position information.

3. Control

Treasury defines ''control'' as the authority to ''exercise investment discretion over the purchase, sale, retention, or financing of specific Treasury securities.'' [13] Investment discretion can be exercised by the beneficial owner, a custodian, or an investment adviser. The party responsible for making investment decisions, regardless of where securities are held, is the relevant reporting entity for large position reporting because the actions and objectives of the decision maker are what we are trying to determine.

4. Components of a Position

Under the current rules, a ''reportable position is the sum of the net trading positions, gross financing positions, and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.'' [14] Specific components of these positions are identified at § 420.2.[15] All position amounts are currently required to be reported on a trade date basis at par value.

5. Recordkeeping

The recordkeeping requirements provide that any reporting entity controlling at least $2 billion of a particular Treasury security must maintain and preserve certain records that enable it to compile, aggregate, and report large position information.[16]

B. Calls for Large Position Reports

Treasury has conducted 14 calls since the LPR rules became effective in 1996.[17] We are proposing certain amendments to the rules based on the experience gained from these calls.

III. Proposed Amendments to the Large Position Reporting Rules

A. Balancing of Regulatory and Market Needs

Treasury has attempted to strike a balance between achieving the purposes and objectives of the GSA's LPR requirements and minimizing costs and burdens on reporting entities. We believe that the amendments being proposed continue to achieve this balance by improving the type of information collected through the Reports while simplifying the reporting process for many reporting entities.

Treasury staff has also consulted staff of the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York in developing this proposal.

B. Section 420.1—Applicability

Treasury's LPR rules currently provide an exemption for foreign central banks, foreign governments, and international monetary authorities (collectively ''foreign official organizations''). U.S. Federal Reserve Banks are also exempt for the portion of any reportable position they control for their own account. Foreign official organizations were exempted from the LPR rules issued in 1996 because they did not typically control large positions in Treasury securities and subjecting them to the reporting requirement would have presented legal and jurisdictional issues.[18] Since that time, foreign official organizations have significantly increased their participation in the Treasury securities market and have an interest in a liquid and well-functioning Treasury securities market.

Treasury is therefore proposing to eliminate these exemptions and request that all foreign official organizations as well as U.S. Federal Reserve Banks for their own accounts voluntarily submit Reports if they meet or exceed the reporting threshold(s). Treasury believes that the voluntary submission of Reports by these entities is consistent with the purposes of the GSA and will help Treasury to better understand supply and demand dynamics in the Treasury securities market. This in turn will benefit these entities by helping the Treasury securities market to remain liquid and efficient. As is the case with all Reports, these voluntary Reports would be submitted only in response to a call for large position reports. Treasury requests for Reports are infrequent.[19]

C. Section 420.2—Definitions

1. Large Position Threshold

The current definition of ''large position threshold'' [20] contains references to the term ''reportable position.'' The proposed amendments to

[8] 17 CFR 420.1(b).

[9] 17 CFR 420.1(c).

[10] 61 FR 48338 (September 12, 1996).

[11] 67 FR 77412 (December 18, 2002).

[12] The notice is in the form of a Treasury press release that is posted to the Treasury and TreasuryDirect Web sites, subsequently published in the **Federal Register**, and also disseminated via social media, major news and financial publications, and wire services. An electronic mailing list that distributes the notice to subscribers is also available at *www.treasurydirect.gov*.

[13] 17 CFR 420.2(b).

[14] 17 CFR 420.2(h).

[15] *See* 17 CFR 420.2 for definitions of gross financing position, net fails position, and net trading position.

[16] 17 CFR 420.4.

[17] So that market participants remain knowledgeable about the LPR rules, specifically how to calculate and report a reportable position, Treasury ''tests'' the reporting system by requesting Reports annually, regardless of market conditions for a particular security. *See* 60 FR 65223 (December 18, 1995).

[18] 61 FR 48342 (September 12, 1996).

[19] *See* note 17, *supra*.

[20] 17 CFR 420.2(d).

the LPR rules no longer include the concept of a reportable position, and therefore, Treasury is proposing to delete references to the term ''reportable position'' in the definition of ''large position threshold.''

The current definition of ''large position threshold'' also establishes a minimum reporting threshold of $2 billion. The GSA requires that the LPR rules specify ''the minimum size of positions subject to reporting under this subsection, which shall be no less than the size that provides the potential for manipulation or control of the supply or price, or the cost of financing arrangements, of an issue or the portion thereof that is available for trading.'' [21]

Treasury is proposing to replace the current $2 billion minimum reporting threshold with a minimum threshold that is 10 percent of the outstanding amount of the specified Treasury security. Given the large range of issue sizes among various Treasury securities, making the minimum reporting threshold a percentage of the amount of the security outstanding may be a better indicator of concentrations of control. A percentage threshold will potentially allow for a threshold that is less than the current $2 billion minimum. We will state the dollar amount of the reporting threshold(s) in the notice and press release announcing a call for Reports. Treasury is not proposing, however, to amend the $2 billion threshold that triggers the LPR recordkeeping requirement.[22]

2. Reporting Requirement

Under the current LPR rules, an entity must submit a Report if its reportable position meets or exceeds the large position threshold. The reportable position is the sum of the net trading, gross financing, and net fails positions. This calculation could result in a reportable position that falls below the large position threshold if an entity's net trading position is a large negative number.

Treasury proposes replacing the concept of the reportable position with a reporting requirement that entities must file a Report if any one of seven criteria is met.[23] For certain reporting criteria Treasury may announce different thresholds. For example, Treasury may have a different threshold for settlement fails than for other reporting criteria. Applying the large position threshold(s) to several different criteria may provide greater insight into gross exposures large enough to potentially impact the liquidity of the security, regardless of how the position was acquired. However, under no circumstances will a large position threshold be less than 10 percent of the amount outstanding of the specified Treasury security.

3. Tri-Party Repurchase Agreement Shells

The proposed amendments introduce the term ''tri-party repurchase agreement shell.'' A tri-party repurchase agreement (repo) shell is an account created on the books of a tri-party repo agent bank following confirmation of a tri-party repo transaction between a cash lender and a collateral provider. Each shell has a unique account number and an eligibility rule set based on an agreement between the cash lender and the collateral provider. The rule set defines the type of securities that are eligible for the shell as well as associated haircuts. Collateral is allocated and held for the duration of the transaction in the tri-party repo shell. The shell must be fully collateralized at all times and collateral providers may remove collateral from the shell only if shell-eligible collateral of equal value is allocated into the shell in its place.

D. Changes to the Large Position Report

1. Reporting Format

The current LPR rules require entities to calculate their total reportable position as of the close of business on the report date. Treasury is proposing a revised format for an entity to report its positions and settlement obligations in the specified Treasury security, including: (1) Positions at the opening of the Federal Reserve System's Fedwire® Securities Service (Fedwire),[24] (2) settlement obligations created prior to and on the report date, and (3) positions at the close of Fedwire. The proposed reporting format would provide Treasury a better understanding of reporting entities' positions in the specified Treasury security leading up to the report date, their settlement obligations created prior to or on the report date, and their positions at the end of the report date.

2. Gross Reporting

Under the current rules, reporting entities are required to net obligations to receive and deliver in the net trading and net fails positions. For transactions between different reporting entities, Treasury is proposing using a two-column format for positions to be reported on a gross basis in order to separate settlement ''obligations to receive'' and ''obligations to deliver.'' For example, settlement fails resulting from an obligation to receive would be reported separately from settlement fails resulting from an obligation to deliver. This format would potentially make it easier for Treasury to understand a reporting entity's trading activity, including what positions it might control in the future. This approach may also be easier for many reporting entities to understand because it may align more closely with the way they typically maintain their records.

To avoid multiple counting, aggregating entities that are part of the same reporting entity would be required to net receive and deliver obligations resulting from intercompany transactions.

3. Futures and Options Contracts

Currently, the LPR rules only require the reporting of positions in futures contracts that require the delivery of the specified Treasury security. We are proposing to expand the components of a position to also include futures, options on futures, and options contracts for which the specified Treasury security is deliverable. The components would include contracts that require delivery of the specified Treasury security as well as contracts that allow for the delivery of several securities.

4. Components of a Position

As part of an ongoing effort to improve the information Treasury receives in response to a call for Reports, we routinely discuss ways to improve the LPR rules with market participants. Feedback from these discussions suggests that the current rules and formula could be modified to more closely align with the way reporting entities typically maintain their records and also may provide more meaningful information for Treasury.

Accordingly, we are proposing to replace the current components of a total reportable position with the following report components:

a. Positions in the Security Being Reported at the Opening of Fedwire on the Report Date, including positions:

i. In accounts of the reporting entity;

ii. In tri-party repurchase agreement shells;

iii. As collateral or margin against financial derivatives and other

[21] *See* note 2, *supra.*

[22] 17 CFR 420.4(a)(1).

[23] *See* Appendix B to the proposed rule, ''Sample Large Position Report,'' for the proposed criteria.

[24] The Federal Reserve System's Fedwire Securities Service is a book-entry securities transfer system that provides safekeeping, transfer, and delivery-versus-payment settlement services. The Fedwire Securities Service operates daily from 8:30 a.m. to 3:30 p.m. Eastern Time.

contractual obligations of the reporting entity; and

iv. Controlled by any other means.

b. Settlement Obligations Attributable to Purchase and Sale Contracts Negotiated Prior to and on the Report Date (excluding settlement fails), including:

i. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0);

ii. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1);

iii. Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement (T+n, n>1);

iv. Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards; and

v. Obligations to receive or deliver, on the report date, principal STRIPS [25] derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts.

c. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails), including:

i. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements;

ii. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date;

iii. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date.

d. Settlement Fails from Days Prior to the Report Date (Legacy Obligations), including:

i. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date.

e. Settlement Fails as of the Close of Fedwire on the Report Date, including:

i. Obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date.

f. Positions in the Security Being Reported at the Close of Fedwire on the Report Date, including positions:

i. In accounts of the reporting entity;

ii. In tri-party repurchase agreement shells;

iii. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and

iv. Controlled by any other means.

g. Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported, including the:

i. Net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date.

h. Futures and Options Contracts, including the:

i. Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable; and

ii. Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable.

All amounts should be reported as positive numbers and at par in millions of dollars.

5. Optional Administrative Information

Treasury is providing an option for reporting entities to identify the type(s) of business engaged in by the reporting entity and its aggregating entities with respect to positions in the specified Treasury security by checking the appropriate box. The types of businesses listed in the proposed Report are: Broker or dealer, government securities broker or dealer, municipal securities broker or dealer, futures commission merchant, bank holding company, non-bank holding company, bank, investment adviser, commodity pool operator, pension trustee, non-pension trustee, and insurance company. Reporting entities could identify as many business types as applicable. If the reporting entity is engaged in a business that is not listed, it could select ''other'' and provide a description of its business with regard to the specified Treasury security. Knowing the type(s) of business in which the reporting entity is engaged would help Treasury better understand the Treasury security positions included in the entity's Report.

Treasury is also providing an option for reporting entities to identify their overall investment strategy with respect to positions in the specified Treasury security by checking the appropriate box. Active investment strategies would include those that involve purchasing, selling, borrowing, lending, and financing positions in the security prior to maturity. Passive investment strategies would include those that involve holding the security until maturity. A combination of active and passive strategies would involve applying the aforementioned active and passive strategies to all or a portion of a reporting entity's positions in the security.

E. Consolidated Guidance

The current LPR rules specify the positions that entities are required to report, however, additional guidance on the treatment of specific transactions is contained in the preambles to the previous proposed and final rules and a list of Frequently Asked Questions and Answers available on the TreasuryDirect Web site. The proposed amendments consolidate certain guidance in the rules themselves, which may help to simplify the reporting process and make the reporting requirements clearer.

F. Request for Comment

Treasury welcomes comments on all of these proposed amendments, in particular whether: (1) The proposed amendments would accomplish the goal of providing Treasury with more useful information regarding supply and demand dynamics in certain Treasury securities; (2) the effect, if any, the proposed amendments would have on reporting entities in calculating their positions; (3) based on the proposed amendments, the current three and a half business day reporting timeframe would be sufficient to allow reporting entities to complete the proposed Report; (4) establishing a minimum LPR threshold that is 10 percent of the outstanding amount of the specified Treasury security is appropriate; (5) announcing different thresholds for certain reporting criteria is appropriate; (6) the proposed treatment of fails is appropriate; (7) including options in the

[25] STRIPS (Separate Trading of Registered Interest and Principal of Securities) means Treasury's program under which eligible securities are authorized to be separated into principal and interest components, and transferred separately. *See* 31 CFR 356.2.

positions that are required to be reported is appropriate or whether there are other amounts or positions that would be meaningful to include; (8) other business types of reporting entities should be identified on the report; and (9) $2 billion is the appropriate threshold that triggers the LPR recordkeeping requirement. We invite comments on the effect of these proposed amendments, including any operational or system modifications that may be needed. We also welcome comments on any other aspects of the proposed amendments and how to improve the LPR rules.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Act) requires that collections of information prescribed in the proposed amendments to the LPR rules be submitted to the Office of Management and Budget (OMB) for review and approval.[26] In accordance with that requirement, Treasury has submitted the collection of information contained in this notice of proposed rulemaking for review. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Comments on the collection of information may be submitted electronically to *oira.submission@omb.eop.gov*, or may be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, DC 20503; and to the Government Securities Regulations Staff, Bureau of the Fiscal Service, at the address specified at the beginning of this document.

The collection of information in the proposed amendments is contained in proposed § 420.3. The proposed amendments require a reporting entity that meets any one of seven criteria to submit a Report to FRBNY. Although we cannot be certain of the number of entities that would be required to report their positions as a result of a call for such Reports, we believe few reporting entities would actually have to file Reports because the minimum reporting threshold remains high. In fact, the actual reporting threshold(s) in a specific call for large position reports may exceed the minimum reporting threshold. Moreover, we expect that our requests for information will continue to be infrequent.

Treasury does not believe that reporting entities would find reporting the additional opening position information and separately reporting gross obligations to deliver and receive overly burdensome because this approach may align more closely with the way many reporting entities typically maintain their records. In addition, reporting entities must collect much of this information to calculate their reportable position under the current LPR rules. Because the proposed amendments would require more detailed information to be provided by entities that file reports, we are increasing the annual reporting burden in our submission to OMB by 104 hours, representing an increase from eight hours to ten hours per reporting entity and an increase from 12 to 20 reporting entities.

The collection of information is intended to enable the Treasury and other regulators to better understand supply and demand dynamics in certain Treasury securities. This information would help the Treasury securities market remain liquid and efficient and facilitate government borrowing at the lowest possible cost to taxpayers.

Treasury invites further comments on: (1) Whether the proposed collection of information is necessary for the proper performance of Treasury's functions, including whether the information has practical utility; (2) the accuracy of Treasury's estimate of the burden; (3) enhancement of the quality, utility, and clarity of information to be collected; and (4) minimizing the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology.

Estimated total annual reporting burden: 200 hours.

Estimated annual number of respondents: 20.

Estimated annual frequency of response: 1.

V. Special Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The proposed amendments reflect Treasury's continuing interest in meeting its informational needs while minimizing the cost and burden on those entities affected by the regulations. The proposed amendments retain the on-demand reporting system, adopted in 1996, which is less burdensome than a regular reporting system. Based on the limited impact of the proposed amendments, it is our view that the proposed regulations are not a ''significant regulatory action'' for the purposes of Executive Order 12866.

In addition, we certify under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that the proposed amendments to the current regulations would not have a significant economic impact on a substantial number of small entities. We believe that small entities will not control positions of 10 percent or greater in any particular Treasury security. The inapplicability of the proposed amendments to small entities indicates there is no significant impact. As a result, a regulatory flexibility analysis is not required.

List of Subjects in 17 CFR Part 420

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, we propose that 17 CFR part 420 be revised to read as follows:

PART 420—LARGE POSITION REPORTING

Sec.

420.1 Applicability.
420.2 Definitions.
420.3 Reporting.
420.4 Recordkeeping.
420.5 Effective date.
Appendix A to Part 420—Separate Reporting Entity.
Appendix B to Part 420—Sample Large Position Report.

Authority: 15 U.S.C. 78o–5(f).

§ 420.1 Applicability.

(a) This part is applicable to all persons that participate in the government securities market, including, but not limited to: Government securities brokers and dealers, depository institutions that exercise investment discretion, registered investment companies, registered investment advisers, pension funds, hedge funds, and insurance companies that may control a position in a recently-issued marketable Treasury bill, note, or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, Treasury requests that central banks (including U.S. Federal Reserve Banks for their own account), foreign governments, and international monetary authorities voluntarily submit large position reports when they meet or exceed the reporting threshold(s).

[26] 44 U.S.C. 3507(d).

§ 420.2 Definitions.

For the purposes of this part:

Aggregating entity means a single entity (e.g., a parent company, affiliate, or organizational component) that is combined with other entities, as specified in the definition of ''reporting entity'' of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

Control means having the authority to exercise investment discretion over the purchase, sale, retention, or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

Large position threshold means the minimum dollar par amount of the specified Treasury security that a reporting entity must control in order for the entity to be required to submit a large position report. Treasury will announce the large position threshold(s), which may vary with each notice of request to report large position information and with each specified Treasury security. Treasury may announce different thresholds for certain reporting criteria. Under no circumstances will a large position threshold be less than 10 percent of the amount outstanding of the specified Treasury security.

Recently-issued means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security.

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the new portion of the reopened security is issued by Treasury (or for when-issued securities, the scheduled issue date).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(5) Treasury security issues other than those specified in paragraphs (1) and (2) of this definition, provided that such large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.

Reporting entity means any corporation, partnership, person, or other entity and its affiliates, as further provided herein. For the purposes of this definition, an affiliate is any: Entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in appendix A to this part, one aggregating entity, or a combination of aggregating entities, may be recognized as a separate reporting entity.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of Treasury securities are considered, collectively, to be one reporting entity.

Reporting requirement means that an entity must file a large position report when it meets any one of seven criteria contained in appendix B to this part.

Tri-party repurchase agreement (repo) shell means an account created on the books of a tri-party repo agent bank following confirmation of a tri-party repo transaction between a cash lender and a collateral provider. Each shell has a unique account number and an eligibility rule set based on an agreement between the cash lender and the collateral provider. The rule set defines the type of securities that are eligible for the shell as well as associated haircuts. Collateral is allocated and held for the duration of the transaction in the tri-party repo shell. The shell must be fully collateralized at all times and collateral providers may remove collateral from the shell only if shell-eligible collateral of equal value is allocated into the shell in its place.

§ 420.3 Reporting.

(a) A reporting entity must file a large position report if it meets the reporting requirement as defined in § 420.2 of this part. Treasury will provide notice of the large position threshold(s) by issuing a press release and subsequently publishing the notice in the **Federal Register**. Such notice will identify the Treasury security issue to be reported (including, where applicable, identifying the related STRIPS principal component); the date or dates for which the large position information must be reported; and the applicable large position threshold(s) for that issue. A reporting entity is responsible for taking reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by Treasury and for maintaining the additional records prescribed in § 420.4.

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity that controls an amount of the specified Treasury security that equals or exceeds one of the specified large position thresholds stated in the notice shall compile and report the amounts of the reporting entity's positions in the order specified, as follows:

(i) *Part I.* Positions in the Security Being Reported at the Opening of Fedwire® on the Report Date, including positions:

(A) In accounts of the reporting entity;

(B) In tri-party repurchase agreement shells;

(C) As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and

(D) Controlled by any other means.

(ii) *Part II.* Settlement Obligations Attributable to Purchase and Sale Contracts Negotiated Prior to and on the Report Date (excluding settlement fails), including:

(A) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0);

(B) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1);

(C) Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement (T+n, n>1);

(D) Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards; and

(E) Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts.

(iii) *Part III.* Settlement Obligations Attributable to Delivery-versus-Payment

Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails), including:

(A) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements;

(B) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date; and

(C) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date.

(iv) *Part IV.* Settlement Fails from Days Prior to the Report Date (Legacy Obligations), including obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date.

(v) *Part V.* Settlement Fails as of the Close of Fedwire on the Report Date, including obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date.

(vi) *Part VI.* Positions in the Security Being Reported at the Close of Fedwire on the Report Date, including:

(A) In accounts of the reporting entity;

(B) In tri-party repurchase agreement shells;

(C) As collateral or margin against financial derivatives and other contractual obligations of the reporting entity; and

(D) Controlled by any other means.

(vii) *Part VII.* Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported, including net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date.

(viii) *Part VIII.* Futures and Options Contracts, including:

(A) Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable; and

(B) Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable.

(2) An illustration of a sample report is contained in Appendix B.

(3) Each of the components of Part I–Part VIII shall be reported as a positive number or zero. All reportable amounts should be reported in the order specified above and at par in millions of dollars.

(4) Each submitted large position report must include the following administrative information: Name of the reporting entity; address of the principal place of business; name and address of the designated filing entity; the Treasury security that is being reported; the CUSIP number for the security being reported; the report date or dates for which information is being reported; the date the report was submitted; name and telephone number of the person to contact regarding information reported; and name and position of the authorized individual submitting this report.

Reporting entities have the option to identify the type(s) of business engaged in by the reporting entity and its aggregating entities with positions in the specified Treasury security by checking the appropriate box. The types of businesses include: Broker or dealer, government securities broker or dealer, municipal securities broker or dealer, futures commission merchant, bank holding company, non-bank holding company, bank, investment adviser, commodity pool operator, pension trustee, non-pension trustee, and insurance company. Reporting entities may select as many business types as applicable. If the reporting entity is engaged in a business that is not listed, it could select ''other'' and provide a description of its business with respect to positions in the specified Treasury security.

Reporting entities also have the option to identify their overall investment strategy with respect to positions in the specified Treasury security by checking the appropriate box. Active investment strategies include those that involve purchasing, selling, borrowing, lending, and financing positions in the security prior to maturity. Passive investment strategies include those that involve holding the security until maturity. A combination of active and passive strategies would involve applying the aforementioned active and passive strategies to all or a portion of a reporting entity's positions in the specified Treasury security. Reporting entities may select the most applicable investment strategy.

(5) The large position report must be signed by one of the following: The chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The designated filing entity must also include in the report, immediately preceding the signature, a statement of certification as follows:

> By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR part 420.

(6) The report must be filed before noon Eastern time on the fourth business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by the Federal Reserve Bank of New York. The report may be filed by facsimile or delivered hard copy. The Federal Reserve Bank of New York may in its discretion also authorize additional means of reporting.

(e) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of Treasury or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.4 Recordkeeping.

(a) *Recordkeeping responsibility of aggregating entities.* Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity that controls a portion of its reporting entity's position in a recently-issued Treasury security, when such position of the reporting entity equals or exceeds $2 billion, shall be responsible for making and maintaining the records prescribed in this section.

(b) *Records to be made and preserved by entities that are subject to the recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions.* As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer,

noticed financial institution, depository institution that exercises investment discretion, registered investment adviser, or registered investment company with the applicable recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that, if such entity is also the designated filing entity, it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1) through (3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) *Records to be made and preserved by other entities.* (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that contribute to a reporting entity's position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: The type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition it shall make and preserve the following records:

(i) Copies of all large position reports filed pursuant to this part;

(ii) Supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position; and

(iii) A chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position.

(3) With respect to the records required by paragraphs (c)(1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.5 Applicability date.

The provisions of this part shall be first applicable beginning March 31, 1997.

Appendix A to Part 420—Separate Reporting Entity

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent, subsidiary, or organizational component) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from Treasury pursuant to the procedures outlined in § 400.2(c) of this chapter. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR Part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to trade in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

The above-named entity agrees that it will promptly notify Treasury in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid.

Any entity, including any organizational component thereof, that previously has received recognition as a separate bidder in Treasury auctions from Treasury pursuant to 31 CFR part 356 is also recognized as a separate reporting entity without the need to request such status, provided such entity continues to be in compliance with the conditions set forth in appendix A to 31 CFR part 356.

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Appendix B to Part 420 – Sample Large Position Report

Formula for Determining Whether to Submit a Large Position Report (millions of dollars at par value)

	Column A	Column B
	Quantity	
Part I. Positions in the Security Being Reported at the Opening of Fedwire® on the Report Date		
1. In accounts of the reporting entity		
2. In tri-party repurchase agreement shells		
3. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity		
4. Controlled by any other means		
Part II. Settlement Obligations Attributable to Purchase and Sale Contracts Negotiated Prior to and on the Report Date (excluding settlement fails)	**Obligations to receive**	**Obligations to deliver**
5. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0)		
6. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1)		
7. Obligations to receive or deliver, on the report date, the security being reported attributable to forward contracts, including when-issued contracts, for forward settlement (T+n, n>1)		

8. Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards		
9. Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued contracts, and forward contracts		
Part III. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to and on the Report Date (excluding settlement fails)	**Obligations to receive**	**Obligations to deliver**
10. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements		
11. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements opened on, or due to close on, the report date		
12. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements opened on, or due to close on, the report date		
Part IV. Settlement Fails from Days Prior to the Report Date (Legacy Obligations)		
13. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date		

Part V. Settlement Fails as of the Close of Fedwire on the Report Date

14. Obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date	

Part VI. Positions in the Security Being Reported at the Close of Fedwire on the Report Date	**Quantity**
15. In accounts of the reporting entity	
16. In tri-party repurchase agreement shells	
17. As collateral or margin against financial derivatives and other contractual obligations of the reporting entity	
18. Controlled by any other means	

Part VII. Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported	**Quantity**
19. Net amount of security being reported lent out on term repurchase agreements that were opened before the report date and that were not due to close until after the report date, and on open repurchase agreements that were opened before the report date and that were not closed on the report date	

Part VIII. Futures and Options Contracts

20. Net long position, immediately prior to the opening of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable _____

21. Net long position, immediately following the close of futures and options trading on the report date, in futures, options on futures, and options contracts on which the security being reported is deliverable _____

A reporting entity must submit a large position report if it meets any one of the following criteria:

[ ] A. If the sum of column A in lines 1, 2, 3, 4, and 19 is greater than or equal to the announced large position threshold.
[ ] B. If the sum of column A in lines 15, 16, 17, 18 and 19 is greater than or equal to the announced large position threshold.
[ ] C. If the sum of column A in lines 5 through 13 is greater than or equal to the announced large position threshold.
[ ] D. If the sum of column B in lines 5 through 13 is greater than or equal to the announced large position threshold.
[ ] E. If column A in line 14 is greater than or equal to the announced large position threshold.
[ ] F. If column B in line 14 is greater than or equal to the announced large position threshold.
[ ] G. If line 20 or line 21 is greater than or equal to the announced large position threshold.

Please specify which of the above criteria triggered the reporting requirement (check all that apply).

Administrative Information to be Provided in the Report

- Name of Reporting Entity:
- Address of Principal Place of Business:
- Name and Address of the Designated Filing Entity:
- Treasury Security Reported on:
- CUSIP Number:
- Date or Dates for which Information is Being Reported:
- Date Report Submitted:
- Name and Telephone Number of Person to Contact Regarding Information Reported:

Name and Position of Authorized Individual Submitting this Report (Chief Compliance Officer; Chief Legal Officer; Chief Financial Officer; Chief Operating Officer; Chief Executive Officer; or Managing Partner or Equivalent of the Designated Filing Entity Authorized to Sign Such Report on Behalf of the Entity):

(Optional) Identify the business(es) engaged in by the reporting entity and any of its aggregating entities with respect to the specified Treasury security (check all that apply).

[ ] A. Broker or Dealer
[ ] B. Government Securities Broker or Dealer
[ ] C. Municipal Securities Broker or Dealer
[ ] D. Futures Commission Merchant
[ ] E. Bank Holding Company
[ ] F. Non-Bank Holding Company
[ ] G. Bank
[ ] H. Investment Adviser
[ ] I. Commodity Pool Operator
[ ] J. Pension Trustee
[ ] K. Non-Pension Trustee
[ ] L. Insurance Company
[ ] M. Other (specify) _____

(Optional) Do you consider the reporting entity's overall investment strategy with respect to the specified Treasury security to be:

[ ] Active
[ ] Passive
[ ] Combination of Active and Passive

Statement of Certification: "By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420."

Signature of Authorized Person Named Above:

Matthew S. Rutherford,

Assistant Secretary for Financial Markets.

[FR Doc. 2014–13482 Filed 6–9–14; 8:45 am]

BILLING CODE 4810–39–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0311; FRL–9911–89-Region-4]

Approval and Promulgation of Implementation Plans Alabama: Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Alabama State Implementation Plan submitted by the Alabama Department of Environmental Management (ADEM) on September 3, 2013. The revision would modify the definition of ''volatile organic compounds'' (VOCs). Specifically, the revision adds four hydrofluoropolyethers compounds to the list of those excluded from the VOC definition on the basis that these compounds make a negligible contribution to tropospheric ozone formation. ADEM is seeking to update its SIP to be consistent with the federal rule finalized by EPA on February 12, 2013, which excludes these compounds from the regulatory definition of VOC.

DATES: Written comments must be received on or before July 10, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0311, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2014–0311, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wong, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong may be reached at (404) 562–8726, or *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. In the Final Rules Section of this **Federal Register**, EPA is approving the State's implementation plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this notice, no further activity is contemplated. If EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: May 28, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2014–13427 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0738; FRL–9911–95–Region 4]

Approval and Promulgation of Implementation Plans; State of Tennessee; Knoxville; Fine Particulate Matter 2008 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the 2006 24-hour fine particulate matter ($PM_{2.5}$) 2008 base year emissions inventory portion of the State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation on October 18, 2013. The emissions inventory is part of Tennessee's October 18, 2013, attainment demonstration SIP revision that was submitted to meet Clean Air Act requirements related to the Knoxville nonattainment area for the 2006 24-hour $PM_{2.5}$ national ambient air quality standards, hereafter referred to as ''the Knoxville Area'' or ''Area.'' The Knoxville nonattainment area is comprised of Anderson, Blount, Knox and Loudon Counties in their entireties and a portion of Roane County that includes the Tennessee Valley Authority's Kingston Fossil Plant.

DATES: Written comments must be received on or before July 10, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2013–0738, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2013–0738,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2013–0738. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

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

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9121. Mr. Majumder can be reached via electronic mail at *Majumder.joydeb@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the associated direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule by July 10, 2014, no further activity is contemplated. If EPA receives relevant adverse comments by July 10, 2014, the direct final rule will be withdrawn and all relevant adverse comments received during the public comment period will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this document must do so by July 10, 2014.

Dated: May 22, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2014–13407 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket Number MARAD–2014–0043]

RIN 2133–AB86

Requirements To Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length

AGENCY: Maritime Administration, DOT.

ACTION: Notice of proposed rulemaking, request for comments.

SUMMARY: The Maritime Administration (''MARAD'') is soliciting public comments on amendments to its regulations which implement new requirements regarding certain large fishing industry vessels set forth in the American Fisheries Act of 1998, as amended by the Coast Guard Authorization Act of 2010 (''CGAA'') and the Coast Guard and Maritime Transportation Act of 2012 (''CGMTA''). The proposed revisions to the regulation adds two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, eliminates the 15-day application deadline for vessels whose fishery endorsements have become invalid, limits fishery endorsement eligibility for certain large fishing industry vessels, and eliminates certain exemptions for specific vessels that were deleted in the CGMTA.

DATES: Comments must be received on or before August 11, 2014. MARAD will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2014–0043 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search MARAD–2014–0043 and follow the instructions for submitting comments.
- *Email: Rulemakings.MARAD@dot.gov.* Include MARAD–2014–0043 in the subject line of the message.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. If you would like to know that your comments reached the facility, please enclose a stamped, self-addressed postcard or envelope.
- *Hand Delivery/Courier:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you fax, mail or hand deliver your input we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit your inputs by mail or hand delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the docket at *www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: You may contact Michael C. Pucci, Attorney Advisor, Division of Maritime Programs, Maritime Administration, at (202) 366–5320. You may send mail to Michael C. Pucci at Maritime Administration, 1200 New Jersey Avenue SE., MAR 222, W24–217, Washington, DC 20590–0001. You may send electronic mail to

Michael.Pucci@dot.gov. If you have questions on viewing the Docket, call Cheryl Collins, Program Manager, Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION:

Background

Section 602(a) of the CGAA added two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements found at 46 U.S.C. 12113(d): (1) Replaced or rebuilt vessels and (2) fish tender vessels. CGAA also eliminated the 15-day application deadline for vessels whose fishery endorsements had become invalid. Exemptions from the large fishing industry vessel restrictions are found in our regulations at 46 CFR 356.47.

In addition, section 601(b)(2) of the CGAA repealed section 203(g) of the AFA, which exempted particular vessels from the ownership requirements of 46 U.S.C. 12113. These exempt vessels are currently listed in our regulations at 46 CFR 356.51.

Section 307 of the CGMTA added further restrictions on large vessels under 46 U.S.C. 12113(d) by limiting those vessels from participating in the non-AFA trawl catcher processor subsector.

Accordingly, MARAD finds it necessary to update its regulations under 46 CFR part 356 to reflect these amendments to the AFA and 46 U.S.C. 12113.

Public Participation

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number in your comments. MARAD encourages you to provide concise comments. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**.

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 Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE., Washington, DC 20590. When you send comments containing information claimed to be confidential information, you should include a cover letter setting forth with specificity the basis for any such claim.

MARAD will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, MARAD will also consider comments received after that date. If a comment is received too late for MARAD to consider in developing a final rule (assuming that one is issued), MARAD will consider that comment as an informal suggestion for future rulemaking action.

For access to the docket to read background documents, including those referenced in this document, or to submit or read comments received, go to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590. The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. To review documents, read comments or to submit comments, the docket is also available online at *http://www.regulations.gov*, keyword search MARAD–2014–0043.

Please note that even after the comment period has closed, MARAD will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, MARAD recommends that you periodically check the Docket for new material.

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 DOT Privacy Act system of records notice for the Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008, (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Rulemaking Analysis and Notices

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review) and DOT Regulatory Policies and Procedures. Under E.O. 12866 (58 FR 51735, October 4, 1993), supplemented by E.O. 13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MARAD must determine whether a regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one 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 government 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. (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MARAD has determined that this notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This rulemaking will not result in an annual effect on the economy of $100 million or more. It is also not considered a major rule for purposes of Congressional review under Public Law 104–121. This rulemaking is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking do not require further analysis.

Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials because it was not necessary.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

MARAD does not believe that this rulemaking will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and

criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MARAD to assess whether this rulemaking would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

We have analyzed this rulemaking for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MARAD has determined that this rulemaking will not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing ''economically significant'' rules that involve an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this rulemaking is not economically significant, and will cause no environmental or health risk that disproportionately affects children.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Executive Order 12630 (Taking of Private Property)

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

International Trade Impact Assessment

This rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires the Department of Transportation and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. Claims submitted under this rule will be treated the same as all legal claims received by MARAD. The processing and treatment of any claim within the scope of this rulemaking by MARAD shall comply with all legal, regulatory and policy requirements regarding privacy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking proposes to update the regulations with two new exceptions to the restrictions on the eligibility of vessels over 165 feet in registered length to be documented with fishery endorsements, removes certain exemptions relating to specific vessels, and adds restrictions on large vessels by limiting those vessels from participating in the non-AFA trawl catcher processor subsector. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Maritime Administration proposes to amend 46 CFR part 356 as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; 49 CFR 1.66.

■ 2. Revise § 356.47(b) to read as follows:

(b) A vessel that meets one or more of the conditions in paragraph (a) of this section may still be eligible for a fishery endorsement if:

(1) A certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(2) The vessel—

(i) is either a rebuilt vessel or replacement vessel under section 208(g) of the American Fisheries Act (title II of

division C of Pub. L. 105–277; 112 Stat. 2681–627);

(ii) is eligible for a fishery endorsement under this section; and

(iii) in the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Pub. L. 105–277; 112 Stat. 2681–625 et seq.) is neither participating in nor eligible to participate in the non-AFA trawl catcher processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Appropriations Act, 2005 (Pub. L. 108–447; 118 Stat. 2887); or

(3) The vessel is a fish tender vessel that is not engaged in harvesting or processing of fish.

■ 3. Revise § 356.47(c) to read as follows:

(c) A vessel that is prohibited from receiving a fishery endorsement under paragraph (a) of this section will be eligible if the owner of such vessel demonstrates to MARAD that

(i) The regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Pub. L. 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council'sAuthority; and

(ii) In the case of a vessel listed in paragraphs (1) through (20) of section 208(e) of the American Fisheries Act (title II of division C of Pub. L. 105–277; 112 Stat. 2681–625 et seq.), the vessel is neither participating in nor eligible to participate in the non-AFA trawl catch processor subsector (as that term is defined under section 219(a)(7) of the Department of Commerce and Related Agencies Appropriations Act, 2005 (Pub. L. 108–447; 118 Stat. 2887)).

■ 4. Remove § 356.51(a) through (d) and redesignate § 356.51(e) through (f) as § 356.51(a) and (b), respectively.

By Order of the Maritime Administrator.

Dated: June 3, 2014.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. 2014–13282 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 14–13]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Extension of comment deadline.

SUMMARY: The Public Safety and Homeland Security Bureau extends the deadline for filing reply comments on the Third Further Notice of Proposed Rulemaking (Third FNPRM) which was published in the **Federal Register** on March 28, 2014. The extension will provide commenters with additional time to prepare reply comments in response to the Third FNPRM and initial comments filed in this docket.

DATES: The reply comment period for the proposed rules published at 79 FR 17819, March 28, 2014 is extended. Submit reply comments by July 14, 2014.

ADDRESSES: Submit comments to the Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, identified by PS Docket No. 07–114. Comments may be submitted electronically through the Federal Communications Commission's Web site: *http://fjallfoss.fcc.gov/ecfs2/*. Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in § 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

FOR FURTHER INFORMATION CONTACT: Dana Zelman of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau, (202) 418–0546 or *dana.zelman@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in PS Docket No. 07–114, released on June 4, 2014, which extends the reply comment deadline established in the Third Further Notice of Proposed Rulemaking published under FCC No. 14–13 at 79 FR 17819, March 28, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at—*http://www.fcc.gov/document/proposes-new-indoor-requirements-and-revisions-existing-e911-rules*.

Summary of Order

On February 20, 2014, the Commission adopted a Third Further Notice of Proposed Rulemaking (Third FNPRM) in this docket, seeking comment on proposed wireless E911 location accuracy requirements. The Third Further NPRM set deadlines for filing comments and reply comments of May 12, 2014 and June 11, 2014, respectively.

On May 29, 2014, CTIA—The Wireless Association (CTIA) filed a request to extend the reply comment deadline an additional 30 days, until July 14, 2014. CTIA states that an extension of time is warranted due to the complex issues presented by the Third NPRM and the large number of initial comments filed in this docket. The National Emergency Number Association, Competitive Carrier Association, and Texas 911 Entities filed letters in support of CTIA's request.

We grant the request for an extension of time. As set forth in Section 1.46 of the Commission's rules, the Commission's policy is that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. In this case, however, an extension of the reply comment period is warranted for the reasons identified by CTIA. Specifically, we find that extension of the reply comment deadline to July 14, 2014 is warranted to provide commenters with sufficient time to prepare reply comments that fully respond to the complex technical, economic, and policy issues raised in the Third FNPRM and comments filed thereafter.

Accordingly, *it is ordered* that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Sections 0.191, 0.392, and 1.46 of the Commission's rules, 47 CFR 0.191, 0.392, and 1.46, the Motion for Extension of Time filed by CTIA *is granted,* and the deadline to file reply comments in this proceeding is extended to July 14, 2014.

Federal Communications Commission.

David G. Simpson,

Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2014–13533 Filed 6–9–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 12, 46, and 52

[FAR Case 2013–002; Docket No. 2013–0002; Sequence No. 1]

RIN 9000–AM58

Federal Acquisition Regulation; Expanded Reporting of Nonconforming Items

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require expanded reporting of nonconforming items.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 11, 2014 to be considered in the formation of the final rule.

Public Meeting: A public meeting will be held on June 16, 2014, from 1:30 p.m. to 5:30 p.m., Eastern Standard Time at the National Aeronautics and Space Administration Headquarters Auditorium, 300 E Street SW., Washington, DC 20546. The visitor's entrance is on the West side of the building. A notice was published in the **Federal Register** at 79 FR 27871 on May 15, 2014 on the subject of expanded reporting of nonconforming items. See the May 15, 2014 **Federal Register** for details on registering and attending.

ADDRESSES: Submit comments in response to FAR Case 2013–002 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2013–002''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2013–002.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2013–002'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2013–002, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2013–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to expand Government and contractor requirements for reporting of nonconforming items in partial implementation of section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 and implement requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 91–3, entitled ''Reporting Nonconforming Products,'' dated April 9, 1991. While section 818 applied only to DoD, only to electronic products, and only to contractors covered by the Cost Accounting Standards (CAS), the FAR Council concluded that the principles expressed in section 818 should be applied beyond DoD, should not be limited to electronic products, and should not be limited to CAS-covered contractors. Similarly, although OFPP Policy Letter 91–3 requires agencies to report to the Government-Industry Data Exchange Program (GIDEP), the FAR Council determined that reporting would be much more timely and effective if contractors were to make the reports directly to GIDEP.

The NDAA for FY 2012 (Pub. L. 112–81, enacted December 31, 2011) included section 818, entitled ''Detection and Avoidance of Counterfeit Electronic Parts''. However, the problem of counterfeit and nonconforming parts extends far beyond electronic parts and can impact the mission of all Government agencies. OFPP recognized this more than 20 years ago when it published its Policy Letter 91–3, entitled ''Reporting Nonconforming Products''. At that time, OFPP referenced FAR 46.407, noting that contracting officers ordinarily are required to reject nonconforming products ''when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability, or other contract objectives''. OFPP, in section 4 of Policy Letter 91–3, specified that, ''Information shall be exchanged among agencies about nonconforming products. The existing Government/Industry Data Exchange Program (GIDEP) operated by the Department of Defense will serve as the central data base for receiving and disseminating information about such products''.

The changes proposed by this rule will help mitigate the growing threat that counterfeit items pose when used in systems vital to an agency's mission. The rule is intended to reduce the risk of counterfeit items entering the supply chain by ensuring that contractors report suspect items to a widely available database. Multiple credible sources of information demonstrate that counterfeit electronic parts are a severe and growing problem across the supply chain, including data reported by the Senate Armed Services Committee (SASC), a Department of Commerce (DoC) report entitled ''Defense Industrial Base Assessment: Counterfeit Electronic Parts'', and the GIDEP.

The SASC reported in 2011 that it had identified 1,800 cases of counterfeiting, comprising roughly one million parts. The DoC reported in 2010 that 9,356 suspected cases of counterfeiting had been identified in the defense industrial supply chain in 2008, an almost three-fold increase since 2005. GIDEP data also supports an increase over the past decade in counterfeit components and assemblies used in the Government.

Counterfeit parts are most commonly identified during product testing due to part failure or significantly degraded performance. Parts that do not fail product testing and remain undetected pose severe reliability and safety risks. Catastrophic failure of safety or mission critical electronic parts can potentially result in loss of life or loss of significant mission capabilities.

The FAR, at 46.101, defines a ''critical nonconformance'' as a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission. It defines a ''major nonconformance'' to mean a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose. The terms major nonconformance and critical nonconformance are familiar to the quality assurance and contracting workforces and have been in use for decades.

The proposed rule would build on the existing contractor inspection system

requirements, utilizing the existing terminology, and would add a requirement for contractors to report to the GIDEP database a counterfeit item, a suspect counterfeit item, or an item that contains a major or critical nonconformance that is a common item and that constitutes a quality escape, as defined in FAR 46.101, that has resulted in the release of like nonconforming items to more than one customer.

GIDEP has been in existence for over two decades and has a Web site at *www.gidep.org.* In that Web site, one can find the GIDEP reporting tools, including the reporting forms. The paperwork burden associated with completing and submitting the reporting forms is addressed thoroughly in the Paperwork Reduction Act section of this notice. In addition, the proposed rule includes new material under the ''contract administration'' topic of the contents of written acquisition plans (FAR 7.105(b)(19)). The acquisition plan should consider the risk-based quality assurance measures that are in place to identify and control major and critical nonconformances, *e.g.,* higher-level quality standards or use of GIDEP.

II. Discussion and Analysis

Amendments to FAR subparts 7.1, 12.2, 12.3, 46.1, 46.2, 46.3, 46.4, and 52 are proposed by this rule. The proposed changes are summarized in the following paragraphs.

A. *Subpart 7.1, Acquisition Plans:* The requirements for contents of written acquisition plans are proposed to be amended, at FAR 7.105(b)(19), to describe the risk-based Government quality assurance measures needed to identify and control major and critical nonconformances (see FAR 46.101) including the use of the GIDEP. Higher-level quality standards are one example that may be used to address the risk of nonconformance.

B. *Subpart 12.2, Special Requirements for the Acquisition of Commercial Items:* This subpart is proposed to be amended to add a reference to FAR 12.208, Contract quality assurance, to alert contractors to the requirement to use GIDEP.

C. *Subpart 12.3, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items:* This subpart is proposed to be amended at FAR 12.301(d)(5) to require the clause at FAR 52.246–XX, Reporting Nonconforming Items, be included in solicitations and contracts.

D. *Subpart 46.1, General:* Five new terms are defined at FAR 46.101:

1. *Common item.* Because the term is defined and used differently in part 46 than in part 31 (see FAR 31.205–42, Termination costs), the definition at FAR 2.101 is proposed to be revised to exclude the definition in FAR 46.101 from the definition at FAR 2.101.

2. *Counterfeit item.*

3. *Design activity.*

4. *Quality escape.* This is a new concept for procurement personnel but is well-known by quality assurance experts. It is necessary to differentiate between items that must be reported to GIDEP and those that need not be reported to GIDEP.

5. *Suspect counterfeit item.*

E. *Subpart 46.1, General:* FAR 46.102, Policy, is proposed to be revised to alert contractors of the requirement to use GIDEP.

F. *Subpart 46.1, General:* FAR 46.105, Contractor responsibilities, would be revised to state that the contractor is responsible for using GIDEP for two purposes: (1) To report nonconforming items; and (2) to screen GIDEP reports to avoid the use of nonconforming items. The proposed changes show the linkage between supplier quality control and preventing quality escapes from being incorporated into the contractor's product. Inevitably, even the best quality control process will miss a percentage of nonconformances; this is the pivotal issue justifying mandatory GIDEP reporting.

In the proposed rule, several conditions must exist to mandate reporting an item to GIDEP: It must be a counterfeit or suspect counterfeit item; or contain a major or critical nonconformance that is a common item and constitutes a quality escape from a lower level subcontractor or supplier that resulted in the release of nonconforming items to more than one customer.

In addition, there are reporting requirements to the contracting officer. The circumstances requiring such reporting are different than those requiring reporting to GIDEP. The contracting officer does not need to be notified if the contractor identifies a major or critical nonconformance but corrects the problem prior to delivery. However, the contracting officer must be notified when a counterfeit or suspect counterfeit item is identified, without regard to whether the contractor intends to deliver the product containing the counterfeit or suspect counterfeit items. In such cases, the contracting officer will provide disposition instructions for the counterfeit or suspect counterfeit items in accordance with agency procedures. The contracting officer's disposition instructions may be informed by agency policy or investigative needs.

G. *Subpart 46.2, Contract Quality Requirements:* A new sentence in FAR 46.202–1, Contracts for commercial items, is proposed to alert contractors of the requirement to use GIDEP.

H. *Subpart 46.3, Contract Clauses:* A new section, FAR 46.317, Reporting nonconforming items, is proposed to prescribe the use of a new clause at FAR 52.246–XX, Reporting Nonconforming Items, in solicitations and contracts, for the acquisition of supplies, or services that include supplies when these items are—

- Delivered to the government;
- Acquired by the contractor for use in performing services, or;
- Furnished by the contractor for use by, or for the Government.

I. *Subpart 46.4, Government Contract Quality Assurance:* The current FAR includes section 46.407, Nonconforming supplies or services. This section would be amended to add paragraph (h) stating, in part, that the contracting officer shall provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy.

J. *Subpart 52.2, Texts of Provisions and Clauses:* A new clause would be added to require contractors to—

1. Perform the reporting requirements summarized in the bullets above with regard to GIDEP and the contracting officer;

2. Retain in its possession any items suspected or confirmed as counterfeit items;

3. Screen GIDEP reports in order to avoid the use and delivery of items that are counterfeit or suspect counterfeit items or contain a major or critical nonconformance; and

4. Include the substance of the clause in all subcontracts at any tier for supplies, or services that include supplies.

In accordance with the NDAA for FY 2012 (Pub. L. 112–81), if the contract is with the Department of Defense, the clause would state that the contractor or any subcontractor providing a written report as required under the clause will not be subject to civil liability on the basis of such reporting, provided that, the contractor or any subcontractor made a reasonable effort to determine that the end item, component, part, or material contained electronic parts (*i.e.,* an integrated circuit, a discrete electronic component or a circuit assembly) that were counterfeit items or suspect counterfeit items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require expanded reporting of nonconforming items. This action is proposed in implementation of Office of Federal Procurement Policy (OFPP) Policy Letter 91–3 and in partial implementation of the National Defense Authorization Act for Fiscal Year 2012, section 818, entitled ''Detection and Avoidance of Counterfeit Electronic Parts.''

The requirements in the proposed rule have the potential to impact any entity, small or large, that does business with the Federal Government because the proposed rule would apply to purchases of items, including commercial items and commercial off-the-shelf items, and purchases under the simplified acquisition threshold. Therefore, any small business that contracts with a Federal agency could be impacted to at least some extent. Contractors do receive notifications from the GIDEP system which reduces the impact on small businesses. Contractors can enter a bill of goods into the system and GIDEP will alert them via email when a report has been submitted regarding an item on that list. The contractor will then have to log into GIDEP to review the report. Contractors can also log into the system and search reports by specific item or generally. Using data from the Federal Procurement Data System (FPDS), there were 107,178 such small entities in FY 2010, 97,569 in FY 2011, and 85,502 small entities in FY 2012 doing business with the Federal Government.

A contractor must report to the Government-Industry Data Exchange Program (GIDEP) at *www.gidep.org* when an item meets the following conditions under a Government contract:

1. The item is counterfeit or suspect counterfeit; or

2. Contains a major or critical nonconformance that:

a. Is a common item; and

b. Constitutes a quality escape that has resulted in the release of like nonconforming items to more than one customer.

All of the above terms are defined at FAR 46.101.

In addition, a contractor must report to the contracting officer under certain circumstances, which are different from those requiring the contractor to report to GIDEP, for example when a counterfeit or suspect counterfeit item is identified, without regard to whether the contractor intends to deliver the product containing the counterfeit or suspect counterfeit items. This is necessary so that the appropriate authorities, *e.g.,* the Department of Justice or the agency Inspector General, can follow up with the item's supplier.

The rule does not duplicate, overlap, or conflict with any other Federal rules. A number of alternatives were considered, as follows, but none were determined to meet the requirements of the statute and OFPP Policy Letter 91–3:

- Making the rule applicable only to DoD.
- Making the rule applicable only to electronic parts.
- Not applying the rule below the simplified acquisition threshold.
- Not applying the rule to purchases of commercial items or commercial off-the-shelf items.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DOD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2013–002), in correspondence.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning Expanded Reporting of Nonconforming Items to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimate is based on data revealed in the U.S. Department of Commerce report and GIDEP data. In this report, 12 percent of companies and organizations participating in the survey contacted GIDEP to report incidents of counterfeit or suspect counterfeit. The number of contractors that are registered in GIDEP for FY 2012 totaled 1,896. If this represents only 12 percent of the potential companies and organizations reporting into GIDEP then the total number of possible companies and organizations that could be reporting is approximately 15,800.

The annual reporting burden estimated as follows:

Respondents: 15,800.

Responses per respondent: 30.

Total annual responses: 474,000.

Preparation hours per response: 3 hours.

Total response Burden Hours: 1,422,000.

B. Request for Comments Regarding Paperwork Burden.

Submit comments, including suggestions for reducing this burden, not later than August 11, 2014 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Hada Flowers, 1800 F Street NW., Washington, DC 20405.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Hada Flowers, 1800 F Street NW., Washington, DC 20405. Please cite OMB Control Number 9000–00XX, Expanded Reporting of Nonconforming Items, in all correspondence.

List of Subjects in 48 CFR Parts 2, 7, 12, 46, and 52

Government procurement.

Dated: June 3, 2014.

William Clark,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 2, 7, 12, 46, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 12, 46, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 in paragraph (b)(2) by revising the definition ''Common item'' to read as follows.

2.101 Definitions.

* * * * *

(b) * * *

(2) * * *

Common item means material that is common to the applicable Government contract and the contractor's other work, except that for use in part 46, see the definition in 46.101.

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising paragraph (b)(19) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(19) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced. In contracts for supplies or service contracts that include supplies, describe the risk-based Government quality assurance measures in place to identify and control major and critical nonconformances (see 46.101) including the use of the Government-Industry Data Exchange Program (GIDEP). Such measures may include, but are not limited to, higher-level quality standards.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 12.208 by adding a sentence to the end of the paragraph to read as follows:

12.208 Contract quality assurance.

* * * In supply contracts and service contracts that include supplies, contractors shall be required to use the Government-Industry Data Exchange Program (GIDEP) (see 12.301(d)(4)).

■ 5. Amend section 12.301 by adding paragraph (d)(5) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(5) Insert the clause at 52.246–XX, Reporting Nonconforming Items, as prescribed in 46.317.

* * * * *

PART 46—QUALITY ASSURANCE

■ 6. Amend section 46.101 by adding, in alphabetical order, the definitions for ''Common item'', ''Counterfeit item'', ''Design activity'', ''Quality escape'', and ''Suspect counterfeit item'' to read as follows:

46.101 Definitions.

* * * * *

Common item means an item that has multiple applications versus a single or peculiar application. Common items include, for example, raw or processed materials, parts, components, subassemblies, and finished assemblies that are commonly available products (such as nondevelopmental items, off-the-shelf items, National Stock Number items, or commercial catalog items).

* * * * *

Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

* * * * *

Quality escape means a situation in which a supplier's internal quality control system fails to identify and contain a nonconforming condition.

* * * * *

Suspect counterfeit item means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

* * * * *

■ 7. Amend section 46.102 by adding a sentence to the end of paragraph (f) to read as follows:

46.102 Policy.

* * * * *

(f) * * * In supply contracts and service contracts that include supplies, contractors shall be required to use the Government-Industry Data Exchange Program (GIDEP) (see 12.301(d)(4)); and

* * * * *

■ 8. Amend section 46.105 by revising paragraph (a)(3); and adding paragraphs (e) and (f) to read as follows:

46.105 Contractor responsibilities.

(a) * * *

(3) Ensuring that vendors or suppliers of raw or processed materials, parts, components, subassemblies, and finished assemblies have an acceptable quality control system and that quality escapes from these vendors and suppliers are not incorporated into the contractor's final product; and

* * * * *

(e) The contractor is responsible for screening reports in the Government-Industry Data Exchange Program (GIDEP) to avoid the use and delivery of items that are counterfeit or suspect counterfeit items or that contain a major or critical nonconformance.

(f) The contractor is responsible for providing a written report—

(1) To the contracting officer within 30 days from when the contractor becomes aware that any end item, component, subassembly, part, or material contained in supplies purchased by the contractor for delivery to, or for the Government is counterfeit or suspect counterfeit. If the contractor has the item(s) in its possession at the time of discovery, then the Contractor shall retain such item(s) until disposition instructions have been provided by the contracting officer; and

(2) To the GIDEP within 60 days from when it becomes aware that an item purchased by or for the contractor for delivery to, or for the Government—

(i) Is counterfeit or suspect counterfeit; or

(ii) Contains a major or critical nonconformance that—

(A) Is a common item; and

(B) Constitutes a quality escape that has resulted in the release of like nonconforming items to more than one customer.

■ 9. Amend section 46.202–1 by adding a sentence to the end of paragraph to read as follows:

46.202–1 Contracts for commercial items.

* * * In supply contracts and service contracts that include supplies, contractors shall be required to use the Government-Industry Data Exchange Program (GIDEP) (see 12.301(d)(5)).

■ 10. Add section 46.317 to read as follows:

46.317 Reporting nonconforming items.

The contracting officer shall insert the clause at 52.246–XX, Reporting Nonconforming Items, in solicitations and contracts for the acquisition of supplies, or services that include supplies, that are—

(a) Delivered to the Government;

(b) Acquired by the contractor for use in performing services, or;

(c) Furnished by the contractor for use by, or for the Government. If required by agency policy, the contracting officer may modify paragraph (c) but only to change the responsibility for the contractor to submit reports to the agency rather than to GIDEP, so that the agency instead of the contractor submits reports to GIDEP within the mandatory 60 days.

■ 11. Amend section 46.407 by adding paragraph (h) to read as follows:

46.407 Nonconforming supplies or services.

* * * * *

(h) The contracting officer shall provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy. In some cases, agency policy may require the contracting officer to direct the contractor to retain such items for investigative or evidentiary purposes.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(viii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (**DATE**).

* * * * *

■ 13. Amend section 52.244–6 by revising the date of the clause; redesignating paragraph (c)(1)(xi) as (c)(1)(xii); and adding a new paragraph (c)(1)(xi) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (Date)

* * * * *

(c) * * *

(1) * * *

(xi) 52.246–XX, Reporting Nonconforming Items (**DATE**), if flowdown is required in accordance with paragraph (e) of FAR clause 52.246–XX.

* * * * *

■ 14. Add section 52.246–XX to read as follows:

52.246–XX Reporting Nonconforming Items.

As prescribed in 46.317, insert the following clause:

Reporting Nonconforming Items (Date)

(a) *Definitions.* As used in this clause—

Common item means an item that has multiple applications versus a single or peculiar application. Common items include, for example, raw or processed materials, parts, components, subassemblies, and finished assemblies that are commonly available products (such as nondevelopmental items, off-the-shelf items, National Stock Number items, or commercial catalog items).

Counterfeit item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. Design activity could be the original organization, or an organization to which design responsibility has been transferred.

Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

Quality escape means a situation in which a supplier's internal quality control system fails to identify and contain a nonconforming condition.

Suspect counterfeit item means an item for which credible evidence (including but not limited to, visual inspection or testing) provides reasonable doubt that the item is authentic.

(b) The Contractor shall provide written notification to the Contracting Officer within 30 days from when it becomes aware that any end item, component, subassembly, part or material contained in supplies purchased by the Contractor for delivery to, or for the Government is counterfeit or suspect counterfeit. If the Contractor has the item(s) in its possession at the time of discovery, then the Contractor shall retain such item(s) until disposition instructions have been provided by the Contracting Officer.

(c)(1) The Contractor shall, as a part of the Contractor's inspection system or program for the control of quality, screen GIDEP reports to avoid the use and delivery of items that are counterfeit or suspect counterfeit items or contain a major or critical nonconformance.

(2) The Contractor shall report to GIDEP within 60 days of becoming aware that an item purchased by or for the Contractor for delivery to, or for the Government—

(i) Is counterfeit or suspect counterfeit; or

(ii) Contains a major or critical nonconformance that—

(A) Is a common item; and

(B) Constitutes a quality escape that has resulted in the release of like nonconforming items to more than one customer.

(3) The Contractor shall obtain the appropriate form at *www.gidep.org* and submit the form electronically to *gidep@gidep.org.*

(d) If this is a contract with the Department of Defense, as provided in paragraph (c)(5) of section 818 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), the Contractor or subcontractor that provides a written report or notification under this clause shall not be subject to civil liability on the basis of such reporting, provided that the Contractor or any subcontractor made a reasonable effort to determine that the end item, component, part, or material contained electronic parts (*i.e.,* an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly) that were counterfeit items or suspect counterfeit items.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts for supplies, or services that include supplies, at any tier.

(End of clause)

[FR Doc. 2014–13336 Filed 6–9–14; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2012–0097; FXES11130900000C2–123–FF09E32000]

RIN 1018–AZ74

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Delist the Southern Selkirk Mountains Population of Woodland Caribou and Proposed Rule To Amend the Listing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the public comment period on our May 8, 2014, 12-month finding and proposed rule concerning the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*). We will also hold two public hearings to receive comments on the proposed rule. We are taking these actions to allow all interested parties additional time and opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES:

Written Comments: The comment period on the proposed rule published on May 8, 2014 (79 FR 26504), is extended. We will consider comments received or postmarked on or before August 6, 2014, or at the public hearings. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decisions on these actions.

Public Informational Sessions and Hearings: We will hold public informational sessions and public hearings as follows (see **ADDRESSES** for location information):

- On June 25, 2014, we will hold an informational session from 2:00 p.m. to 5:00 p.m., followed by a public hearing from 6:00 p.m. to 8:00 p.m., in Sandpoint, Idaho.
- On June 26, 2014, we will hold an informational session from 2:00 p.m. to 5:00 p.m., followed by a public hearing from 6:00 p.m. to 8:00 p.m., in Bonners Ferry, Idaho.

ADDRESSES:

Document Availability: You may obtain copies of the proposed rule at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0097, or by contacting the Idaho Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**).

Comment Submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for docket number FWS–R1–ES–2012–0097.

(2) *By Hard Copy:* Submit comments on the proposed rule by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Informational Sessions and Hearings: Public informational sessions and public hearings for the proposed Southern Mountain Caribou DPS will be held at the following locations:

- Bonner County Headquarters meeting room, 1500 Highway 2, Sandpoint, ID 83864.
- Bonners Ferry High School, 6485 Tamarack Lane, Bonners Ferry, ID 83805.

People needing reasonable accommodation in order to attend and participate in either public hearing should contact Ben Conard, Field Supervisor, Northern Idaho Field Office, Idaho Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mike Carrier, State Supervisor, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; by telephone (208) 378–5243; or by facsimile (208) 378–5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2014, we published in the **Federal Register** (79 FR 26504) a document consisting of: (1) Our 12-month finding on a petition to delist the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*); (2) a proposed rule to amend the current listing of this population by defining the Southern Mountain Caribou distinct population segment (DPS), which includes the currently listed southern Selkirk Mountains population of woodland caribou, and by listing that DPS as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); and (3) a determination that the approximately 30,010 acres (12,145 hectares) designated as critical habitat on November 28, 2012 (77 FR 71042), for the southern Selkirk Mountains population of woodland caribou is applicable to the U.S. portion of the proposed Southern Mountain Caribou DPS.

Public Comments

We are extending the public comment period on our May 8, 2014, proposed rule (79 FR 26504) for 30 days and announcing two public informational sessions and public hearings on the proposed rule (see **DATES** and **ADDRESSES**). This extension of the comment period allows all interested parties additional time and opportunity to comment on the proposed rule. We will consider all information and recommendations from all interested parties.

For additional details on specific information we are requesting, please see the Information Requested section in our proposed rule (79 FR 26504; May 8, 2014).

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information such as your street address, phone number, or email address—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0097, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

Dated: June 3, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–13426 Filed 6–9–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 79, No. 111
Tuesday, June 10, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Baker-Snoqualmie National Forest; Washington State; Notice of Cancellation of the Environmental Impact Statement for the Proposed Green Mountain Lookout Removal Project, Darrington, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of preparation of environmental impact statement.

SUMMARY: The Forest Service announces that it has discontinued preparation of an Environmental Impact Statement (EIS) for the court ordered removal of Green Mountain Lookout. The Forest Service discontinued preparation of the EIS due to the passage and signing of the ''Green Mountain Lookout Heritage Protection Act'' (Pub. L. 113–99). The Act amends the Washington State Wilderness Act of 1984 by striking the period at the end and inserting the following: ''and except that with respect to the lands described in section 3(5), the designation of such lands as a wilderness area shall not preclude the operation and maintenance of Green Mountain Lookout.'' Furthermore, the Act prohibits the Forest Service from moving the lookout from its current location on Green Mountain unless the Secretary of Agriculture determines that moving the Lookout is necessary to preserve the Lookout or to ensure the safety of individuals on or around Green Mountain.

FOR FURTHER INFORMATION CONTACT: Todd Griffin, Project Leader, at (360) 677–2258. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In 2010, a lawsuit was filed against the Forest Service seeking declaratory judgment and injunction requiring the removal of the lookout. The plaintiff alleged that the Forest Service violated the Wilderness Act and the National Environmental Policy Act (NEPA) with the removal and reassembly of the lookout, and the use of mechanized transport. The court agreed with the plaintiff's claims and ordered the Forest Service to remove the lookout. In an amended decision, the court granted a motion that the Forest Service should be afforded the opportunity to determine how to move forward to implement the court's order to remove the lookout. On May 2, 2013, the Forest Service published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement (78 FR 25693). The NOI included a description of the proposed action and described the purpose and need for the project. After receiving a congressional request to extend the scoping period, the Forest Service, on June 3, 2013, published a second NOI in the **Federal Register** extending the scoping period for 30 days (78 FR 33048). Due to legislation, a Notice of Availability was not published in the **Federal Register**.

Dated: May 29, 2014.

Jennifer Eberlien,

Forest Supervisor.

[FR Doc. 2014–13508 Filed 6–9–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Delta-Bienville Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Delta-Bienville Resource Advisory Committee (RAC) will meet in Forest, Mississippi. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review proposed projects for discussion and approval.

DATES: The meeting will be held on July 21, 2014 at 6 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi. Interested parties may also attend via teleconference by calling: 888–844–9904, access code: 8389256; or via Video Teleconference at the Delta Ranger District, 68 Frontage Road, Rolling Fork, Mississippi.

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 Bienville Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Nefisia Kittrell, RAC Coordinator, by phone at 601–469–3811; or by email at *nkittrell@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/ADA00765529071A58825754A0055730D?OpenDocument.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 7, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written

statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Michael T. Esters, Designated Federal Officer, Bienville Ranger District, 3473 Hwy 35 South, Forest, Mississippi 39074; or by email to *mesters@fs.fed.us,* or via facsimile to 601–469–2513.

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: June 3, 2014.

Michael T. Esters,

District Ranger.

[FR Doc. 2014–13497 Filed 6–9–14; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting the Washington Advisory Committee (Committee) to the Commission will be held on Friday, June 27, 2014, at the Arab-American Community Coalition, 3806 Whitman Avenue North, Seattle, WA 98103. The meeting is scheduled to begin at 1:00 p.m. and adjourn at approximately 2:30 p.m. The purpose of the meeting is to plan future Committee activities.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by July 28, 2014. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov*. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov*, or to contact the Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Chicago, IL, June 5, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–13489 Filed 6–9–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Government Performance and Results Act (GPRA) Data Collection

AGENCY: Economic Development Administration, 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 August 11, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 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 Mark Lofthus, Program Analyst, Performance and National Programs Division, Room 71030, Economic Development Administration, Washington, DC 20230, or at email *mlofthus@eda.gov* or telephone (202) 482–0831.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. The Economic Development Administration (EDA) accomplishes its mission by helping our partners across the nation (states, regions, and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

EDA's strategic investments in public infrastructure and local capital markets provide lasting benefits for economically disadvantaged areas. Acting as catalysts to mobilize public and private investments, EDA's investments address problems of high unemployment, low per capita income, and other forms of severe economic distress in local communities. EDA also provides special economic adjustment assistance to help communities and businesses respond to major layoffs, plant shutdowns, trade impacts, natural disasters, military facility closures, and other severe economic dislocations.

EDA must comply with the Government Performance and Results Act of 1993 which requires Federal agencies to develop performance measures, and report to Congress and stakeholders the results of the agency's performance. EDA must collect specific data from grant recipients to report on its performance in meeting its stated goals and objectives.

II. Method of Collection

EDA has developed four short data collection forms; one for each type of respondent. Respondents will submit the form to the appropriate EDA regional office for compilation and transmission to EDA headquarters.

III. Data

OMB Control Number: 0610–0098.

Form Number(s): ED–915, ED–916, ED–917, and ED–918.

Type of Review: Regular submission (extension of currently approved information collection).

Affected Public: State, local or tribal governments; community organizations; not-for-profit organizations.

Estimated Number of Respondents: 1,529.

Estimated Time per Response: 7 hours.

Estimated Total Annual Burden Hours: 10,703.

Estimated Total Annual Cost to Public: $0.

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: June 4, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–13421 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–16–2014]

Foreign-Trade Zone 50—Long Beach, California; Authorization of Production Activity, Schlosser Forge Company, (Aerospace and Industrial Turbine Engine Parts, Forgings), Rancho Cucamonga, CA

On February 4, 2014, the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Schlosser Forge Company, in Rancho Cucamonga, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 11756, March 3, 2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that Schlosser Forge Company admit all foreign status titanium products to FTZ 50 in privileged foreign status (19 CFR 146.41).

Dated: June 4, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–13504 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–15–2014]

Foreign-Trade Zone 126—Reno, Nevada; Authorization of Production Activity Schlosser Forge Company North d/b/a Schlosser Forge Company (Aerospace and Industrial Turbine Engine Parts, Forgings) Verdi, NV

On February 4, 2014, the Economic Development Authority of Western Nevada, grantee of FTZ 126, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Schlosser Forge Company North d/b/a Schlosser Forge Company, in Verdi, Nevada.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 11755, March 3, 2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that Schlosser Forge Company North d/b/a Schlosser Forge Company, admit all foreign status titanium products to FTZ 126 in privileged foreign status (19 CFR 146.41).

Dated: June 4, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–13505 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–17–2014]

Foreign-Trade Zone 50—Long Beach, California; Authorization of Production Activity Forged Metals, Inc.; (Aerospace and Industrial Turbine Engine Parts, Forgings) Fontana, California

On February 4, 2014, the Board of Harbor Commissioners of the Port of Long Beach, grantee of FTZ 50, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Forged Metals, Inc., in Fontana, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 11755, March 3, 2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that Forged Metals, Inc., admit all foreign status titanium products to FTZ 50 in privileged foreign status (19 CFR 146.41).

Dated: June 4, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–13502 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2014]

Foreign-Trade Zone 104—Savannah, Georgia; Authorization of Production Activity Firth Rixson Forgings LLC (Aerospace and Industrial Turbine Engine Parts, Forgings) Midway, Georgia

On February 4, 2014, the World Trade Center Savannah, LLC, grantee of FTZ 104, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Firth Rixson Forgings LLC, in Midway, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 11756, March 3, 2014). The FTZ Board has determined that no further review of the activity is

warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14, and further subject to a restriction requiring that Firth Rixson Forgings LLC, admit all foreign status titanium products to FTZ 104 in privileged foreign status (19 CFR 146.41).

Dated: June 4, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–13509 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Now Plastics, Inc. (''Now Plastics'') and its affiliate Huangshi Yucheng Trade Co., Ltd. (''Huangshi Yucheng'') (collectively ''Requestor''), the Department of Commerce (''the Department'') initiated a new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the People's Republic of China (''PRC'') covering the period November 1, 2012 through March 31, 2013.[1] On February 4, 2014, Requestor timely withdrew its request for a new shipper review. Accordingly, the Department is rescinding the new shipper review with respect to Requestor.[2]

DATES: June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Jonathan Hill, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–3518, respectively.

SUPPLEMENTARY INFORMATION:

Rescission of New Shipper Review

On December 30, 2013, the Department initiated a new shipper review of Requestor, and on February 4, 2014, Requestor withdrew its new shipper review request. 19 CFR 351.214(f)(1) provides that, the Department may rescind a new shipper review if the party that requested the review withdraws its request for review within 60 days of the date of publication of the notice of initiation of the requested review. Given that Requestor timely withdrew its request for a new shipper review, the Department is rescinding the new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip from the PRC with respect to Requestor. Consequently, Requestor will remain part of the PRC-wide entity.

Assessment

Requestor remains under review in the ongoing administrative review covering the 2012–2013 period of review (POR) as part of the PRC-wide entity.[3] Therefore, the Department will not order liquidation of entries for Requestor. The Department intends to issue liquidation instructions for the PRC-wide entity, which will cover any entries by Requestor, 15 days after publication of the final results of the ongoing administrative review covering the 2012–2013 POR.

Cash Deposit

The Department will notify U.S. Customs and Border Protection (''CBP'') that bonding is no longer permitted to fulfill security requirements for subject merchandise produced and exported by Requestor that is entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**. The Department will notify CBP that a cash deposit of 76.72 percent should be collected for all shipments of subject merchandise by Requestor entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice.

Notifications to Interested Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this rescission and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: June 2, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–13512 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain crystalline silicon photovoltaic products (certain solar products) from the People's Republic of China (PRC). The period of investigation is January 1, 2012, through December 31, 2012. The final determination will be issued 75 days after the date of this preliminary determination unless otherwise extended. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* June 10, 2014.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Justin Neuman, Office VII, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230;

[1] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 78 FR 79400 (December 30, 2013).

[2] *See* Letter from Requestor to the Secretary of Commerce ''Polyethylene Terephthalate (PET) Film from the People's Republic of China; A–570–924; Withdrawal of Request for New Shipper Review of Exports by Huangshi Yucheng Trade Co.,'' dated February 4, 2014.

[3] See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 79392 (December 30, 2013).

telephone: (202) 482–3586 and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Investigation

The merchandise covered by this investigation is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.

For purposes of this investigation, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Excluded from the scope of this investigation are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also, excluded from the scope of this investigation are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China.[1]

Also excluded from the scope of this investigation are crystalline silicon photovoltaic cells, not exceeding 10,000 mm^2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Methodology

The Department is conducting this countervailing duty investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on adverse facts available, *see* the Preliminary Decision Memorandum.[2] The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized 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://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we determine separate subsidy rates for the individually-investigated producers/exporters of the subject merchandise, Wuxi Suntech Power Co., Ltd. and its cross-owned companies and Changzhou Trina Solar Energy Co., Ltd. and its cross-owned company.[3] We also calculated an all-others rate. In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the all-others rate should exclude zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the investigated companies are all zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using ''any reasonable method.'' Notwithstanding the language of section 705(c)(5)(A)(i) of the Act, we have not calculated the ''all-others'' rate by weight averaging the rates of the two individually investigated respondents, because doing so risks disclosure of proprietary information. Therefore, and consistent with the Department's practice where such risk exists, for the ''all-others'' rate, we calculated a simple average of the two responding firms' rates.[4] The overall preliminary subsidy rates are summarized in the table below:

Company	Subsidy rate (%)
Wuxi Suntech Power Co., Ltd.	35.21
Changzhou Trina Solar Energy Co., Ltd.	18.56
All Others	26.89

In accordance with sections 703(d)(1)(B) and (d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of certain solar products from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China,'' dated concurrently with this notice (Preliminary Decision Memorandum). A list of topics discussed in the Preliminary Decision Memorandum can be found as an appendix to this notice.

[3] For a full list of the examined cross-owned companies, *see* the Preliminary Decision Memorandum.

[4] *See, e.g., Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011,* 78 FR 58283 (September 23, 2013).

for such entries of merchandise in the amounts indicated above.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[5] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[6] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: June 2, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Respondent Selection
VI. Injury Test
VII. Application of the Countervailing Duty Law to Imports From the PRC
VIII. Subsidies Valuation
IX. Benchmarks and Discount Rates
X. Use of Facts Otherwise Available and Adverse Inferences
XI. Analysis of Programs
XII. ITC Notification
XIII. Disclosure and Public Comment
XIV. Verification
XV. Conclusion

[FR Doc. 2014–13510 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held on July 10, 2014, from 1 p.m. to 4 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Wiley Rein Conference Center, 1776 K Street, NW., Washington, DC 20006. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230 or emailed to *BWashington@ntia.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: license radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *http://www.ntia.doc.gov/other-publication/2013/csmac-2013-charter.* This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac.*

Matters to Be Considered: The Committee will receive reports on the progress of the following subcommittees established to help NTIA develop new or revised strategies for responding more efficiently and effectively to fundamental technological, operational, and other trends to continue advancement of delivering spectrum products, services, and solutions that will support the ever-increasing demand for spectrum:

1. Enforcement
2. Transitional Sharing
3. General Occupancy Measurements and Quantification of Federal Spectrum Use
4. Spectrum Management via Databases
5. Federal Access to Non-federal Bands
6. Spectrum Sharing Cost Recovery Alternatives

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov/category/csmac*, prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac.*

Time and Date: The meeting will be held on July 10, 2014, from 1 p.m. to 4 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/csmac*, for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Wiley Rein Conference Center, 1776 K Street NW., Washington, DC 20006. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington at (202) 482–6415 or *BWashington@ntia.doc.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to attend and to submit written

comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received five (5) business days before the scheduled meeting date, to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in Word or PDF format. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted electronically to *BWashington@ntia.doc.gov*. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/csmac*.

Dated: June 5, 2014.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2014–13501 Filed 6–9–14; 8:45 am]

BILLING CODE 3510–60–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 14–C0002]

Cinmar, LLC, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Cinmar, LLC, containing a civil penalty of $3,100,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 25, 2014.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 14–C0002 Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Kelly M. Moore, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7447.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 5, 2014.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2089 and 16 CFR 1118.20, Cinmar, LLC (Cinmar), and the U.S. Consumer Product Safety Commission (Commission), through its staff (staff), hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order (Order) resolve staff's charges set forth below.

The Parties

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Cinmar (d/b/a Frontgate) is a limited liability company, organized and existing under the laws of the state of Delaware, with its principal corporate office located at 5566 West Chester Road, West Chester, OH 45069. Cinmar is a retailer of home furnishings and decorative household items.

Staff Charges

4. Between November 2005 and July 2010, Cinmar sold approximately 38,000 Frontgate foldaway closet two- and three-step ladders made of mahogany wood and designed for use in walk-in closets (Subject Products, or Ladders). Cinmar sold the Ladders to consumers nationwide for between $89.95 and $149.50.

5. The Ladders are ''consumer products,'' and at all relevant times, Cinmar was a ''retailer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (7) and (13), of the CPSA, 15 U.S.C. 2052(a)(5), (7) and (13).

6. The Ladders are defective because the steps can break unexpectedly, posing a fall hazard to consumers.

7. CPSC staff charges that Cinmar received notice of the defect shortly after Ladder sales began in November 2005. Between 2005 and 2010, Cinmar received hundreds of reports of step breakage during first and early use, including reports of injuries to consumers. During that same time, Cinmar implemented design changes to eliminate the hazard posed by the Subject Products. Throughout this period, Cinmar also paid out claims filed by consumers who reported that they had been injured when the Ladders broke during use.

8. CPSC staff charges that (i) by September 28, 2007, Cinmar had sufficient information that reasonably supported the conclusion that the Ladders contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death and (ii) that Cinmar was required to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). By that date, Cinmar had received more than 600 Ladder returns due to breakage and had been notified of at least one personal injury lawsuit filed by a consumer alleging injury from a broken Ladder.

9. CPSC staff charges that, when consumers contacted Cinmar regarding their broken Ladders, Cinmar routinely provided the consumers with replacement Ladders which Cinmar knew were just as likely to break.

10. Despite having information regarding the Ladders' defect or risk, Cinmar failed to inform the Commission immediately, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

11. Cinmar did not file its Full Report with the Commission until July 29, 2010. By that time, more than 1,200 consumers had returned their Ladders to Cinmar, most citing breakage, and others citing cosmetic problems. Also by that time, Cinmar had received notice of at least two dozen injuries, one of which required surgery and another necessitated hospitalization.

12. In failing to inform the Commission about the Subject Products immediately, Cinmar knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Cinmar is subject to civil penalties for its knowing failure to report, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Cinmar's Response

14. Cinmar neither admits nor denies the charges set forth in paragraphs 4 through 13, including, but not limited to, the charge that the Ladders contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and the contention that Cinmar failed to notify the Commission in a timely manner, in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over the matter involving the Ladders described herein and over Cinmar.

16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Cinmar shall pay a civil penalty in the amount of three million one hundred thousand dollars ($3,100,000.00), which shall be due and payable within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: *http://www.pay.gov*.

17. The parties agree that this settlement figure is predicated, among other things, upon the accuracy of oral and written representations of, and statements by, Cinmar and Cinmar's representatives (including representations and warranties set forth in the Agreement).

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Cinmar or a determination by the Commission that Cinmar violated the CPSA.

19. Following staff's receipt of the Agreement executed on behalf of Cinmar, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If, within fifteen (15) calendar days, the Commission does not receive any written request not to accept the Agreement, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. The Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon Cinmar, and (ii) the date of issuance of the final Order, the Agreement shall be in full force and effect and shall be binding upon the parties.

21. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon Cinmar, and (ii) the date of issuance of the final Order, for good and valuable consideration, Cinmar hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in the Agreement: (a) An administrative or judicial hearing; (b) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (c) a determination by the Commission of whether Cinmar failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

22. Cinmar shall implement and maintain a formal compliance program designed to ensure compliance with the statutes and regulations enforced by the Commission that, at a minimum, contains the following elements: (i) Written standards and policies; (ii) procedures for reviewing claims and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified (including procedures to prevent defective products from being introduced into commerce); (iii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iv) effective communication of company compliance-related policies and procedures to all employees, through training programs, or otherwise; (v) senior manager responsibility for compliance and accountability for violations of the statutes and regulations enforced by the Commission; (vi) oversight of compliance by Cinmar's governing body; and (vii) retention of all compliance-related records for at least five (5) years, and availability of such records to staff upon request.

23. Cinmar shall maintain and enforce a system of internal controls and procedures designed to ensure that: (i) Information required to be disclosed by Cinmar to the Commission is recorded, processed, and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, and accurate; and (iii) prompt disclosure is made to Cinmar management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to adversely affect in any material respect Cinmar's ability to record, process, and report to the Commission in accordance with applicable law.

24. Upon request of staff, Cinmar shall provide written documentation of such improvements, processes, and controls, including, but not limited to, the effective dates of such improvements, processes, and controls. Cinmar shall cooperate fully and truthfully with staff and shall make available all information, materials, and personnel deemed necessary by staff to evaluate Cinmar's compliance with the terms of the Agreement.

25. The parties acknowledge and agree that the Commission may make public disclosure of the terms of the Agreement and the Order.

26. Cinmar represents that the Agreement: (i) Is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Cinmar, and each of its successors and/or assigns, enforceable against Cinmar in accordance with the Agreement's terms. The individuals signing the Agreement on behalf of Cinmar represent and warrant that they are duly authorized by Cinmar to execute the Agreement.

27. The Commission signatories represent that they are signing the Agreement in their official capacities and that they are authorized to execute the Agreement.

28. The Agreement is governed by the laws of the United States.

29. The Agreement and the Order shall apply to, and be binding upon,

Cinmar and each of its subsidiaries, successors, transferees, and assigns, and a violation of the Agreement or Order may subject Cinmar and each of its successors, transferees, and assigns to appropriate legal action.

30. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained herein and therein.

31. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties, and therefore, shall not be construed against any party for that reason in any subsequent dispute.

32. The Agreement shall not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

33. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Cinmar agree that severing the provision materially affects the purpose of the Agreement and Order.

CINMAR, LLC

Dated: *5/27/2014*

By: _____

H.R. Harvey,

President, Cinmar, LLC, 5566 West Chester Road, West Chester, OH 45069.

Dated: *5/28/2014*

By: _____

Ivan J. Wasserman

Manatt, Phelps & Phillips, LLP, 700 12th Street NW., Suite 1100, Washington, DC 20005, Counsel for Cinmar, LLC.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Stephanie Tsacoumis

General Counsel.

Mary B. Murphy

Assistant General Counsel.

Dated: *5/28/2014*

By: _____

Kelly Moore,

Trial Attorney, Division of Compliance, Attorney.

Order

Upon consideration of the Settlement Agreement entered into between Cinmar, LLC (Cinmar), and the U.S. Consumer Product Safety Commission (Commission), and the Commission having jurisdiction over the subject matter and over Cinmar, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Cinmar shall comply with the terms of the Settlement Agreement and shall pay a civil penalty of $3,100,000.00, within twenty (20) calendar days after receiving service of the Commission's final Order accepting the Settlement Agreement. Upon failure of Cinmar to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Cinmar at the federal legal rate of interst set forth at 28 U.S.C. 1961(a) and (b). If Cinmar fails to make such a payment or to comply in full with any other provision as set forth in the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the *5th* day of *June,* 2014.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2014–13483 Filed 6–9–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Response Systems To Adult Sexual Assault Crimes Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: On May 28, 2014, the Department of Defense published a notice titled Response Systems to Adult Sexual Assault Crimes Panel; Notice of Federal Advisory Committee Meeting (79 FR 30566–30567). Subsequent to the publication of that notice, the location of the meeting changed. This notice amends the location.

DATES: A meeting of the Response Systems to Adult Sexual Assault Crimes Panel (''the Panel'') will be held June 16, 2014 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: U.S. District Court for the Southern District of New York, Marshall Courthouse, Courtroom 506, 40 Centre Street (40 Foley Square), New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Green, Response Systems Panel, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, VA 22203. Email: *Shannon.l.green8.civ@mail.mil.* Phone: (703) 693–3837. Web site: *http://responsesystemspanel.whs.mil.*

SUPPLEMENTARY INFORMATION: Due to a change in the location of the scheduled meeting on June 16, 2014, of the Response Systems Adult Sexual Assault Crimes Panel, the requirements of 41 CFR 102–3.150(a) were not met. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

The location of the June 16, 2014 meeting is revised to read as set forth in the **ADDRESSES** section. All other information in the **Federal Register** notice of May 28, 2014 (79 FR 30566–30567) remains the same.

Dated: June 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–13430 Filed 6–9–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Supplemental Environmental Impact Statement for the Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Roadmap Adjustments)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: On April 18, 2014, the Department of Navy (DoN) published a Notice of Availability and Notice of Public Meetings, including a request for public comments, on the Draft Supplemental Environmental Impact Statement (SEIS) for the Guam and Commonwealth of the Northern Mariana Islands Military Relocation (2012 Adjustment)(79 FR 21907, April 18, 2014). The purpose of this notice is to announce an extension of the 60-day public comment period. The public comment period will be extended by 15 days to end on July 1, 2014 Eastern Daylight Time (E.D.T.) [July 2, 2014, Chamorro Standard Time (ChST)].

DATES: The extended 75-day public comment period for the Draft SEIS began on April 18, 2014, EDT [April 19, 2014, ChST) with the publication of the

Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency, and with this extension, will end on July 1, 2014, EDT [July 2, 2014, ChST].

ADDRESSES: The public may provide comments through the project Web site at *http://guambuildupeis.us*, or by mail at: Joint Guam Program Office Forward, P.O. Box 153246, Santa Rita, Guam 96915. Mailed comments should be postmarked no later than July 1, 2014, EDT [July 2, 2014, ChST] to ensure they are considered.

The Draft SEIS was distributed to Federal, state, and local agencies, elected officials, and other interested individuals and organizations. The Draft SEIS is available for public review at *http://guambuildupeis.us* and at the following libraries: University of Guam Robert F. Kennedy Memorial Library, Government Documents, Tan Siu Lin Building, UOG Station, 303 University Drive, Mangilao, Guam 96923; and the Nieves M. Flores Memorial Library, 254 Martyr Street Hagatna, Guam 96910. The public may request copies of the Draft SEIS Executive Summary from the Joint Guam Program Office Forward, P.O. 153246, Santa Rita, Guam 96915.

SUPPLEMENTARY INFORMATION: The DoN's proposed action is to construct and operate a live-fire training range complex, a main cantonment area, including family housing, and associated infrastructure in support of the Guam Military Relocation. The DoN recognizes that public comments are an essential part of the National Environmental Policy Act (NEPA) process. Accordingly, the DoN established a 60-day public comment period in lieu of the 45-day period required by NEPA. In response to public comments, the DoN has extended the Draft SEIS 60-day public comment period by an additional 15 days to July 1, 2014, EDT [July 2nd, 2014, ChST].

FOR FURTHER INFORMATION CONTACT: Commander Curtis Duncan, Joint Guam Program Office, at 703–602–3825. On Guam, contact Major Darren Alvarez, Joint Guam Program Office, Forward, at 671–339–3337.

Dated: June 4, 2014.

P.A. Richelmi,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2014–13494 Filed 6–9–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0083]

Agency Information Collection Activities; Comment Request; Implementation Study of the Ramp Up to Readiness Program

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq*.), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 11, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0083 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Chris Boccanfuso, 202–219–1674.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Implementation Study of the Ramp Up to Readiness Program.

OMB Control Number: 1850–0907.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 62,711.

Total Estimated Number of Annual Burden Hours: 18,178.

Abstract: This study will examine the implementation of Ramp-Up to Readiness, a schoolwide guidance intervention aimed at increasing the college readiness of students. The intervention is at present being implemented in 34 high schools in Minnesota, and the developers intend to make the intervention available to a much larger set of Minnesota schools. No independently gathered high-quality evidence exists, however, on whether schools are able to implement this comprehensive intervention as intended or how its core components compare to the college-readiness supports in other high schools. The project for which OMB clearance is requested will attempt to gather such evidence from 22 public Minnesota high schools through the least burdensome means. The school-level implementation study will focus on assessing whether Ramp-Up school staff implement the program as intended, on identifying the extent to which the Ramp-Up program differs from the college-readiness supports offered in schools without Ramp-Up, and on the validity of a measure of personal college readiness, which the developers hypothesize is a key mechanism through which the program impacts later outcomes. The study will collect data from school staff in the following activities: Administrative data collection, focus groups in January and June, extant document collection, instructional logs, student and staff

surveys, and student personal readiness assessment. The findings produced through analysis of these data will help (1) state education agencies seeking strategies and programs to endorse as a potential means of improving students college readiness and college enrollment, (2) local education agencies that are considering the challenges of implementing Ramp-Up, (3) the developer of this intervention (the College Readiness Consortium at the University of Minnesota) and developers of other college readiness interventions who continually seek to improve their programs by using information from studies like this, and (4) a group of education stakeholders in the Midwest interested in considering whether to conduct a study of the impacts of the Ramp-Up intervention on student outcomes.

Dated: June 4, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–13403 Filed 6–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2014–ICCD–0084]

Agency Information Collection Activities; Comment Request; Office of Innovation and Improvement Grantee Viewpoint Survey

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before August 11, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0084 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ayesha Edwards-Kemp, 202–205–4516.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Office of Innovation and Improvement Grantee Viewpoint Survey.

OMB Control Number: 1855—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 200.

Total Estimated Number of Annual Burden Hours: 200.

Abstract: The purpose of the Office of Innovation and Improvement (OII) Grantee Viewpoint survey is for the Department to collect data from grantees on their satisfaction in regards to OII services and to learn ways in which the organization can improve service to external customers. The survey would collect information on satisfaction regarding current technical assistance resources and services that the organization offers; and provide grantees with an opportunity to provide feedback on resources and services that would improve their fiduciary responsibilities.

Fifteen of OIIs grant programs will participate in the survey including the Charter Schools Program, Investing In Innovation, Promise Neighborhoods, School Leadership Program, Supporting Effective Educator Development, Transition to Teaching, Magnet Schools Assistance Program, Full Service Community Schools, Ready to Learn Television Program, Teacher Quality Programs, Arts in Education Model Development and Dissemination, and Professional Development for Arts Educators.

Dated: June 4, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–13431 Filed 6–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers—Health and Function of Individuals with Physical Disabilities Notice inviting applications for new awards for fiscal year (FY) 2014.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–4.

DATES: Applications Available: June 10, 2014.

Date of Pre-Application Meeting: July 1, 2014.

Deadline for Notice of Intent to Apply: July 15, 2014.

Deadline for Transmittal of Applications: August 11, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDRR with guidance from its Rehabilitation Research Advisory Council. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html.*

Priorities: NIDRR has established two separate priorities for the competition announced in this notice. The General RRTC Requirements priority, which applies to all RRTC competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The other priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of these priorities.

These priorities are:

Absolute Priority 1—General RRTC Requirements.

Note: The full text of the General RRTC Requirements priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the application package for this competition.

Absolute Priority 2—Health and Function of Individuals With Physical Disabilities.

Note: The full text of the Health and Function of Individuals with Physical Disabilities priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2)(A).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Maximum Award: $875,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: 60 months.

III. Eligibility Information

1. Eligible Applicants

States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. Cost Sharing or Matching

This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. Address To Request Application Package

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133B–4.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. Content and Form of Application Submission

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Notice of Intent to Apply: Due to the broad nature of the priorities in these competitions, and to assist with the selection of reviewers for these competitions, NIDRR is requesting all potential applicants to submit a letter of intent (LOI). The submission is not mandatory and the content of the LOI will not be peer reviewed or otherwise used to rate an applicant's application.

Each LOI should be limited to a maximum of four pages and include the following information: (1) The title of the proposed project, the name of the applicant, the name of the Project Director or Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed project and a description of its activities at a sufficient level of detail to allow NIDRR to select potential peer reviewers; (3) a list of proposed project staff including the Project Director or PI and key personnel; (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal

development, selection as an advisory board member, co-PI relationships, etc.; and (5) contact information for the Project Director or PI. Submission of an LOI is not a prerequisite for eligibility to submit an application.

NIDRR will accept the optional LOI via mail (through the U.S. Postal Service or commercial carrier) or email, by July 15, 2014. The LOI must be sent to: Patricia Barrett, U.S. Department of Education, 550 12th Street SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202; or by email to: *patricia.barrett@ed.gov*.

For further information regarding the LOI submission process, contact Patricia Barrett at (202) 245–6211.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

Note: Please submit an appendix that lists every collaborating organization and individual named in the application, including staff, consultants, contractors, and advisory board members. We will use this information to help us screen for conflicts of interest with our reviewers.

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 FR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. Submission Dates and Times

Applications Available: June 10, 2014.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 1, 2014. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Notice of Intent to Apply: July 15, 2014.

Deadline for Transmittal of Applications: August 11, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. Funding Restrictions

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management

To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov*. To further assist you

with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. Other Submission Requirements

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under this RRTC competition, CFDA number 84.133B–4, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for this RRTC competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability

of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system;

and

- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. FAX: (202) 245–6211.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–4), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133B–4), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the program under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria

The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. Review and Selection Process

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Special Conditions

Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. Award Notices

If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other

specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. Performance Measures

To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html*.

Continuation Awards: In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, PCP, Washington, DC 20202–2700. Telephone: (202) 245–6211 or by email: *patricia.barrett@ed.gov*.

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

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.

Dated: June 5, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–13499 Filed 6–9–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[New York Power Authority; Project No. 2685–026]

Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

Type of Filing: Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

Project No.: 2685–026.

Dated Filed: April 10, 2014.

Submitted By: New York Power Authority (NYPA).

Name of Project: Blenheim-Gilboa Pumped Storage Project.

Location: On Schoharie Creek, in the Towns of Blenheim and Gilboa in Schoharie County, New York. The project does not occupy any federal lands.

Filed Pursuant to: 18 CFR part 5 of the Commission's Regulations.

Potential Applicant Contact: Mr. Mark Slade, NYPA-Licensing Director, 123 Main Street, White Plains, New York 10601. Telephone: (914) 681–6659, Email: *Mark.Slade@nypa.gov*.

FERC Contact: Andy Bernick at (202) 502–8660 or email at *andrew.bernick@ferc.gov*.

Cooperating agencies: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402 and (b) the New York

State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

With this notice, we are designating NYPA as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

NYPA filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2685–026.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 8, 2014.

Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The evening meeting is primarily for receiving input from the public, while the daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Monday, July 7, 2014.
Time: 6:00 p.m.
Location: Gilboa-Conesville Central School, 132 Wyckoff Road, Gilboa, New York 12076.
Phone: (607) 588–7541.

Daytime Scoping Meeting

Date: Wednesday, July 9, 2014.
Time: 9:00 a.m.
Location: Best Western Inn, 121 Burgin Drive, Cobleskill, New York 12043.
Phone: (518) 234–4321.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and NYPA's PAD distribution list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an environmental site review of the project on Tuesday, July 8, 2014, starting at 9:00 a.m. and lasting approximately 3 hours. All participants should meet at the Blenheim-Gilboa Visitors Center parking lot, located at 1378 State Route 30, North Blenheim, NY, 12131. All participants are responsible for their own transportation to the Visitors Center. Thereafter, NYPA will provide shuttles to visit locations within the project boundary.

Please notify Mr. Rob Daly at (914) 681–6564 or *rob.daly@nypa.gov* on or before Monday, June 30, 2014, if you plan to attend the environmental site review. Persons not providing an RSVP by June 30, 2014, will not be allowed on the environmental site review. Also, persons attending the environmental site review must adhere to the following requirements: (1) Persons must be 16 years or older; (2) persons must have a current, valid, government-issued or school photo identification (i.e., driver's license, etc.); (3) persons with open-toed shoes/sandals/flip flops/high heels, etc. will not be allowed on the environmental site review; (4) no photography will be allowed on-site; (5) small bags containing personal items for the site visit (i.e., notebooks, maps, water, etc.) will be allowed, but are subject to search; (6) no weapons are allowed on-site; (7) no alcohol/drugs are allowed on-site (or persons exhibiting the effects thereof); (8) all persons coming on-site are subject to search; and (9) no animals (except for service animals) are allowed on the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any

federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: June 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–13487 Filed 6–9–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Oversight Committee, Special Meeting of Members and Board of Directors Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the Southwest Power Pool, Inc. (SPP) meetings above. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at SPP's Corporate Center, 201 Worthen Drive, Little Rock, AR. SPP's phone number is (501) 614–3200.

SPP Oversight Committee

June 9, 2014 (8:00 a.m.–12:00 p.m.)

SPP Special Meetings of Members and Board

June 9, 2014 (3:00 p.m.–5:00 p.m.)
June 10, 2014 (8:30 a.m.–5:00pm)

The discussions may address matters at issue in the following proceedings:

Docket No. ER05–168, *Southwestern Public Service Company*
Docket No. EL05–19, *Southwestern Public Service Company*
Docket No. ER06–274, *Southwestern Public Service Company*
Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER09–35, *Tallgrass Transmission, LLC*
Docket No. ER09–36, *Prairie Wind Transmission, LLC*
Docket No. ER09–548, *ITC Great Plains, LLC*
Docket No. ER11–4105, *Southwest Power Pool, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–59, *Golden Spread Electric Cooperative, Inc.*
Docket No. EL12–60, *Southwest Power Pool, Inc., et al.*
Docket No. EL12–78, *Southwest Power Pool, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–959, *Southwest Power Pool, Inc.*
Docket No. ER12–1071, *Entergy Arkansas, Inc.*
Docket No. ER12–1179, *Southwest Power Pool, Inc.*
Docket No. ER12–1586, *Southwest Power Pool, Inc.*
Docket No. ER12–2366, *Southwest Power Pool, Inc.*
Docket No. ER13–366, *Southwest Power Pool, Inc.*
Docket No. ER13–367, *Southwest Power Pool, Inc.*
Docket No. ER13–1173, *Southwest Power Pool, Inc.*
Docket No. ER13–1748, *Southwest Power Pool, Inc.*
Docket No. ER13–1864, *Southwest Power Pool, Inc.*
Docket No. ER13–1937, *Southwest Power Pool, Inc.*
Docket No. ER13–1939, *Southwest Power Pool, Inc.*
Docket No. EL14–21, *Southwest Power Pool, Inc.*
Docket No. EL14–30, *Midcontinent Independent System Operator, Inc.*
Docket No. EL14–57, *City of Hastings and City of Grand Island*
Docket No. ER14–781, *Southwest Power Pool, Inc.*
Docket No. ER14–1174, *Southwest Power Pool, Inc.*
Docket No. ER14–1406, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1407, *Southwest Power Pool, Inc.*
Docket No. ER14–1628, *Southwest Power Pool, Inc.*
Docket No. ER14–1713, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–1743, *Southwest Power Pool, Inc.*
Docket No. ER14–1744, *Southwest Power Pool, Inc.*
Docket No. ER14–1779, *Southwest Power Pool, Inc.*
Docket No. ER14–1784, *Southwest Power Pool, Inc.*
Docket No. ER14–1796, *Southwest Power Pool, Inc.*
Docket No. ER14–1798, *Southwest Power Pool, Inc.*
Docket No. ER14–1900, *Southwest Power Pool, Inc.*
Docket No. ER14–1901, *Southwest Power Pool, Inc.*
Docket No. ER14–1965, *Southwest Power Pool, Inc.*
Docket No. ER14–1967, *Southwest Power Pool, Inc.*
Docket No. ER14–1968, *Southwest Power Pool, Inc.*
Docket No. ER14–1975, *Southwest Power Pool, Inc.*
Docket No. ER14–1993, *Southwest Power Pool, Inc.*
Docket No. ER14–2008, *Southwest Power Pool, Inc.*
Docket No. ER14–2009, *Southwest Power Pool, Inc.*
Docket No. ER14–2022, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2059, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2062, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: June 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–13486 Filed 6–9–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2014–0350, FRL–9912–02–OW]

Proposed Information Collection Request; Comment Request; National Listing of Fish Advisories (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), National Listing of Fish Advisories, (EPA ICR Number 1959.05, OMB Control Number 2040–0226) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2014. 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: Comments must be submitted on or before August 11, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2014–0350, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mailcode 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

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: LCDR Samantha Fontenelle, Office of Science and Technology, Standards and Health Protection Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566–2083; fax number: (202) 566–0409; email address: *fontenelle.samantha@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.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The National Listing of Fish Advisories (NLFA) database contains information on the number of advisories issued by each state, territory, or tribe annually. The advisory information collected identifies the waterbody under advisory, the fish or shellfish species and size ranges included in the advisory, the chemical contaminants and residue levels causing the advisory to be issued, the waterbody type (river, lake, estuary, coastal waters), and the target populations to whom the advisory is directed. This information is collected under the authority of section 104 of the Clean Water Act, which provides for the collection of information to be used to protect human health and the environment. The results of the survey are shared with states, territories, tribes, other federal agencies, and the general public through the NLFA database and the distribution of biennial fish advisory fact sheets. The responses to the survey are voluntary and the information requested is part of the state public record associated with the advisories. No confidential business information is requested.

Form Numbers: None.

Respondents/Affected Entities: Entities potentially affected by this action are Administrators of Public Health and Environmental Quality Programs in state and tribal governments (NAICS 92312/SIC 9431 and NAICS 92411/SIC 9511).

Respondent's Obligation To Respond: Voluntary (Clean Water Act, Section 104).

Estimated Number of Respondents: 92 total.

Frequency of Response: Annual.

Total Estimated Burden: 3,336 labor hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total Estimated Cost: $125,697.09 (per year), includes $520 annualized operation & maintenance costs. No capital or startup costs are required.

Changes in Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

June 3, 2014.

Elizabeth Southerland,

Director, Office of Science and Technology.

[FR Doc. 2014–13500 Filed 6–9–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2014–3007]

Agency Information Collection Activities; Proposals Submissions, and Approvals

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 92–79 Broker Registration Form.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically. This form is used by insurance brokers to register with Export-Import Bank. It provides Export-Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export-Import Bank's credit insurance programs.

Form can be viewed at *http://www.exim.gov/pub/pending/eib92-79.pdf.*

DATES: Comments must be received on or before July 10, 2014 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 92–79) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–0024

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–79 Broker Registration Form

OMB Number: 3048–0024.

Type of Review: Regular.

Need and Use: This form is used by insurance brokers to register with Export Import Bank. The form provides Export Import Bank staff with the information necessary to make a determination of the eligibility of the broker to receive commission payments under Export Import Bank's credit insurance programs.

Affected Public: This form affects entities engaged in brokering export credit insurance policies.

Annual Number of Respondents: 17.

Estimated Time per Respondent: 15 minutes.

Government Review Time per Response: 2 hours.

Frequency of Reporting or Use: Once every three years.

Government Reviewing Time per Year: 34 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $1,445.

Benefits and Overhead: 20%.

Total Government Cost: $1,734.

Bonita Jones,

Agency Clearance Officer.

[FR Doc. 2014–13424 Filed 6–9–14; 8:45 am]

BILLING CODE 6690–01–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 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 August 11, 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–xxxx.

Title: Section 79.107 User Interfaces Provided by Digital Apparatus; Section 79.108 Video Programming Guides and Menus Provided by Navigation Devices; Section 79.110 Complaint Procedures for User Interfaces, Menus and Guides, and Activating Accessibility Features on Digital Apparatus and Navigation Devices.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; and State, local, or tribal Governments.

Number of Respondents and Responses: 4,245 respondents; 509,484 responses.

Estimated Time per Response: 0.0167 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g).

Total Annual Burden: 22,198 hours.

Total Annual Cost: $70,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.110.

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On October 29, 2013, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking,* MB Docket Nos. 12–108, 12–107, FCC 13–138 (the *Report and Order*) adopting rules implementing portions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the CVAA) related to the accessibility of digital apparatus and navigation devices used to view video programming. These rules are codified at 47 CFR 79.107, 79.108, 79.109 and 79.110. Pursuant to Section 204 of the CVAA, the *Report and Order* requires the user interfaces, text menus and guides of digital apparatus to be accessible and requires that the activation mechanisms for closed captioning and video description be reasonably comparable to a button, key or icon. Pursuant to Section 205 of the CVAA, the *Report and Order* requires the user text menus and guides of navigation devices be made audibly accessibly upon request and requires that the activation mechanism for closed captioning be reasonably comparable to a button, key or icon.

The following rule sections and other requirements contain new and revised information collection requirements for which the Commission is seeking approval from the Office of Management and Budget (OMB):

(a) Requests for Commission determination of achievability for the accessibility requirements for the user interfaces, text menus and guides of digital apparatus.

Section 204 of the CVAA provides that ''if achievable (as defined by section 716) . . . digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually

impaired.'' Pursuant to 47 CFR 79.107, manufacturers of digital apparatus must comply with the section's provisions ''only if *achievable* as defined in § 79.107(c)(2).''

Pursuant to 47 CFR 79.107(c)(1), manufacturers of digital apparatus may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the requirements of 47 CFR 79.107 before manufacturing or importing the apparatus. Alternatively, manufacturers may assert that a particular digital apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of section 79.107 are not achievable. Pursuant to 47 CFR 79.107(c)(2), such a petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination. In evaluating evidence offered to prove that compliance is not achievable, the Commission will be informed by the analysis in the Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, 14607–19, ¶¶ 119–48 (2011) (''ACS Order'').

(b) Requests for Commission determination of achievability for the accessibility requirements for the text menus and guides of navigation devices.

Section 205 of the CVAA provides that ''if achievable (as defined by section 716)'' ''the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired.'' Pursuant to 47 CFR 79.108, MVPDs and manufacturers of navigation devices must comply with the section's provisions ''only if *achievable* as defined in § 79.108(c)(2).''

Pursuant to 47 CFR 79.108(c)(1), MVPDs and manufacturers of navigation devices may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the requirements of 47 CFR 79.108 before manufacturing or importing the navigation device. Alternatively, manufacturers may assert that a particular digital apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of section 79.108 are not achievable. Pursuant to 47 CFR 79.108(c)(2), such a petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination. In evaluating evidence offered to prove that compliance is not achievable, the Commission will be informed by the analysis in the *ACS Order*.

(c) Requests to MVPDs and navigation device manufacturers for accessible equipment.

Pursuant to 47 CFR 79.108(a)(5), manufacturers of navigation devices and MVPDs must permit blind or visually impaired individuals to request accessible navigation devices through any means that such covered entities generally use to make available navigation devices to other consumers. Such requests could require navigation device manufacturers and MVPDs to collect information from consumers and require consumers to provide information to navigation device manufacturers and/or MVPDs to obtain a benefit.

(d) Notifications by MVPDs regarding the availability of accessible equipment.

Pursuant to 47 CFR 79.108(d), MVPDs must notify consumers that navigation devices with the required accessibility features are available upon request to consumers who are blind or visually impaired. MVPDs must clearly and conspicuously inform consumers about the availability of accessible navigation devices when providing information about equipment options in response to a consumer inquiry about service, accessibility, or other issues. In addition, MVPDs must provide prominent notice on their official Web sites about the availability of accessible navigation devices in a manner accessible to people with disabilities.

(e) Contact information for the receipt and handling of user interface accessibility complaints.

Pursuant to 47 CFR 79.110(b), covered entities must make their contact information available for the receipt and handling of complaints regarding the requirements of 47 CFR 79.107—79.109. The contact information required must include the name of a person with primary responsibility for accessibility compliance issues. This contact information must also include that person's title or office, telephone number, fax number, postal mailing address, and email address. A covered entity must keep this information current and update it within 10 business days of any change.

(f) Submission and review of verification of consumer eligibility in connection with accessibility solutions provided by sophisticated equipment and/or services at a price lower than that offered to the general public.

Pursuant to 47 CFR 79.108(e), covered entities may require consumers to provide verification of eligibility as an individual who is blind or visually impaired to the extent a covered entity chooses to rely on an accessibility solution that involves providing the consumer with sophisticated equipment and/or services at a price that is lower than that offered to the general public. In these situations, covered entities must allow a consumer to provide a wide array of documentation to verify eligibility for the accessibility solution provided and must comply with the requirements of 47 U.S.C. 338(i)(4)(A) and 47 U.S.C. 631(c)(1) to protect personal information gathered from consumers through verification procedures.

(g) Complaints alleging violations of the digital apparatus and navigation device accessibility rules.

The *Report and Order* adopts procedures for consumers to file complaints alleging violations of the rules requiring the accessibility of user interfaces, text menus and guides of digital apparatus and navigation devices requirements.

Pursuant to 47 CFR 79.110(a)(1), a complaint alleging a violation of the requirements of 47 CFR 79.107, 79.108, or 79.109 must be filed with the Commission or with the covered entity within 60 days after the date the complainant experiences a problem relating to compliance with the requirements of 47 CFR 79.107, 79.108, or 79.109. A complaint filed with the Commission may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. (Because some of the rules we are adopting are intended to make apparatus or navigation devices accessible to individuals who are blind or visually impaired, and therefore complainants may themselves be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer.)

Pursuant to 47 CFR 79.110(a)(2), complaints should include the following information:

(i) The complainant's name, address, and other contact information, such as telephone number and email address;

(ii) The name and contact information of the covered entity;

(iii) Information sufficient to identify the software or digital apparatus/navigation device used;

(iv) The date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the digital apparatus/navigation device;

(v) A statement of facts sufficient to show that the covered entity has violated, or is violating, the Commission's rules;

(vi) The specific relief or satisfaction sought by the complainant;

(vii) The complainant's preferred format or method of response to the complaint; and

(viii) If a complaint pursuant to § 79.108 of this part, the date that the complainant requested an accessible navigation device and the person or entity to whom that request was directed.

Pursuant to 47 CFR 79.110(a)(3), if a complaint is filed first with the Commission, the Commission will forward a complaint satisfying the above requirements to the named covered entity for its response, as well as to any other entity that Commission staff determines may be involved. The covered entity or entities must respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

Pursuant to 47 CFR 79.110(a)(4), if a complaint is filed first with the covered entity, the covered entity must respond in writing to the complainant within 30 days after receipt of a complaint. If the covered entity fails to respond to the complainant within 30 days, or the response does not satisfy the consumer, the complainant may file the complaint with the Commission within 30 days after the time allotted for the covered entity to respond. If the consumer subsequently files the complaint with the Commission (after filing with the covered entity) and the complaint satisfies the requirements, the Commission will forward the complaint to the named covered entity for its response, as well as to any other entity that Commission staff determines may be involved. The covered entity must then respond in writing to the Commission and the complainant within 30 days after receipt of the complaint from the Commission.

Pursuant to 47 CFR 79.110(a)(5), in response to a complaint, the covered entity must file with the Commission sufficient records and documentation to prove that it was (and remains) in compliance with the Commission's rules. Conclusory or insufficiently supported assertions of compliance will not carry the covered entity's burden of proof. If the covered entity admits that it was not, or is not, in compliance with the Commission's rules, it must file with the Commission sufficient records and documentation to explain the reasons for its noncompliance, show what remedial steps it has taken or will take, and show why such steps have been or will be sufficient to remediate the problem.

Pursuant to 47 CFR 79.110(a)(6), the Commission will review all relevant information provided by the complainant and the covered entity, as well as any additional information the Commission deems relevant from its files or public sources. The Commission may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules. When the Commission requests additional information, parties to which such requests are addressed must provide the requested information in the manner and within the time period the Commission specifies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–13439 Filed 6–9–14; 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 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 August 11, 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 No.: 3060–1161.

Title: Construction requirements; Interim reports—Sections 27.14(g)–(l).

Form No.: N/A.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,118 respondents; 1,118 responses.

Estimated Time per Response: 5 to 15 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

Total Annual Burden: 11,260 hours.

Annual Cost Burden: $1,893,700.00.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collected will be used by the Commission to determine the progress made by licensees to meet specific performance requirements, and the manner in which their spectrum is being utilized, and to determine whether licensees have complied with the Commission's performance benchmarks. The Commission will also use the information to evaluate whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–13440 Filed 6–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

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 August 11, 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: 3060–0987.

Title: 911 Callback Capability; Non-initialized Handsets (47 CFR 20.18(l)(1)(i-iii), 20.18 (l)(2)(i-iii)).

Form Number: Not applicable.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 785 respondents; 225,785 responses.

Estimated Time per Response: 0.0117811 hour (range of 30 seconds for labeling each handset to one hour for each respondent's public education effort).

Frequency of Response: Third-party disclosure.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 154, 160, 201, 251–254, 303, and 332.

Total Annual Burden: 2,660 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: In 2003, the Commission modified 47 CFR 20.18(l) to further improve the ability of public safety answering points (PSAPs) to respond quickly and efficiently to calls for emergency assistance made from non-service initialized wireless mobile handsets. Non-service-initialized wireless mobile handsets (non-initialized handsets) are not registered for service with any Commercial Mobile Radio Service (CMRS) licensee. A non-initialized handset lacks a dialable number, but is programmed to make outgoing 911 calls. The Commission addressed issues arising from the inability of a PSAP operator to call back a 911 caller who becomes disconnected when using a non-service-initialized wireless handset. These requirements also apply to manufacturers of 911-only handsets that are manufactured after May 3, 2004.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–13438 Filed 6–9–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Determination of Insufficient Assets To Satisfy Claims Against Financial Institution in Receivership

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The FDIC has withdrawn and set aside its determination that insufficient assets exist in the receivership of Colonial Bank, Montgomery, Alabama, to make any distribution on general unsecured claims and that such claims have no value.

DATES: The FDIC withdrew its determination on June 4, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may contact an FDIC Claims Agent at (972) 761–8677. Written correspondence may also be mailed to FDIC as Receiver of Colonial Bank, Attention: Claims Agent, 1601 Bryan Street, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION: On April 15, 2013, the FDIC determined that the assets of Colonial Bank, Montgomery, Alabama, were insufficient to make any distribution on general unsecured claims, and that such claims therefore had no value. Notice of the determination was published in the **Federal Register** on April 19, 2013. 78 FR 23565. The FDIC has now withdrawn its determination because the Receivership's theoretically possible recoveries have been revised upward as a result of changed circumstances and could possibly exceed the previously

calculated $1.698 billion deficit, which in turn could possibly result in payment on non-deposit claims under the most favorable circumstances.

Dated: At Washington, DC, June 4, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–13423 Filed 6–9–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: June 18, 2014; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The first portion of the meeting will be held in Open Session; the second in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing by U.S. Harbor Trucking Representatives on Trucking Trends and Conditions.

Closed Session

1. Staff Briefing on Economic and Trade Conditions.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523 5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–13601 Filed 6–6–14; 4:15 pm]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0896]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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 notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community-based Organization (CBO) Monitoring and Evaluation Project (CMEP) of WILLOW (CMEP–WILLOW) (OMB No. 0920–0896, expires 8/31/2014)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC began formally partnering with CBOs in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention. Women Involved in Life Learning from Other Women (WILLOW) is an EBI that focuses on health education and social skills building among women living with HIV.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of CMEP is to improve the performance of CDC-funded CBOs delivering particular individual- or group-level behavioral interventions. This is done by monitoring changes in clients' self-reported HIV transmission risk behaviors after participating in the intervention.

CDC funded four (4) CBOs to participate in CMEP–WILLOW for five (5) years (September 2010–August 2015). From October 1, 2011 through March 21, 2014, baseline surveys were conducted with 941 participants; 90-day follow up surveys were completed with 700 participants, and 180-day follow up surveys were completed with 609 participants.

CDC is requesting additional time to complete follow up surveys at 90- and 180-days for participants completing the intervention on or before 8/31/2014. Following their participation in the WILLOW intervention, participants will complete an 18 minute, self-administered, computer based interview at two follow-up time points (90- and 180-days following the WILLOW intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up interviews. CBO agency staff will submit data files to CDC monthly. It is estimated it will take 5 minutes to upload to the CDC's Secure Data Network (SDN).

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP–WILLOW to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP–WILLOW. The total estimated annual burden hours are 200.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
General population	90-day Follow-up Survey	320	1	18/60
CMEP–WILLOW grantees	90-day SDN Submission	4	12	5/60
General population	180-day Follow-up Survey	320	1	18/60
CMEP–WILLOW grantees	180-day SDN Submission	4	12	5/60

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–13397 Filed 6–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–0895]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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 notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Community-based Organization (CBO) Monitoring and Evaluation Project (CMEP) of RESPECT (CMEP–RESPECT) (OMB No. 0920–0895, expires 8/31/2014)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC began formally partnering with CBOs in the late 1980s to expand the reach of HIV prevention efforts. CBOs were, and continue to be, recognized as important partners in HIV prevention because of their history and credibility with target populations and their access to groups that may not be easily reached. Over time, CDC's program for HIV prevention by CBOs has grown in size, scope, and complexity to respond to changes in the epidemic, including the diffusion and implementation of Effective Behavioral Interventions (EBIs) for HIV prevention.

CDC's EBIs have been shown to be effective under controlled research environments, but there is limited data on intervention implementation and client outcomes in real-world settings (as implemented by CDC-funded CBOs). The purpose of CMEP is to improve the performance of CDC-funded CBOs delivering particular individual- or group-level behavioral interventions. This is done by monitoring changes in clients' self-reported HIV transmission risk behaviors after participating in the intervention.

CDC funded four (4) CBOs to participate in CMEP-Respect for five (5) years (September 2010–August 2015). CDC funded CMEP-Respect for five (5) years (September 2010–August 2015). From April 1, 2012 through April 30, 2014 baseline surveys were conducted with an estimated 871 participants; 90–day follow up surveys were completed with 576 participants, and 180-day follow up surveys were completed with 484 participants.

CDC is requesting additional time to complete follow up surveys at 90- and 180-days for participants completing the intervention on or before 8/31/2014. Following their participation in the Respect intervention, participants will complete an 18 minute, self-administered, computer based interview at two follow-up time points (90- and 180-days following the Respect intervention) to assess their HIV-related attitudes and behavioral risks. CBOs will be expected to retain 80% of these participants at both follow-up interviews. CBO agency staff will submit data files to CDC monthly. It is estimated it will take 5 minutes to upload to the CDC's Secure Data Network (SDN).

Throughout the project, funded CBOs will be responsible for managing the daily procedures of CMEP-Respect to ensure that all required activities are performed, all deadlines are met, and quality assurance plans, policies and procedures are upheld. CBOs will be responsible for participating in all CDC-sponsored grantee meetings related to CMEP-Respect. The total estimated annual burden hours are 200.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
General population	90-Day Follow-Up Survey	320	1	18/60
CMEP-Respect grantees	90-Day SDN Submission	4	12	5/60
General Population	180-day Follow-up Survey	320	1	18/60
CMEP-Respect grantees	180-Day SDN Submission	4	12	5/60

Leroy Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–13396 Filed 6–9–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1558]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 10, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0673. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry and Food and Drug Administration Staff on Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products—(OMB Control Number 0910–0673)—(Extension)

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new chapter granting FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 905(j) of the FD&C Act (21 U.S.C. 387e(j)) authorizes FDA to establish the form for the submission of information related to substantial equivalence. In a level 1 guidance document issued under the Good Guidances Practices regulation (21 CFR 10.115), FDA provides recommendations intended to assist persons submitting reports under section 905(j) of the FD&C Act and explains, among other things, FDA's interpretation of the statutory sections related to substantial equivalence.

In the **Federal Register** of December 27, 2013 (78 FR 78974), FDA published a 60-day notice requesting public comment on the proposed collection of information. Six comment submissions were received, some of which included multiple comments. Two of the six comment submissions were in favor of FDA's regulation of tobacco products. Three comment submissions were considered to contain PRA-related comments and three comment submission were not considered to contain PRA-related comments. The three comment submissions not considered to contain PRA-related comments are beyond the scope of this **Federal Register** notice.

(Comment 1) One commenter supported FDA in its mission to regulate tobacco products for the benefit of public health and safety and indicated that language in the guidance be strengthened to assist in FDA reviews. The commenter also suggested that the respondents provide additional information to minimize future Freedom of Information Act requests.

(Response 1) FDA agrees that the request in this collection of information is necessary to fulfill the requirements of the FD&C Act. The type of data for a given new product may vary depending on whether the characteristics of the product are the same or different from a predicate tobacco product, and the information is needed to allow FDA to make informed decisions when reviewing a substantial equivalence application.

(Comment 2) Several commenters indicated that FDA has improperly implemented the substantial equivalence provisions of the statute (the FD&C Act, as amended by the Family Smoking Prevention and Tobacco Control Act (FSPTCA)), and maintain that FDA is asking for reports that are neither authorized nor relevant to a substantial equivalence determination.

(Response 2) FDA disagrees with the comment. The information FDA is requesting is related to new products using the substantial equivalence pathway to assist FDA in making a determination of whether a product is substantially equivalent.

(Comment 3) Several commenters asserted that FDA was not asking for enough information, while other commenters asserted that FDA was asking for too much information.

(Response 3) FDA believes that the collection of information is necessary and the burden estimates are appropriate and reflect the amount of time a respondent would need to prepare a substantial equivalence submission.

(Comment 4) One commenter noted that under FDA's interpretation, every new, including modified, product

automatically will be evaluated. Other commenters questioned FDA's implementation and Congress' intent of the FSPTCA and its definition of substantial equivalence and new products.

(Response 4) The FD&C Act as amended by the FSPTCA establishes the definition of ''new tobacco product'' and the premarket pathways, of which substantial equivalence is one. FDA believes the information collection estimates are appropriate and reflect estimates of the time it would take to put together and report the information needed in a substantial equivalence submission required by the statute.

(Comment 5) One commenter stated that the commenter believes that substantial equivalence reports should be exempt from environmental assessment requirements.

(Response 5) The National Environmental Policy Act and FDA implementing regulations require environmental assessment requirements.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act sections	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
905(j)(1)(A)(i) and 910(a)	1,000	1	1,000	360	360,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on information it now has available from interactions with the industry, information related to other regulated products, and FDA's expectations regarding the tobacco industry's use of the section 905(j) pathway to market their products. Table 1 describes the annual reporting burden as a result of the implementation of the substantial equivalence requirements of sections 905(j) and 910(a) of the FD&C Act (21 U.S.C. 387j(a)). FDA estimates that it will receive 1,000 section 905(j) reports each year and that it will take a manufacturer approximately 360 hours to prepare a report of substantial equivalence for a new tobacco product. Therefore, FDA estimates the burden for submission of substantial equivalence information will be 360,000 hours.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13434 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0619]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for humanitarian use devices (HUDs).

DATES: Submit either electronic or written comments on the collection of information by August 11, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Humanitarian Use Devices—21 CFR 814 (OMB Control Number 0910–0332)—Extension

This collection of information implements the HUD provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(m)) and subpart H, part 814 (21 CFR part 814). Under section 520(m) of the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a

person with such a disease or condition unless an exemption is granted because there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose the disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury with the probable benefit to health from using the device outweighing the risk of injury or illness from its use. This takes into account the probable risks and benefits of currently available devices or alternative forms of treatment.

The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

The number of respondents in tables 1, 2, and 3 of this document are an average based on data for the previous 3 years, i.e., fiscal years 2011 through 2013. The number of annual reports submitted under § 814.126(b)(1) in table 1 reflects 32 respondents with approved HUD applications. Likewise, under § 814.126(b)(2) in table 2, the number of recordkeepers is 247.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for HUD designation—814.102	16	1	16	40	640
Humanitarian device exemption (HDE) application—814.104	7	1	7	320	2,240
HDE amendments and resubmitted HDEs—814.106	14	5	70	50	3,500
HDE supplements—814.108	112	1	112	80	8,960
Notification of withdrawal of an HDE—814.116(e)(3)	8	1	8	1	8
Notification of withdrawal of institutional review board approval—814.124(b)	3	1	3	2	6
Periodic reports—814.126(b)(1)	32	1	32	120	3,840
Total					19,194

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR Section	Number of recordkeepers	Number of records per recordkeeping	Total annual records	Average burden per recordkeeping	Total hours
HDE Records—814.126(b)(2)	247	1	247	2	494

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notification of emergency use—814.124(a)	22	1	22	1	22

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13435 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–1234]

Determination of Regulatory Review Period for Purposes of Patent Extension; STENDRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for STENDRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://*

www.regulations.gov. Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257, Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product STENDRA (avanafil). STENDRA is indicated for the treatment of erectile dysfunction. Subsequent to this approval, USPTO received a patent term restoration application for STENDRA (U.S. Patent No. 6,656,935) from Mitsubishi Tanabe Pharma Corp., and USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 13, 2013, FDA advised USPTO that this human drug product had undergone a regulatory review period and that the approval of STENDRA represented the first permitted commercial marketing or use of the product. Thereafter, USPTO requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for STENDRA is 3,770 days. Of this time, 3,466 days occurred during the testing phase of the regulatory review period, while 304 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 2, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* June 29, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for STENDRA (NDA 202276) was submitted on June 29, 2011.

3. *The date the application was approved:* April 27, 2012. FDA has verified the applicant's claim that NDA 202276 was approved on April 27, 2012.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,686 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 11, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 8, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov*, Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13444 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–E–1241]

Determination of Regulatory Review Period for Purposes of Patent Extension; Xience Prime Ll Everolimus Eluting Coronary Stent System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Xience Prime Ll Everolimus Eluting Coronary Stent System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written petitions (two copies are required) and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit petitions electronically to *http://www.regulations.gov* at Docket No. FDA–2013–S–0610.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6257,

Silver Spring, MD 20993–0002, 301–796–7900.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device Xience Prime Ll Everolimus Eluting Coronary Stent System. Xience Prime Ll Everolimus Eluting Coronary Stent System is indicated for improving coronary luminal diameter in patients with symptomatic heart disease due to de novo native coronary artery lesions (length ≤ 32 millimeters (mm)) with reference vessel diameters of ≥2.25 mm to ≤ 4.25 mm. Subsequent to this approval, the USPTO received a patent term restoration application for Xience Prime Ll Everolimus Eluting Coronary Stent System (U.S. Patent No. 5,514,154) from Abbott Cardiovascular Systems Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 4, 2013, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of Xience Prime Ll Everolimus Eluting Coronary Stent System represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Xience Prime Ll Everolimus Eluting Coronary Stent System is 890 days. Of this time, 694 days occurred during the testing phase of the regulatory review period, while 196 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* May 27, 2009. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective May 27, 2009.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* April 20, 2011. The applicant claims October 28, 2010, as the date the premarket approval application (PMA) for Xience Prime Ll Everolimus Eluting Coronary Stent System (PMA P110019) was initially submitted. However, FDA records indicate that PMA P110019 was submitted in full on April 20, 2011.

3. *The date the application was approved:* November 1, 2011. FDA has verified the applicant's claim that PMA P110019 was approved on November 1, 2011.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 630 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 11, 2014. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 8, 2014. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written or electronic petitions. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. If you submit a written petition, two copies are required. A petition submitted electronically must be submitted to *http://www.regulations.gov,* Docket No. FDA–2013–S–0610. Comments and petitions that have not been made publicly available on *http://www.regulations.gov* may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13445 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2001–D–0067 (Formerly Docket No. 2001D–0185)]

Draft Guidance for Industry on Providing Submissions in Electronic Format—Postmarketing Safety Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports.'' This draft guidance provides general information pertaining to electronic submission of postmarketing safety reports (individual case safety reports (ICSRs), attachments to ICSRs (ICSR attachments), and other postmarketing safety reports) for certain human drug and biological products. We are issuing the draft guidance to help persons required to submit postmarketing safety reports comply with the final rule.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 11, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the

Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Jean Chung, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4466, Silver Spring, MD, 20993–0002, 301–796–1874.

For information concerning human biological products: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7268, Silver Spring, MD, 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Providing Submissions in Electronic Format—Postmarketing Safety Reports.'' This draft guidance provides general information pertaining to electronic submission of postmarketing safety reports (ICSRs, ICSR attachments, and other postmarketing safety reports) for the following products:

- Drug products marketed for human use with approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs);
- Prescription drug products marketed for human use without an approved NDA or ANDA;
- Biological products, other than vaccines, marketed for human use with approved biologic license applications (or BLAs);
- Nonprescription (over-the-counter or OTC) human drug products marketed without an approved application.

This draft guidance does not apply to vaccines, human cells, tissues, and cellular and tissue-based products regulated under section 361 of the Public Health Service Act, whole blood, components of whole blood, or lot distribution reports.

This draft guidance revises and replaces the draft guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Postmarketing Individual Case Safety Reports,'' issued on June 12, 2008 (73 FR 33436). Elsewhere in this issue of the **Federal Register,** we are publishing a final rule to require that mandatory postmarketing safety reports for human drug and biological products be submitted to FDA in an electronic format that the Agency can process, review, and archive. The revised draft guidance is intended to help persons subject to mandatory postmarketing safety reporting requirements comply with the final rule. Along with other information, the revised draft guidance provides updated information about the following: (1) Options for submitting postmarketing safety reports to FDA in electronic format, (2) the notification that submitters will receive when FDA has received the electronic postmarketing safety report, and (3) procedures for requesting temporary waivers from the electronic submission requirement.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on submission of postmarketing safety reports in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

The information collection resulting from this draft guidance is covered by the information collection provisions of the final rule entitled ''Postmarketing Safety Reports for Human Drug and Biological Products; Electronic Submission Requirements,'' which is published elsewhere in this issue of the **Federal Register**. The information collection provisions of the final rule have been submitted to the Office of Management and Budget (OMB) for review, as required under section 3507(d) of the Paperwork Reduction Act. Prior to the effective date of the final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the final rule. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm,* or *http://www.regulations.gov*.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13479 Filed 6–9–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0012]

Kidney Health Initiative (R18)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of the Center for Drug Evaluation and Research/Office of Medical Policy's Kidney Health Initiative Program. FDA, Center for Drug Evaluation and Research (CDER), Office of Medical Policy (OMP) is announcing its intent to accept and consider a single source application for the award of a grant to the American Society of Nephrology (ASN) to support the Kidney Health Initiative (KHI).

DATES: The application due date is June 30, 2014, by 11:59 p.m., EST.

ADDRESSES: Submit electronic applications to: *http://www.grants.gov*.

For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mark Lauda, Office of Medical Policy, Center for Drug Evaluation and Research, Food and Drug Administration, White Oak, Bldg. 51, Rm. 2212, Silver Spring, MD 20993, 301–796–0381, email: *Mark.Lauda@fda.hhs.gov*; or Lisa Ko, Office of Acquisition & Grants Services, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD, 240–402–7592, email: *Lisa.Ko@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.grants.gov*. Search by Funding Opportunity Number: RFA–FD–14–018.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

RFA–FD–14–018
93.103

A. Background

A memorandum of understanding (MOU) between FDA and ASN signed in September 2012 served as the basis for the establishment of KHI. This award will be made to ASN to enable FDA's support of KHI by defraying some of the direct and indirect costs associated with KHI and KHI projects. The ASN is a 501(c)(3) non-profit organization whose mission is to fight against kidney disease by educating health professionals, sharing new knowledge, advancing research, and advocating the highest quality care for patients.

KHI is a public-private partnership whose mission is to advance scientific understanding of the kidney health and patient safety implications of new and existing medical products and to foster development of therapies for disease that affect the kidney by creating a collaborative environment in which FDA and the greater nephrology community can interact to optimize evaluation of drugs, devices, biologics, and food products. KHI membership is broad and includes stakeholders from government, patient advocacy groups and foundations, pharmaceutical and device companies, professional societies, dialysis providers, and research institutions. KHI helps to effect change through the conduct of projects that address barriers to innovation, facilitate critical evidence generation, and/or elucidate safety concerns. KHI projects may be submitted for consideration by any of its member organizations (including FDA). Candidate projects are developed and refined through Web-based interactions and during stakeholder meetings. Candidate projects that are successfully developed and receive the endorsement of the KHI Board of Directors are conducted on a volunteer basis by work groups largely (but not exclusively) staffed by individuals from KHI member organizations.

The opportunity for meaningful interaction with a broad set of stakeholders committed to improving the evaluation of products that impact kidney health offers significant value to FDA and the public. Since its inception, KHI has undertaken several projects that have advanced the FDA mission, including (but not limited to) projects elucidating endpoints for lupus nephritis trials and also providing guidance for generating pharmacokinetic data for critical drugs often used in the setting of continuous renal replacement therapies.

B. Research Objectives

The goals of this program are to develop and maintain an administrative and scientific infrastructure to support the creation and execution of a series of projects under the auspices of KHI, to complement the goals of FDA.

The following KHI activities are supported by this grant:

- Maintaining an adequate administrative and scientific infrastructure to implement all related projects under this collaborative effort.
- Identifying and/or hiring a sufficient number of qualified personnel to conduct the necessary research and project-management of all related activities, including review of project milestones for degree of completion, preparation/reporting of project findings, periodic and final reports, and subsequent distribution in the public domain.
- Developing plans for the conduct of identified research plans.
- Identifying, securing, and/or building, and effectively leveraging other resources for the conduct of identified projects.
- Upon completion of a given project, generating project results and recommendations and proposing related studies/projects, if needed, to build on the findings of the project and continuing to leverage established resources and personnel.

C. Eligibility Information

The following organization is eligible to apply: American Society of Nephrology (ASN).

II. Award Information/Funds Available

A. Award Amount

This is a multi-year grant. FDA/CDER intends to fund up to $500,000 in total costs (direct and indirect) in fiscal year (FY) 2014. Awards are contingent upon the availability of funds.

Subject to the availability of Federal funds and successful performance of the FOA's stated goals and objectives, 4 additional years of support may be available. Funding beyond the first year will be noncompetitive and will depend on: (1) Satisfactory performance during the preceding year and (2) the availability of Federal FY funds.

Application budgets need to reflect the actual needs of the proposed project and should not exceed the following in total costs (direct and indirect):

Year 1: $500,000
Year 2: $500,000
Year 3: $500,000
Year 4: $500,000
Year 5: $500,000

B. Length of Support

The scope of the proposed project should determine the project period. The maximum project period is 5 years.

III. Electronic Application, Registration, and Submission

Only electronic applications will be accepted. To submit an electronic application in response to this FOA, applicants should first review the full announcement located at *http://www.grants.gov*. Search by Funding Opportunity Number: RFA–FD–14–018. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) For all electronically submitted applications, the following steps are required.

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With System for Award Management (SAM)
- Step 3: Obtain Username & Password
- Step 4: Authorized Organization Representative (AOR) Authorization
- Step 5: Track AOR Status
- Step 6: Register With Electronic Research Administration (eRA) Commons

Steps 1 through 5, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*. Step 6, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit

electronic applications to: *http://www.grants.gov*.

Dated: June 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13443 Filed 6–9–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–P–1107]

OXIPLEX/SP Gel; FzioMed, Incorporated's Petition for Review of the Food and Drug Administration's Denial of Premarket Approval; Notice of Meeting Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Medical Devices Dispute Resolution Panel scheduled for June 10, 2014, is cancelled. This meeting was announced in the **Federal Register** of May 14, 2014.

FOR FURTHER INFORMATION CONTACT: Pamela D. Scott, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 3611, Silver Spring, MD 20993–0002, 301–796–5433, FAX: 301–847–8510, email: *pamelad.scott@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The meeting of the Medical Devices Dispute Resolution Panel (the panel) of the Medical Devices Advisory Committee scheduled for June 10, 2014, is cancelled. On June 10, 2014, the panel was slated to discuss the Center for Device and Radiological Health's (CDRH's) denial of a premarket approval application (PMA) for OXIPLEX submitted by FzioMed, the sponsor for OXIPLEX.

On August 21, 2007, FzioMed submitted a PMA (PMA P070023) for OXIPLEX. OXIPLEX is an absorbable, clear, viscoelastic gel designed to be applied in the lower back during lumbar spine surgery. The device's proposed indication is for use as a surgical adjuvant in adult patients with primary leg pain and severe baseline back pain undergoing first surgical intervention (i.e., open or endoscopic posterior lumbar laminectomy, laminotomy, or discectomy) for diagnosed unilateral herniation of lumbar intervertebral disc material associated with radiculopathy. The proposed intended use is for one-time use, up to 3 milliliters, after hemostasis during wound closure, as an adjunct to primary surgical intervention to improve patient outcomes by reducing leg pain, back pain, and neurologic symptoms.

On October 9, 2012, CDRH issued a decision upholding a not approvable letter in response to the PMA P070023 for OXIPLEX. CDRH determined that PMA P070023 is not approvable based on its conclusion that the data and information offered in support of the PMA do not provide a reasonable assurance that the device is safe and effective under the conditions of use prescribed, recommended, or suggested in the proposed labeling, as required by section 515(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(2)).

On November 5, 2012, FzioMed requested administrative review of CDRH's decision to uphold its not approvable letter. Submitted in the form of a petition for reconsideration under 21 CFR 10.33 (see § 814.44(f)(2) (21 CFR 814.44(f)(2)), FzioMed's petition for review (petition) stated that, in accordance with § 814.44(f), FzioMed considered the decision to uphold the not approvable letter to be a denial of approval of PMA P070023 under § 814.45). Under section 515(d)(4) of the FD&C Act, FzioMed requested review of this denial under section 515(g)(2) of the FD&C Act.

Accordingly, as required by § 814.45(e)(3), CDRH issued an order denying approval of the PMA for OXIPLEX on October 21, 2013. Under section 515(g)(2) of the FD&C Act, on October 25, 2013, FDA granted FzioMed's petition for review of the order denying PMA P070023. In the **Federal Register** of May 14, 2014 (79 FR 27623), the Office of the Commissioner referred PMA P070023 and the basis for the order denying its approval to the Medical Devices Dispute Resolution Panel, and announced that the panel was scheduled to meet to discuss the clinical and scientific issues raised by CDRH's Denial Order on June 10, 2014.

Since the panel meeting announcement on May 14, 2014, the parties have agreed that the panel meeting should not go forward on June 10, 2014. The Agency is thereby cancelling the June 10, 2014, meeting.

Dated: June 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–13565 Filed 6–6–14; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft Report on Carcinogens Monograph on Trichloroethylene; Availability of Documents; Request for Comments; Notice of Meeting

SUMMARY: The notice announces a meeting to peer review the Draft Report on Carcinogens (RoC) Monograph on Trichloroethylene (TCE). This document was prepared by the Office of the Report on Carcinogens (ORoC), Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS). The peer-review meeting is open to the public. Registration is requested for both public attendance and oral comment and required to access the webcast. Information about the meeting and registration are available at *http://ntp.niehs.nih.gov/go/38853.*

DATES:

Meeting: August 12, 2014, 8:30 a.m. Eastern Daylight Time (EDT) to adjournment. Document Availability: Draft monograph will be available by June 30, 2014, at *http://ntp.niehs.nih.gov/go/38853.*

Written Public Comments Submissions: Deadline is July 30, 2014.

Registration for Meeting, Oral Comments, and/or to View Webcast: Deadline is August 5, 2014. Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Agency Meeting Web page: The draft monographs, draft agenda, registration, and other meeting materials will be posted at *http://ntp.niehs.nih.gov/go/38853.*

Webcast: The URL for viewing the webcast will be provided to those who register.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, NTP Designated Federal Official, Office of Liaison, Policy and Review, DNTP, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709. Phone: (919) 541–9834, Fax: (301) 480–3272, Email: *whiteld@niehs.nih.gov.* Hand Delivery/Courier: 530 Davis Drive, Room 2136, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

The RoC is a congressionally mandated, science-based, public health report that identifies agents, substances,

mixtures, or exposures (collectively called ''substances'') in our environment that pose a cancer hazard for people in the United States. The NTP prepares the RoC on behalf of the Secretary of Health and Human Services.

The NTP follows an established, four-part process for preparation of the RoC (*http://ntp.niehs.nih.gov/go/rocprocess*). A RoC monograph is prepared for each candidate substance selected for review for the RoC. Trichloroethylene was selected as a candidate substances following solicitation of public comment, review by the NTP Board of Scientific Counselors on June 21–22, 2012, and approved by the NTP Director (*http://ntp.niehs.nih.gov/go/9741*). A draft RoC monograph consists of (1) a cancer evaluation component that reviews all information that may bear on a listing decision, assesses its quality and sufficiency for reaching a listing decision, applies the RoC listing criteria to the relevant scientific information, and recommends a listing status for the candidate substance in the RoC and (2) a substance profile that contains the NTP's preliminary listing recommendation and a summary of the scientific evidence considered key to reaching that recommendation. This meeting is planned for peer review of the draft RoC Monograph on TCE.

Trichloroethylene (CASRN 79–01–6) is a halogenated alkene used primarily in the past as a degreaser for metal parts and more currently as an intermediate for hydrofluorocarbon (e.g., refrigerant) production. It is a common drinking water contaminant and has also been found in contaminated air and soil, and is an ingredient in many consumer products (e.g., aerosols or degreasers for hobbies, crafts and home and automobile maintenance). It is currently listed as *reasonably anticipated to be a human carcinogen* in the 12th RoC. Additional information about the review of TCE for the RoC is available at *http://ntp.niehs.nih.gov/go/37899.*

Meeting and Registration

This meeting is open to the public with time set aside for oral public comment. The public may attend the meeting at NIEHS, where attendance is limited only by the space available, or view the webcast. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to provide oral comments (see below) are encouraged to register online at the meeting Web site (*http://ntp.niehs.nih.gov/go/38853*) by August 5, 2014, to facilitate planning for the meeting.

The preliminary agenda and draft monograph should be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/38853*) by June 30, 2014. Additional information will be posted when available or may be requested in hardcopy, see **FOR FURTHER INFORMATION CONTACT**. Following the meeting, a report of the peer review will be prepared and made available on the NTP Web site. Registered attendees are encouraged to access the meeting Web page to stay abreast of the most current information regarding the meeting.

Visitor and security information is available at *http://www.niehs.nih.gov/about/visiting/index.cfm.* Individuals with disabilities who need accommodation to participate in this event should contact Ms. Danica Andrews at phone: (919) 541–2595 or email: *andrewsda@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments

The NTP invites written and oral public comments on the draft monograph. The deadline for submission of written comments is July 30, 2014, to enable review by the peer-review panel and NTP staff prior to the meeting. Registration to provide oral comments is by August 5, 2014, at *http://ntp.niehs.nih.gov/go/38853.* Public comments and any other correspondence on the draft monographs should be sent to the **FOR FURTHER INFORMATION CONTACT**. Persons submitting written comments should include their name, affiliation, mailing address, phone, email, and sponsoring organization (if any) with the document. Written comments received in response to this notice will be posted on the NTP Web site, and the submitter will be identified by name, affiliation, and/or sponsoring organization.

Public comment at this meeting is welcome, with time set aside for the presentation of oral comments on the draft monograph. In addition to in-person oral comments at the meeting at the NIEHS, public comments can be presented by teleconference line. There will be 50 lines for this call; availability will be on a first-come, first-served basis. The lines will be open from 8:30 a.m. until adjournment on August 12, 2014, and oral comments will be received only during the formal public comment period indicated on the preliminary agenda. Each organization (sponsoring organization or affiliation) is allowed one time slot. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the chair.

Persons wishing to make an oral presentation are asked to register online at *http://ntp.niehs.nih.gov/go/38853* by August 5, 2014, and if possible, to send a copy of their slides and/or statement or talking points at that time. Written statements can supplement and may expand the oral presentation. Registration for in-person oral comments will also be available at the meeting, although time allowed for presentation by on-site registrants may be less than that for registered speakers and will be determined by the number of speakers who register on-site.

Background Information on the RoC

Published biennially, each edition of the RoC is cumulative and consists of substances newly reviewed in addition to those listed in previous editions. The 12th RoC, the latest edition, was published on June 10, 2011 (available at *http://ntp.niehs.nih.gov/go/roc12*). The 13th RoC is under development. For each listed substance, the RoC contains a substance profile, which provides information on: Cancer studies that support the listing—including those in humans, animals, and studies on possible mechanisms of action—information about potential sources of exposure to humans, and current Federal regulations to limit exposures.

Background Information on NTP Peer-Review Panels

NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise the NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. The NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide a current *curriculum vita* to the **FOR FURTHER INFORMATION CONTACT.** The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service (PHS) Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: June 4, 2014.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2014–13481 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''NIAID Investigator Initiated Program Project Applications (P01)''.

Date: July 1, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3117, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Richard W. Morris, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC–7616, Room 3251, Bethesda, MD 20892–7616, 301–451–2663, *rmorris@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13468 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Mentored Career Development, Institutional Research Training & Pathways to Independence Applications.

Date: June 30, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles H Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (301) 496–9568 *washabac@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13472 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Opportunities for Collaborative Research at the NIH Clinical Center (U01).

Date: July 9, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3122, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Brenda Lange-Gustafson, Ph.D., Scientific Review Officer, NIAID/NIH/DHHS, Scientific Review Program, Room 3122, Bethesda, MD 20892–7616, *bgustafson@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13473 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Disaster Related Review.

Date: June 30, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Conference Room 2128, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709 (919) 541–1446, *eckertt1@niehs.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 4, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13471 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Kidney and Islet Transplant (U34).

Date: July 10, 2014.

Time: 2:45 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 4, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13470 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 12–109: Targeting Persistent HIV Reservoirs (TAPHIR).

Date: June 26–27, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.

Date: July 7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

Date: July 7–8, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cell, Computational and Molecular Biology.

Date: July 7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–435–1024, *allen.richon@nih.hhs.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member conflict: Pulmonary Diseases.

Date: July 7–8, 2014.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: July 7, 2014.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Denise R Shaw, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–14–003: Limited Competition: Mutant Mouse Resource and Research Centers.

Date: July 8–9, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

Date: July 8, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Hilary D Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 357–9236, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: July 8, 2014.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Hilary D Sigmon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Surgical Sciences and Bioengineering.

Date: July 8, 2014.

Time: 11:45 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Mehrdad Mohseni, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7854, Bethesda, MD 20892, 301–435–0484, *mohsenim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Endocrinology and Reproductive Biology.

Date: July 8, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Garofalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6156, MSC 7892, Bethesda, MD 20892, 301–435–1043, *garofalors@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 4, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–13469 Filed 6–9–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2014–N058; FF09E15000–FXHC112509CBRA1–145]

John H. Chafee Coastal Barrier Resources System; Availability of Draft Maps for Maine, Maryland, New Jersey, New York, North Carolina, and Virginia; Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coastal Barrier Resources Act (CBRA) requires the Secretary of the Interior (Secretary) to review the maps of the John H. Chafee Coastal Barrier Resources System (CBRS) at least once every 5 years and make any minor and technical modifications to the boundaries of the CBRS as are necessary to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces. The U.S. Fish and Wildlife Service (Service) has conducted this review and has prepared draft revised maps for all of the CBRS units in Maine, all units in Maryland, all units in New Jersey, all units in North Carolina, all units in Virginia, and one unit in New York. The draft maps were produced by the Service in partnership with the Federal Emergency Management Agency (FEMA). This notice announces the findings of the Service's review and request for comments on the draft revised maps from Federal, State, and local officials.

DATES: To ensure consideration, the Service must receive written comments by July 10, 2014.

ADDRESSES: Mail comments to Katie Niemi, Coastal Barriers Coordinator, Division of Budget and Technical Support, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 840, Arlington, VA 22203, or send comments by electronic mail (email) to *CBRAcomments@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Katie Niemi, Coastal Barriers Coordinator; (703) 358–2071 (telephone); or *CBRA@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

Background information on the CBRA (16 U.S.C. 3501 *et seq.*) and the CBRS, as well as information on the digital conversion effort and the methodology used to produce the revised maps, can be found in a notice the Service published in the **Federal Register** on August 29, 2013 (78 FR 53467).

For information on how to access the draft revised maps, see the Availability of Draft Maps and Related Information section below.

Proposed Modifications to the CBRS Boundaries

This notice fulfills a requirement under the CBRA (16 U.S.C. 3503(f)(3)) that requires the Secretary to publish a notice in the **Federal Register** of any proposed revisions to the CBRS to reflect: (1) Changes that have occurred to the CBRS as a result of natural forces (e.g., erosion and accretion); (2) voluntary additions to the CBRS requested by property owners; or (3) additions of excess Federal property to the CBRS (as authorized under 16 U.S.C. 3503(c)–(e)).

The Service's review of all CBRS units in Maine, all units in Maryland, all units in New Jersey, all units in North Carolina, all units in Virginia, and one unit in New York resulted in a set of 121 draft revised maps, dated September 30, 2013, depicting a total of 185 CBRS units. The set of maps includes 19 maps for 34 CBRS units located in Maine; 23 maps for 49 CBRS units located in Maryland; 16 maps for 21 CBRS units located in New Jersey; 29 maps for 16 CBRS units located in North Carolina; 32 maps for 64 CBRS units located in Virginia; and 2 maps for 1 CBRS unit located in both Kings and Queens Counties, New York. The Service's review of these areas found a total of 141 CBRS units that require modifications due to natural changes in the size or location of the units since they were last mapped. The Service's review of these areas also found three CBRS units that require modifications to correct administrative errors that were

made in the past, on maps for Washington County, Maine; Cumberland County, Maine; and Northampton County, Virginia.

Following the close of the comment period on the date listed in the **DATES** section of this document, the Service will review all comments received from Federal, State, and local officials on the draft maps; make adjustments to the draft maps, as appropriate; and publish a notice in the **Federal Register** to announce the availability of the final revised maps.

Below is a summary of the changes depicted on the draft revised maps.

Maine

The Service's review found 22 of the 34 of the CBRS units in Maine to have changed due to natural forces. Additionally, the Service's review found that two of these units in Maine, A03C and A07, contained administrative errors that were made by the Service in 1990.

A01: LUBEC BARRIERS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline.

A03: JASPER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A03B: STARBOARD UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A03C: POPPLESTONE BEACH/ROQUE ISLAND UNIT. The landward boundary of the Popplestone Beach segment of the unit has been modified to correct an administrative error in the transcription of the boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990, for this unit. The area in question was first added to the CBRS at the request of the State of Maine on April 18, 1983, through the minor and technical boundary modification process authorized by Section 4(c) of the CBRA (Pub. L. 97–348). This same area, which had been in the CBRS since 1983, was misidentified as an ''addition'' to the CBRS in the Service's *1988 Report to Congress: Volume 2, Maine.* This correction is supported by an assessment of the historical maps and aerial imagery for this area, as well as by the legislative history of the Coastal Barrier Improvement Act (CBIA; Pub. L. 101–591). Additionally, the landward boundaries of the Great Bar, Popplestone Beach, and Rogue Island Harbor segments of the unit have been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A05B: HEAD BEACH UNIT. The southeastern boundary of the unit has been modified to include the entire frontal dune within the unit.

A06: CAPE ELIZABETH UNIT. The landward boundary of the eastern segment of the unit has been modified to account for natural change in the shoreline of the pond within the unit.

A07: SCARBOROUGH BEACH UNIT. The southern landward portion of the boundary has been modified to correct an administrative error in the transcription of the boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990, for this unit. This correction is supported by an assessment of the historical maps and aerial imagery for this area, as well as by the legislative history of the CBIA (Pub. L. 101–591).

A08: CRESCENT SURF UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

A09: SEAPOINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–04: SEAL COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline.

ME–07P: ROQUE BLUFFS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–09P: PETIT MANAN/BOIS BUBERT UNIT. The boundary has been modified in the northern segment of the unit to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–10P: OVER POINT UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–11: POND ISLAND UNIT. A segment of boundary has been added to the southeastern portion of the unit to clarify the extent of the unit, which includes portions of Pond Island but not Hog Island. As a result, a segment of boundary has been removed from the southwestern side of the unit to keep one side of the unit open to East Penobscot Bay.

ME–12: THRUMCAP UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–14: NASH POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–15P: LITTLE RIVER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–16: HUNNEWELL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–17: SMALL POINT BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has also been modified to account for natural changes in the location of the barrier in the area of Small Point Beach.

ME–18: STOVER POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–20P: OGUNQUIT BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

ME–23: PHILLIPS COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

Maryland

The Service's review found 29 of the 49 CBRS units in Maryland to have changed due to natural forces.

MD–01P: ASSATEAGUE ISLAND UNIT. The landward boundary of the unit has been modified to account for the migration of sand outside of the unit in Sinepuxent Bay.

MD–03: SOUND SHORE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–06: JOES COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to account for channel migration along Joes Gut.

MD–09P: ST. PIERRE POINT UNIT. The landward boundary of the unit has been modified to account for the channel migration along an unnamed channel. The southern boundary of the unit has been modified to include the entire barrier feature, which has expanded to the south. The northern boundary of the unit has been modified to include the entire barrier feature, which has expanded to the east.

MD–12: DEAL ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–14: FRANKS ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Rock Creek.

MD–15: LONG POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to include the entirety of an accreting barrier spit located south of Long Point and its associated aquatic habitat within the unit.

MD–16: STUMP POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The boundary has also been modified to account for channel migration and erosion along Stacey Gut.

MD–20: JENNY ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–18P: MARSH ISLAND UNIT. The northern landward boundary of the unit has been modified slightly to account for erosion and channel migration along Little Pungers Creek.

MD–37P: FLAG PONDS UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The southern boundary has been modified to include the entirety of an accreting barrier spit and its associated aquatic habitat within the unit.

MD–38: COVE POINT MARSH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–24: COVEY CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface. The northern boundary has been moved further north to account for shoreline erosion within the unit.

MD–26: BOONE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and to account for shoreline erosion.

MD–27: BENONI POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and to account for shoreline erosion.

MD–30: KENT POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–32: STEVENSVILLE UNIT. The landward and northern boundaries of the unit have been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–33: WESLEY CHURCH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–35: WILSON POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–41: GREEN HOLLY POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–44: ST. CLARENCE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and shoreline erosion.

MD–45: DEEP POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has also been modified slightly to include the entirety of an accreting sand spit within the unit.

MD–46: POINT LOOK-IN UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–47: TANNER CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–48P: POINT LOOKOUT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–49: BISCO CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and wetland/fastland interface.

MD–53: BLAKE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–54: BELVEDERE CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

MD–56: ST. CATHERINE ISLAND UNIT. The boundary of the unit has been modified to include an accreting sand spit on the eastern side of St. Catherine Island.

New Jersey

The Service's review found 19 of the 21 CBRS units in New Jersey to have changed due to natural forces.

NJ–02: SEIDLER BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

NJ–03P: CLIFFWOD BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes in the wetland/fastland interface and along the banks of Whale Creek and Treasure Lake. The western boundary of the unit has been modified to account for the accretion of the sand spit at the western end of Cliffwood Beach.

NJ–04: CONASKONK POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes to the wetland/fastland interface and the southernmost edge of Chingarora Creek.

NJ–04A: NAVESINK/SHREWSBURY COMPLEX UNIT. The boundary of the northern segment of the unit has been modified to include more of the sand sharing system in the Navesink River to the north, northwest, and northeast of Barley Point. The boundary of the northern segment of the unit has been modified to the south and southeast of Barley Point to reflect the current location of the channels that the boundary follows. The eastern boundary of the southern segment of the unit has been modified slightly to fully include all of the islands behind the barrier within the unit.

NJ–04B: METEDECONK NECK UNIT. The boundary of the northern segment of the unit has been modified to reflect natural changes that have occurred along the shoreline of Herring Island and in the configuration of the wetland/fastland interface. The boundary of the southern segment of the unit has been modified to reflect natural changes in the shoreline along Metedeconk Neck and along minor channels.

NJ–04BP: METEDECONK NECK UNIT. The boundary of the northern segment of the unit has been modified to reflect natural changes that have occurred along the shoreline of Herring Island. The boundary of the southern segment of the unit has been modified to reflect natural changes along the shoreline along Metedeconk Neck.

NJ–05P: ISLAND BEACH UNIT. The boundary of the southern portion of the unit has been modified to include the entirety of an unnamed island in Barnegat Bay which is already partially within the unit.

NJ–06: CEDAR BONNET ISLAND UNIT. A portion of the northern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary coincident with a segment of Unit NJ–06P has been modified to reflect natural changes along the shoreline of an unnamed channel. The boundary has been modified to follow the center of an unnamed channel running between Units NJ–06 and NJ–06P.

NJ–06P: CEDAR BONNET ISLAND UNIT. The boundaries of three of the four discrete segments of the unit in Little Egg Harbor have been modified to reflect natural changes that occurred along the shorelines of the islands. The boundary coincident with a segment of Unit NJ–06 has been modified to reflect natural changes along the shoreline of an unnamed channel.

NJ–07P: BRIGANTINE UNIT. The boundary of the unit has been modified to account for channel migration and erosion along several channels. The boundary, primarily in the northern part of the unit, has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and the shoreline.

NJ–08P: CORSON INLET UNIT. The boundary of the unit has been modified to account for channel migration and erosion along a tributary to Corson Sound, Ben Hands Thorofare, Crook Horn Creek, and Weakfish Creek.

NJ–09: STONE HARBOR UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on the northwestern side of the unit and along Slab Creek and Nichols Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for channel migration along Gravelly Run, Great Flat Thorofare, Hammock Creek, and

Jenkins Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for natural changes along the southeastern shoreline of Nummy Island.

NJ–09P: STONE HARBOR UNIT. The boundary of the unit has been modified to account for channel migration along Dung Thorofare. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for channel migration along Gravelly Run, Great Flat Thorofare, Hammock Creek, and Jenkins Channel. The coincident boundary between Units NJ–09 and NJ–09P has been modified to account for natural changes along the southeastern shoreline of Nummy Island.

NJ–11P: HIGBEE BEACH UNIT. A portion of the southern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

NJ–12: DEL HAVEN UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units NJ–12 and NJ–12P has been modified to account for shoreline erosion along Delaware Bay.

NJ–12P: DEL HAVEN UNIT. The coincident boundary between Units NJ–12 and NJ–12P has been modified to account for shoreline erosion along Delaware Bay.

NJ–13: KIMBLES BEACH UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. A small portion of the boundary that follows the shoreline of Delaware Bay at Kimbles Beach has been modified to account for erosion.

NJ–14: MOORES BEACH UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units NJ–14 and NJ–14P has been modified to account for channel migration along East Creek, West Creek, and several unnamed channels.

NJ–14P: MOORES BEACH UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has been modified to account for channel migration along Bidwell Creek, Dennis Creek, Riggins Ditch, Sluice Creek, and several unnamed channels. The coincident boundary between Units NJ–14 and NJ–14P has been modified to account for channel migration along East Creek, West Creek, and several unnamed channels.

New York

The Service's review found that Unit NY–60P (the only CBRS unit in New York that was part of this review) had changed due to natural forces. Other CBRS units in the State of New York were not assessed as part of this review.

NY–60P: JAMAICA BAY. The boundary of the unit has been modified to reflect changes in the configuration of the wetland/fastland interface and the shoreline in Jamaica Bay.

North Carolina

The Service's review found 15 of the 16 CBRS units in North Carolina to have changed due to natural forces. This review did not include the North Carolina portion of Unit M01 in Brunswick County because that unit crosses the State boundary into South Carolina and was included in its entirety with the draft maps for all CBRS units in South Carolina that were remapped and referenced in a notice the Service published in the **Federal Register** on August 29, 2013 (78 FR 53467).

L01: CURRITUCK BANKS UNIT. The landward boundary of the unit on Knotts Island Bay has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface and the shoreline. The coincident boundary with the northern segment of Unit L01P has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on Currituck Sound, and modified to follow the center of the channel in Old Currituck Inlet.

L01P: CURRITUCK BANKS UNIT. The landward boundary of the northern segment of L01P has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface on Currituck Sound, and modified to follow the center of the channel in Old Currituck Inlet.

NC–01: PINE ISLAND BAY UNIT. The landward boundary of the unit along the shoreline of the excluded area has been modified slightly to better follow the shoreline as depicted on the new CBRS base map.

NC–02: NAGS HEAD WOODS UNIT. The landward boundary along the portion of the northern segment of the unit that follows the edge of the marsh has been modified to better follow the edge of the marsh as depicted on the new CBRS base map.

NC–03P: CAPE HATTERAS UNIT. Portions of the landward boundary of the unit have been modified to account for shoreline erosion. The boundary of the unit has been modified to account for accretion at the southern end of Ocracoke Island. The western boundary of the unit, where it is coincident with Unit L03AP, has intentionally not been modified. This area continues to change, and there are CBRS units on both sides of the boundary, so a modification in this area would have no effect.

L03AP: SHACKLEFORD BANKS UNIT. The western boundary of the unit along Beaufort Inlet has been expanded westward into the inlet. The original boundary of the unit has been generally located along the shoreline of Shackleford Banks within the inlet, but the island and the inlet continue to change. The boundary has been modified and generalized to account for existing conditions and the potential for future change. The eastern boundary of the unit, which is coincident with Unit NC–03P, has intentionally not been modified. This area continues to change, and there are Otherwise Protected Areas of the CBRS on both sides of the boundary, so a modification in this area would have no effect.

NC–04P: FORT MACON UNIT. The northern boundary of the excluded area of the unit surrounding United States Coast Guard Station Fort Macon has been modified to account for erosion along the shoreline.

NC–05P: ROOSEVELT NATURAL AREA UNIT. The northern boundary of the unit along Bogue Sound has been modified to account for erosion.

NC–06P: HAMMOCKS BEACH UNIT. The northern boundary of the unit has been modified to reflect natural changes that have occurred to Bear Island and Bogue Inlet. A portion of the southern boundary of the unit has been modified to reflect the current location of Sanders Creek. The location of the shoals in Bear Inlet has been dynamic, and so has the location of the Bear Inlet channel. Additionally, the southern boundary of the unit is coincident with Unit L05. The boundary in this area has been simply generalized, and the current geomorphic features of the inlet were not used to determine the placement of the boundary.

L05: ONSLOW BEACH COMPLEX UNIT. The southern boundary of the southern segment of the unit has been modified to follow what is now the center of New River Inlet up the New River channel. The boundary of the unit has also been modified due to channel migration along Wards Channel through to its junction with New River. In the northern segment of the unit, the northern boundary has been modified to follow the center of Shacklefoot Channel and Sanders Creek through to its junction with Bear Inlet. The location of the shoals in Bear Inlet has been dynamic, and so has the location of the Bear Inlet channel. Additionally, the northern boundary of the unit is coincident with Unit NC–06P. The boundary in this area has been simply generalized, and the current geomorphic features of the inlet were not used to determine the placement of the boundary.

L06: TOPSAIL UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and the location of New River Inlet. Due to the dynamic nature of the New River Inlet and the adjacent barrier island to the northeast of the unit, the boundary through the inlet has been modified and generalized to account for existing conditions and the potential for future change.

L07: LEA ISLAND COMPLEX UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and Nixon Channel.

L08: WRIGHTSVILLE BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh and the wetland/fastland interface.

L09: MASONBORO ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh,

wetland/fastland interface, and the shoreline along the landward side of the unit.

NC–07P: CAPE FEAR UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the marsh, wetland/fastland interface, and the shoreline along Bald Head Creek, Cape Creek, and the Cape Fear River and its associated aquatic habitat.

Virginia

The Service's review found 55 of the 64 CBRS units in Virginia to have changed due to natural forces. Additionally, the Service's review found that one unit in Virginia, VA–09, contained an administrative error that was made by the Service in 1997.

VA–01P: ASSATEAGUE ISLAND UNIT. The southern boundary of the unit has been modified to account for accretion at the southern end of Assateague Island.

VA–02P: ASSAWOMAN ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary on the southern side of the unit has been modified to reflect natural changes along Shipping Creek and Wire Passage. The northern boundary of the unit has been modified to account for natural changes along Assawoman Creek. The northern boundary formerly ran through Assawoman Inlet, which has since closed, and now runs from Assawoman Creek across Assawoman Island to the Atlantic Ocean.

VA–03P: METOMPKIN ISLAND UNIT. The northern boundary of the unit has been modified to account for channel migration along Wire Passage. The landward boundary of the unit has been modified to reflect the westward migration of Metompkin Island. The coincident boundary between Units VA–03P and K03 has been modified to follow the current location of Metompkin Inlet and to account for accretion at the northern end of Cedar Island. The name of this unit has been changed from ''Metomkin Island'' to ''Metompkin Island'' to correctly identify the underlying barrier feature.

K03: CEDAR ISLAND UNIT. The coincident boundary between Units VA–03P and K03 has been modified to follow the current location of Metompkin Inlet and to account for accretion at the northern end of Cedar Island. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units K03 and VA–04P has been modified to follow the current location of Wachapreague Inlet and to account for accretion at the southern end of Cedar Island.

VA–04P: PARRAMORE/HOG/COBB ISLANDS UNIT. The coincident boundary between Units VA–04P and K04 has been modified to reflect the migration of Long Channel, Little Cobb Island, and the southern end of Cobb Island.

K04: LITTLE COBB ISLAND UNIT. The coincident boundary between Units VA–04P and K04 has been modified to reflect the migration of Long Channel, Little Cobb Island, and the southern end of Cobb Island. The coincident boundary between Units K04 and VA–05P has been moved southward to reflect natural changes in Sand Shoal Inlet and the barrier islands to the north and south of the inlet.

VA–05P: WRECK ISLAND UNIT. The coincident boundary between Units K04 and VA–05P has been moved southward to reflect natural changes in Sand Shoal Inlet and the barrier islands to the north and south of the inlet. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The coincident boundary between Units VA–05P and VA–06P has been modified to reflect channel migration along Main Ship Shoal Channel.

VA–06P: SMITH ISLAND UNIT. The coincident boundary between Units VA–05P and VA–06P has been modified to reflect channel migration along Main Ship Shoal Channel.

K05, K05P: FISHERMAN'S ISLAND UNIT. The coincident boundary between Units K05 and K05P has been modified to reflect channel migration along two minor unnamed channels and to account for natural changes in the wetland/fastland interface.

VA–09: ELLIOTS CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. Additionally, the southern boundary of the unit has been modified to correct an administrative error that was made by the Service in 1997 when this unit was last modified to account for natural changes under 16 U.S.C. 3503(c). In 1996, Northampton County, Virginia, submitted a letter to the Service which objected to the Service's proposed addition of part of a subdivision known as Sugar Hill located near Elliott's Creek. The County's letter indicated that the subdivision was already being developed and did not qualify for addition to the CBRS under 16 U.S.C. 3503(c), as there had been no natural changes that warranted the proposed addition. The Service's background records indicate that the Service re-examined the area in 1996 and agreed that the area in question should not be included within the CBRS. However, when the Service adopted the final set of revised maps via a notice in the **Federal Register** on February 24, 1997 (62 FR 8258), the map that proposed to add the area in question to the CBRS was adopted in error. This correction is supported by an assessment of the historical maps and aerial imagery for this area and the Service's background records for Unit VA–09.

VA–10: OLD PLANTATION CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–11: WESTCOAT POINT UNIT. The boundary of the unit in Cherrystone Inlet has been modified to account for the migration of sand outside the unit at Westcoat Point.

VA–12: GREAT NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–13: WESTERHOUSE CREEK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–14: SHOOTING POINT UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–16: SCARBOROUGH NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–17: CRADDOCK NECT UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–18: HACKS NECK UNIT. The boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–21: BEACH ISLAND UNIT. The northeastern boundary of the unit has been modified to reflect the eastward migration of Beach Island.

VA–23: SIMPSON BEND UNIT. The boundary of the unit has been modified to reflect channel migration along Cedar Cove Gut.

VA–24: DRUM BAY UNIT. The boundary of the unit has been modified to reflect channel migration along Starling Creek and Fishing Creek.

VA–26: CHEESEMAN ISLAND UNIT. The boundary of the unit has been modified to reflect the eastward migration of Cheeseman Island and to include wetlands and aquatic habitat that are now associated with the barrier. The southern boundary of the unit has been modified to account for the migration of sand both eastward and southward.

VA–28: TANGIER ISLAND UNIT. The northwestern boundary of the unit has been modified to reflect channel migration along an unnamed channel and to account for the northwesterly expansion of the barrier feature at the southern end of Tangier Island.

VA–29: ELBOW POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–30: WHITE POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–31: CABIN POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The southern end of the unit has been modified to account for the southeasterly expansion of the barrier feature.

VA–32: GLEBE POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–33: SANDY POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have

occurred in the configuration of the wetland/fastland interface.

VA–34: JUDITH SOUND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–35: COD CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–36: PRESLEY CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–37: CORDREYS BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The western boundary of the unit has been modified to account for the westward expansion of the barrier feature.

VA–38: MARSHALLS BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–39P: GINNY BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–40: GASKIN POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–41: OWENS POND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–42: CHESAPEAKE BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–43: FLEET POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–44: BUSSEL POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–45: HARVEYS CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–46: INGRAM COVE UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–47: BLUFF POINT NECK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The southern boundary of the unit has been modified to account for erosion of the barrier feature.

VA–48: BARNES CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–49: NORTH POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–50: WINDMILL POINT UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–51: DEEP HOLE POINT UNIT. The landward boundary of the unit has been modified to reflect shoreline erosion. The eastern boundary of the unit has been modified to account for the migration of sand outside the unit in Windmill Point Creek. The western boundary of the unit has been modified to reflect the westward migration of the barrier at Deep Hole Point and include wetlands and aquatic habitat that are now associated with the barrier.

VA–52: STURGEON CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–53: JACKSON CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–55: RIGBY ISLAND/BETHEL BEACH UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The name of this unit has been changed from ''Rigby Island/Bethal Beach'' to ''Rigby Island/Bethel Beach'' to correctly identify the underlying barrier feature.

VA–56: NEW POINT COMFORT UNIT. The northern boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The western boundary of the unit has been modified to account for migrating sand.

VA–57: WARE NECK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–58: SEVERN RIVER UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–59P: PLUM TREE ISLAND UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface.

VA–60P: LONG CREEK UNIT. The landward boundary of the unit has been modified to reflect natural changes that have occurred in the configuration of the wetland/fastland interface. The boundary has been modified to reflect channel migration along Grunland Creek.

Request for Comments

The CBRA requires consultation with the appropriate Federal, State, and local officials on the proposed CBRS boundary modifications to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces (16 U.S.C. 3503(c)). We invite interested Federal, State, and local officials to review and comment on the draft maps for Maine, Maryland, New Jersey, North Carolina, Virginia, and one unit in New York. The Service is specifically notifying the following stakeholders concerning the availability of the draft maps and opportunity to provide comments on the proposed boundary modifications: The Chair and Ranking Member of the House of Representatives Committee on Natural Resources; the Chair and Ranking Member of the Senate Committee on Environment and Public Works; the members of the Senate and House of Representatives for the affected areas; the Governors of the affected areas; and other appropriate Federal, State, and local officials.

Federal, State, and local officials may submit written comments and accompanying data to the individual and location identified in the **ADDRESSES** section above. We will also accept digital Geographic Information System (GIS) data files that are accompanied by written comments. Comments regarding specific units should reference the appropriate CBRS unit number and unit name. Please note that boundary modifications through this process can only be made to reflect changes that have occurred in the size or location of any CBRS unit as a result of natural forces, voluntary additions to the CBRS, or additions of excess Federal property to the CBRS (as authorized under 16 U.S.C. 3503(c)–(e)); other requests for changes to the CBRS will not be considered at this time. We must receive comments on or before the date listed in the **DATES** section of this document.

Availability of Draft Maps and Related Information

The draft maps and digital boundary data can be accessed and downloaded from the Service's Web site: *http://www.fws.gov/CBRA*. The digital boundary data are available for reference purposes only. The digital boundaries are best viewed using the base imagery to which the boundaries were drawn; this information is printed in the title block of the draft maps. The Service is not responsible for any misuse or misinterpretation of the digital boundary data.

Interested parties may also contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above to make arrangements to view the draft maps at the Service's Headquarters office. Interested parties who are unable to access the draft maps via the Service's Web site or at the Service's Headquarters office may contact the Service individual identified in the **FOR FURTHER INFORMATION CONTACT** section above, and reasonable accommodations will be made to ensure the individual's ability to view the draft maps.

Public Availability of Comments

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: May 23, 2014.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2014–13402 Filed 6–9–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L13200000–EL0000, COC–76319]

Notice of Invitation To Participate; Coal Exploration License Application COC–76319, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Members of the public are hereby invited to participate with Oxbow Mining Oak Mesa, 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 Delta County, Colorado, encompassing 1,286.95 acres.

DATES: A Notice of Invitation was also published in the *Delta County Independent,* once each week for 2 consecutive weeks beginning the week of September 25, 2013. Any party seeking to participate in this exploration program must send written notice to both Oxbow Mining Oak Mesa, LLC, and the Bureau of Land Management (BLM) as provided in the **ADDRESSES** section below no later than July 10, 2014 or 10 calendar days after the last publication of this notice in the *Delta County Independent* newspaper, whichever is later. Such written notice must refer to serial number COC–76319.

ADDRESSES: The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through Friday, at the BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, and the BLM Uncompahgre Field Office, 2465 South Townsend Avenue, Montrose, Colorado. A written notice to participate in the exploration licenses should be sent to the State Director, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, CO 80215 and Oxbow Mining Oak Mesa, LLC, Attn: Steve D. Weist, P.O. Box 535, Somerset, CO 81434.

FOR FURTHER INFORMATION CONTACT: Kyle Free by telephone at 303–239–3774 or by email at *kfree@blm.gov;* or Desty Dyer by telephone at 970–240–5302 or by email at *ddyer@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 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 COC–76319 are described as follows:

Sixth Principal Meridian, Colorado

T. 13 S., R. 92 W.,
Sec. 6, Lots 12–23, inclusive;
Sec. 7, Lots 6–11, inclusive.
T. 13 S., R. 93 W.,
Sec. 1, Lots 18–20;
Sec. 12, Lots 1–3, and 6–8.

These lands contain 1,286.95 acres, more or less.

The Federal coal within the lands described for exploration license COC–76319 is currently unleased for development of Federal coal reserves.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2014–13511 Filed 6–9–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR2530000, RX.00124960.0000000, 14XR0680A1]

Notice of Intent To Prepare an Environmental Impact; Statement/Environmental Impact Report and Notice of Public Scoping Meetings for the On-Project Plan for the Klamath Reclamation Project, Klamath County, Oregon, and Modoc and Siskiyou Counties, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and scoping meetings.

SUMMARY: The Bureau of Reclamation, the lead Federal agency, and the Klamath Water and Power Agency, the lead state agency, will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the implementation and administration of the On-Project Plan (OPP) for the Klamath Reclamation Project. The purpose of the OPP is to align water supply and demand for the OPP Plan Area as defined in the Klamath Basin Restoration Agreement for the Sustainability of Public and Trust Resources and Affected Communities. Under the Klamath Basin Restoration Agreement, the preparation, implementation, and administration of the OPP is the responsibility of Klamath Water and Power Agency (KWAPA) and its approval is the responsibility of Reclamation. Therefore, Reclamation proposes to approve the OPP prepared by KWAPA and ensure the OPP is consistent with the KBRA. However, Reclamation will consider public input and analysis of impacts in the EIS/EIR as part of the process to inform its decision on whether or not to approve the OPP.

DATES: Submit written comments on the scope of the EIS/EIR by July 15, 2014. Two public scoping meetings will be held on the following dates and times:

- Tuesday, June 24, 2014, 10:00 a.m. to 11:30 a.m., Klamath Falls, Oregon.
- Wednesday, June 25, 2014, 5:30 p.m. to 7:00 p.m., Tulelake, California.

ADDRESSES: Send written comments on the scope of the EIS/EIR, or requests to

be added to the EIS/EIR mailing list, to Ms. Tara Jane Campbell Miranda, Bureau of Reclamation, 6600 Washburn Way, Klamath Falls, Oregon 97603; or by email to *sha-kfo-oppcmts@usbr.gov*. Environmental documents for the On-Project Plan EIS/EIR will be available for review and download at *https://www.usbr.gov/mp/*.

Public scoping meetings will be held at the following locations:

- Klamath Falls—Klamath Community College Building 6, Room H138, 7390 South 6th Street, Klamath Falls, Oregon 97603
- Tulelake—the Tulelake-Butte Valley Fairgrounds, Home Economics Building–West Wing, 800 South Main Street, Tulelake, California 96134

FOR FURTHER INFORMATION CONTACT: Ms. Tara Jane Campbell Miranda, Bureau of Reclamation, (541) 880–2583; or Mark Oliver, Klamath Water and Power Agency Consultant, at (530) 229–3316.

SUPPLEMENTARY INFORMATION:

Background

Conflicts over water and other natural resources in the Klamath Basin between conservationists, Tribes, irrigators, fishermen, and State and Federal agencies have existed for decades. In particular, several events affecting the Klamath Basin have occurred in recent years:

- In 2001, water deliveries to irrigation contractors in the Bureau of Reclamation's (Reclamation) Klamath Project were substantially reduced.
- In 2002, returning adult salmon suffered a major die-off.
- In 2006, the commercial salmon fishing season was closed along 700 miles of the West Coast to protect weak Klamath River stocks and other major river salmon stocks.
- In 2010, 2012, and 2013, due to drought conditions, Reclamation's Klamath Project had a reduction in water deliveries resulting in short-term idling of farmland and increased groundwater pumping.

The United States, the States of California and Oregon, three Klamath River Basin Tribes, Klamath Project water users, and other Klamath River Basin stakeholders negotiated the Klamath Hydroelectric Settlement Agreement (KHSA) and the Klamath Basin Restoration Agreement (KBRA) to resolve long-standing disputes regarding a broad range of natural resource issues. The Parties entered into the KHSA for the purpose of resolving among them the pending Federal Energy Regulatory Commission (FERC) relicensing proceeding by establishing a process for potential facilities removal and operation of the Klamath Hydroelectric Project as licensed by FERC under Project No. 2082.

The parties, absent the Federal agencies, entered the KBRA which is intended to result in effective and durable solutions to: (1) Restore and sustain natural fish production and provide for full participation in ocean and river harvest opportunities of fish species throughout the Klamath Basin; (2) establish reliable water and power supplies which sustain agricultural uses, communities, and National Wildlife Refuges; and (3) contribute to the public welfare and the sustainability of all Klamath Basin communities. Upon the enactment of authorizing legislation, Federal agencies would become parties to the KBRA. Additional appropriations would likely be necessary for these agencies to fully implement their responsibilities under the agreement. Additional information about the KHSA and the KBRA is available at: *http://klamathrestoration.gov* and *http://www.klamathcouncil.org*.

In June 2013, a Klamath Basin Task Force made up of over 20 representatives from agencies, Tribes, and other Klamath Basin groups was established to address outstanding issues related to comprehensive settlement agreements of the Klamath River Basin. Working groups were formed to obtain a settlement of the tribal water issues in the Upper Basin above Upper Klamath Lake, identify a pathway to provide affordable power to basin irrigators, and to reduce the costs of the KBRA. Task Force findings or products may be incorporated into Federal legislation that may provide authorization and funding for the Settlement Agreements. Federal legislation is anticipated to be introduced by the Oregon Congressional delegation in 2014.

The On-Project Plan

The OPP for the Klamath Reclamation Project, one element of the KBRA, is described in Section 15.2. In accordance with Section 15.2.1, the OPP is to facilitate the use of Klamath Reclamation Project water supplies from Upper Klamath Lake and the Klamath River as established in the KBRA ''to align water supply and demand'' for an area defined as the On-Project Plan Area (OPPA). Pursuant to limitations on water availability, the OPP is also to facilitate and fulfill water delivery commitments for the Tule Lake and Lower Klamath National Wildlife Refuges on an annual and ongoing basis. KBRA section 15.2.2 assigns responsibility to develop, implement, and administer the OPP to the KWAPA, a Joint Powers/Inter-governmental Agency whose members are water agencies within the Klamath Reclamation Project in Oregon and California. KWAPA and its member entities are parties to the KBRA.

Section 15.2.3 of the KBRA states that in the development of the OPP, KWAPA: ''shall consider and evaluate the following measures for short-term, intermittent, long term, and permanent application to meet the purpose of the plan: conservation easements, forbearance agreements, conjunctive use programs, efficiency measures, land acquisitions, water acquisitions, groundwater development, groundwater substitution, other voluntary transactions, water storage, and any other applicable measures.'' Each measure was evaluated in detail during the development of the OPP using the following goals and objectives KWAPA established for the OPP:

- Maintain long-term sustainability of Klamath Reclamation Project agriculture
- Minimize reductions in irrigated agriculture in the OPPA and avoid any uncompensated reduction in irrigated agriculture
- Develop fair, equitable, and transparent strategies for developing and implementing the OPP
- Consider cost effectiveness of alternatives to the overall Klamath Basin economy and minimize third-party impacts
- Respect and address individual water district needs, concerns, and input throughout the coordination process through the use of the On-Project Plan Advisory Committee (a local committee specifically developed to provide input solely in the development of the OPP)
- Optimize groundwater use while meeting KBRA requirements and obligations, in addition to addressing relevant in-basin groundwater management objectives.

Implementation and administration of the OPP would be in compliance with applicable federal, state, and local laws, regulations, and agreements. Additional information about the OPP is available at: *http://kwapa.org/programs#OPP*.

Additional Information

The EIS/EIR will present the evaluation of potential impacts on the natural and human environment and provide an opportunity through scoping for the interested public, Native American tribes, governments, and organizations to provide input. Reclamation will consider this input and the analysis of impacts in the EIS/

EIR as part of the process to inform its decision on whether or not to approve the OPP. Resources potentially affected by Reclamation's approval and KWAPA's implementation and administration of the OPP may include, but are not limited to: Water resources, including groundwater and water quality, biological resources, land uses including agricultural resources, historic and archaeological resources, environmental justice, Indian Trust Assets, air quality, climate change, greenhouse gas emissions, and socioeconomics including impacts to agricultural production.

Special Assistance for Public Scoping Meetings

Requests for sign language interpretation for the hearing impaired and all other special assistance needs to participate in the meetings may be submitted by any of the following methods at least five working days before the meeting:

- *Email to:* Ms. Tara Jane Campbell Miranda, Bureau of Reclamation, *shakfo-oppcmts@usbr.gov*
- *U.S. Mail to:* Ms. Tara Jane Campbell Miranda, Bureau of Reclamation, 6600 Washburn Way, Klamath Falls, Oregon, 97603
- *Telephone:* Ms. Tara Jane Campbell Miranda (541) 880–2583.

A telephone device for the hearing impaired (TDD) is available at 1 (800) 877–8339.

Public Disclosure

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: May 29, 2014.

Anastasia T. Leigh,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2014–13506 Filed 6–9–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–892]

Certain Point-To-Point Network Communication Devices and Products Containing the Same; Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 37) terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. 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 this investigation on September 9, 2013, based on a complaint filed by Straight Path IP Group, Inc., of Glen Allen, Virginia (''Straight Path''). 78 FR 55096–97 (Sept. 9, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, by reason of the infringement of claims 1–3, 9, 10, 17, and 18 of U.S. Patent No. 6,009,469; claims 1, 11, 12, 19, 22, 23, and 30 of U.S. Patent No. 6,108,704; and claims 6 and 13 of U.S. Patent No. 6,131,121. The notice of institution named as respondents AmTran Logistics, Inc., of Irvine, California; AmTran Technology Co., Ltd., of New Taipei City, Taiwan; LG Electronics, Inc., of Seoul, Republic of Korea; LG Electronics U.S.A., Inc., of Englewood Cliffs, New Jersey; LG Electronics MobileComm U.S.A., Inc., of San Diego, California; Panasonic Corporation of Osaka, Japan; Panasonic Corporation of North America of Secaucus, New Jersey; Sharp Corporation, of Osaka, Japan; Sharp Electronics Corporation of Mahwah, New Jersey; Sony Computer Entertainment, Inc., of Tokyo, Japan; Sony Computer Entertainment America Inc., of Foster City, California; Sony Computer Entertainment America LLC, of Foster City, California; Sony Corporation of Tokyo, Japan; Sony Corporation of America, of New York, New York; Sony Electronics Inc., of San Diego, California; Sony Mobile Communications AB, of Lund, Sweden; Sony Mobile Communications (USA) Inc., of Research Triangle Park, North Carolina; Sony Ericsson Mobile Communications, (USA) Inc., of Atlanta, Georgia; Toshiba Corporation of Tokyo, Japan; Toshiba America Inc., of New York, New York; Toshiba America Information Systems, Inc., of Irvine, California; and Vizio, Inc., of Irvine, California. *Id.* at 55097.

On September 23, 2013, the ALJ granted a motion seeking to amend the complaint to remove respondents Sony Computer Entertainment America, Inc., and Sony Ericsson Mobile Communications (USA) Inc. Order No. 2, *not reviewed* Nov. 4, 2014. On February 5, 2014, the ALJ terminated the investigation with respect to respondents Sharp Corporation and Sharp Electronics Corporation based on a settlement agreement. Order No. 18, *not reviewed* February 25, 2014. On May 1, 2014, the ALJ terminated the investigation with respect to respondents Sony Corporation, Sony Computer Entertainment America LLC, Sony Corporation of America, Sony Electronics Inc., Sony Mobile Communications Inc., Sony Mobile Communications AB, and Sony Mobile Communications (USA) Inc. Order No. 34, *not reviewed* May 27, 2014.

On May 5, 2014, Straight Path filed a motion to terminate the investigation with respect to the remaining respondents based on a withdrawal of the complaint. On May 6, 2014, the Commission Investigative Attorney filed a response supporting the motion. On May 8, 2014, the remaining respondents filed a response indicating that they do not oppose the motion. On May 9, 2014, Straight Path filed a motion for leave to file a reply in support of its motion to terminate the investigation.

On May 13, 2014, the ALJ issued the subject ID granting the motion to terminate the investigation. The ALJ found that the motion complied with

the Commission's rules and precedent. The ALJ also granted Straight Path's motion for leave to file a reply.

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

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).

Issued: June 4, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–13408 Filed 6–9–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On June 3, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Indiana in the lawsuit entitled *United States and the State of Indiana* v. *United Water, Inc., United Water Environmental Services, Inc., United Water Services, LLC, and United Water Services Indiana, LLC,* Civil Action No. 2:14–cv–00193 (N.D. Ind.).

The consent decree would resolve claims under the Clean Water Act (''CWA''), 33 U.S.C. 1251 *et seq.,* based on the alleged violations by United Water, Inc. and its subsidiaries United Water Environmental Services, Inc., United Water Services LLC, and United Water Services Indiana LLC during their operation of a publicly owned wastewater treatment system in the City of Gary, Indiana between 1998 and 2010. A complaint, filed concurrently with the lodging of the proposed decree, sets forth the claims brought under Section 309(b) and (d) of the CWA for: (1) Unauthorized discharges of pollutants under Section 301 of the Act; (2) failure to comply with the terms of a permit issued to Gary Sanitary District under the National Pollutant Discharge Elimination System (''NPDES'') provisions of the CWA that was effective between 2006 and 2012; and (3) failure to timely submit information requested by EPA in 2010 under Section 308 of CWA. Under the proposed decree, United Water will pay a civil penalty of $645,000.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Indiana* v. *United Water, Inc. et al.,* D.J. Ref. No. 90–5–1–1–2601/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–13442 Filed 6–9–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1658]

Walk-Through Metal Detectors and Hand-Held Metal Detectors Test Method Validation

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice.

SUMMARY: National Institute of Justice has recently developed updated versions of its minimum performance standards for walk-through metal detectors and hand-held metal detectors. In order to ensure that the test methods in the standards are properly documented, NIJ is requesting proposals (including price quotes) for test method validation efforts from testing laboratories. NIJ is also seeking the participation of metal detector manufacturers in this effort to ensure that the test methods are valid and reasonable for metal detectors in the market today. Additional information for these efforts may be found through the National Law Enforcement and Corrections Technology Center's Web site by following the link below: *https://www.justnet.org/standards/Metal_Detectors.html.*

DATES: Please submit quotes or expressions of interest in participation by 5 p.m. Eastern Time on July 7, 2014.

FOR FURTHER INFORMATION CONTACT: David Otterson by telephone at (301) 240–6754 or by email at *david.m.otterson@lmco.com.*

Greg Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2014–13513 Filed 6–9–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0032]

Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Construction Standards on Posting Emergency Telephone Numbers and Maximum Safe Floor Load Limits (paragraph (f) of § 1926.50 and paragraph (a)(2) of § 1926.250, respectively).

DATES: Comments must be submitted (postmarked, sent, or received) by August 11, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0032, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2011–0032) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Two construction standards, ''Medical Services and First Aid'' (§ 1926.50), and ''General Requirements for Storage'' (§ 1926.250), contain posting provisions. Paragraph (f) of § 1926.50 requires employers to conspicuously post emergency telephone numbers for physicians, hospitals, or ambulances at their worksites if 911 emergency telephone service is not locally available; in the event that a worker has a serious injury at a worksite, this posting requirement helps expedite emergency medical treatment of the worker. Paragraph (a)(2) of § 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures under construction, unless the floors or slabs are on grade (sitting on the ground). This provision prohibits employers from overloading floors in areas used to store material and equipment where a structure's floors are not supported directly by the ground. This requirement is intended to prevent floor collapses which could seriously injure or kill workers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the two construction standards, ''Medical Services and First Aid'' paragraph (f) of § 1926.50, and ''General Requirements for Storage'' paragraph (a)(2) of § 1926.250. The Agency is proposing an adjustment decrease of its current burden hour estimate from 139,078 burden hours to 105,935 burden hours for a total decrease of 33,143 burden hours associated with these two standards. The reduction results from an estimated decrease in the number of affected construction projects. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Construction Standards on the Posting of Emergency Telephone Numbers and Floor Load Limits (29 CFR 1926.50 and 29 CFR 1926.250).

OMB Control Number: 1218–0093.

Affected Public: Business or other for-profits.

Number of Respondents: 428,609.

Number of Responses: 428,609.

Frequency of Responses: On occasion.

Average Time per Response: Varies from 2 minutes (.03 hour) to post emergency telephone numbers to 15 minutes (.25 hour) to develop and post load limits for floors.

Estimated Total Burden Hours: 105,935.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0032). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name,

date, and the docket number so that the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 4, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–13449 Filed 6–09–14; 8:45 am]

BILLING CODE 4510–26–P

MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

Meeting of the Military Compensation and Retirement Modernization Commission

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Notice of Public Meetings and Town Hall Meeting.

SUMMARY: The Military Compensation and Retirement Modernization Commission (Commission) was established by the National Defense Authorization Act for FY 2013. Pursuant to the Act, the Commission is holding public hearings and a town hall to solicit comments from the general public and select experts on the modernization of the military compensation and retirement systems.

DATES: The hearings and town hall will be held Tuesday, June 25, 2014.

ADDRESSES: The hearings and town hall will be held at the Embassy Suites Fayetteville Fort Bragg, 4760 Lake Valley Drive, Fayetteville, North Carolina 28303.

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Military Compensation and Retirement Modernization Commission, P.O. Box 13170, Arlington, VA 22209, telephone 703–692–2080, fax 703–697–8330, email *christopher.nuneviller@mcrmc.gov.*

SUPPLEMENTARY INFORMATION: The Military Compensation and Retirement Modernization Commission (Commission) was established by the National Defense Authorization Act for FY 2013, Public Law 112–239, §§ 671–680, (amended by National Defense Authorization Act for FY 2014, Pub. L. 113–66, § 1095(b)). The Commission will conduct public hearings and town halls across the United States and on select military installations internationally in order to solicit comments on the modernization of the military compensation and retirement systems. The Commission seeks the views of Service members, veterans, retirees, their beneficiaries and other interested parties regarding pay, retirement, health benefits and quality of life programs of the Uniformed Services. The Commission will hear from senior commanders of local military commands and their senior enlisted advisors, unit commanders and their family support groups, local medical and education community representatives, and other quality of life organizations. These meetings sites will be accessible to members of the general public including individuals with disabilities.

On June 25, 2014, the Commission will hold public hearings from 10:00 a.m. until 5:00 p.m., and a public town hall meeting from 7:00 p.m. until 9:00 p.m.

June 25, 2014 Agenda

10:00 a.m. to 12:00 p.m. Senior Local Military Commanders and Senior Enlisted Advisors

1:30 p.m. to 3:00 p.m. TBD (Local Military/Veteran Transition Service Organizations)

3:15 p.m. to 5:00 p.m. Department of Defense and Local Schools

7:00 p.m. to 9:00 p.m. Town Hall

The Panel Testimony heard on Tuesday, June 25, 2014 will consist of:

a. Brief opening remarks by the Chairman and one or more of the Commissioners,

b. brief opening remarks by each panelist, and

c. questions posed by the Chairman and Commissioners to the panelists.

On the evening of Tuesday, June 25, 2014, the Chairman and Commissioners will hear from the public. Attendees will be given an opportunity to address the Chairman and Commissioners and relay to them their experience and comments.

Due to the deliberative, nascent and formative nature of the Commission's work, the Commissioners are unable to discuss their thoughts, plans or intentions for specific recommendations that will ultimately be made to the President and Congress.

The public hearings will be transcribed and the transcripts placed on the Commission's Web site. In addition to public hearings, and due to the essential need for input from the beneficiaries, the Commission is accepting and strongly encourages comments and other submissions through its Web site (*www.mcrmc.gov*).

Christopher Nuneviller,

Associate Director, Administration and Operations.

[FR Doc. 2014–13409 Filed 6–9–14; 8:45 am]

BILLING CODE

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 24, 2014.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 8518A Aviation Accident Report—Descent Below Visual Glidepath and Impact with Seawall, Asiana Airlines Flight 214, Boeing 777–200ER, HL7742, San Francisco, California, July 6, 2013.

News Media Contact: Telephone: (202) 314–6100. The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, June 18, 2014.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov*.

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

FOR MEDIA INFORMATION CONTACT: Keith Holloway, (202) 314–6100 or by email at *keith.holloway@ntsb.gov*.

Dated: Thursday, June 5, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–13503 Filed 6–6–14; 11:15 am]

BILLING CODE 7533–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Annual Board of Directors Meeting; Sunshine Act

TIME AND DATE: 1:00 p.m., Monday, June 16, 2014.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

STATUS: Open (with the exception of Executive Session).

CONTACT PERSON: Jeffrey Bryson, General Counsel/Secretary (202) 760–4101; *jbryson@nw.org*.

AGENDA:

I. Call to Order
II. Approval of Minutes
III. Executive Session: Officer & Internal Auditor Compensation & Other Personnel Matters
IV. Executive Session: CEO Search Committee Update
V. Executive Session: Transition Update
VI. Board Elections & Appointments
VII. Approval of FY13 Audit
VIII. Capital Corporation Grants
IX. Strength Matters Overview, Structure & Procurement
X. Federal FY16 Budget Submission & Timeline for Submission
XI. Sustainable Homeownership Update
XII. Quarterly Financial Report
XIII. Corporate Scorecard Report
XIV. Adjournment

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2014–13591 Filed 6–6–14; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0136]

Draft Emergency Preparedness Frequently Asked Questions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on Emergency Preparedness frequently asked question (EPFAQ) No. 2014–004. This EPFAQ will be used to provide clarification of guidance documents related to the development and maintenance of EP program elements. The NRC is publishing these preliminary results to inform the public and solicit comments.

DATES: Submit comments by July 10, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0136. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Carolyn Kahler, Office of Nuclear Security and Incident Response, telephone: 301–287–3722, email at: *Carolyn.Kahler@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0136 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0136.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection 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 draft EPFAQ is available electronically under ADAMS Accession Number ML14153A318, and is available on the NRC's Web site at *http://www.nrc.gov/about-nrc/emerg-preparedness/faq/faq-contactus.html*.

• *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.

B. Submitting Comments

Please include Docket ID NRC–2014–0136 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to

the public or entering the comment submissions into ADAMS.

II. Background

The NRC is requesting comment on this draft EPFAQ. This process is intended to describe the manner in which the NRC may provide interested outside parties an opportunity to share their individual views with NRC staff regarding the appropriate response to questions raised on the interpretation or applicability of EP guidance issued or endorsed by the NRC, before the NRC issues an official response to such questions.

Dated at Rockville, Maryland, on June 3, 2014.

For the Nuclear Regulatory Commission.

Pamela Baker,

Acting Deputy Director, Division of Preparedness and Response, Office of Nuclear Security and Incident Response.

[FR Doc. 2014–13514 Filed 6–9–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0476]

Reliability Assurance Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the withdrawal of Design Certification (DC) and Combined License (COL) Interim Staff Guidance (ISG) No. 18 (DC/COL–ISG–018), Revision 0, ''Interim Staff Guidance on Standard Review Plan, Section 17.4, 'Reliability Assurance Program.' ''

DATES: The effective date of withdrawal of this ISG is July 10, 2014.

ADDRESSES: Please refer to Docket ID NRC–2009–0476 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0476. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection 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. DC/COL–ISG–018, Revision 0 is available electronically under ADAMS Accession No. ML103010113.

• *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: Jonathan DeGange, telephone: 301–415–6992; email: *Jonathan.DeGange@nrc.gov,* Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

DC/COL–ISG–018 was issued in October 2009 to provide clarification and guidance on the application of Section 17.4, ''Reliability Assurance Program,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants.'' The staff issued DC/COL–ISG–018 to provide clear guidance for performing safety reviews of the Reliability Assurance Program (RAP). DC/COL–ISG–018 clarified the acceptance criteria and evaluation findings contained in Standard Review Plan (SRP) Section 17.4 in support of the NRC reviews of the DC and COL applications. The ISG also made changes to the roles and responsibilities of individual branches in the Office of New Reactors that review the RAP.

II. Discussion

The staff published a notice of solicitation for public comment on DC/COL–ISG–018 on October 30, 2009 (74 FR 56243). The staff considered comments received and then issued the final guidance on March 28, 2011 (76 FR 17159). The staff has since updated SRP Section 17.4 and issued the revised section for use and comment on June 11, 2013 (78 FR 35072). At this time the staff plans to finalize this guidance in June 2014. As anticipated in DC/COLISG–018, this guidance has been incorporated in SRP Section 17.4 and the NRC staff is withdrawing DC/COL–ISG–018.

Dated at Rockville, Maryland, this 30th day of May 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Branch Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–13515 Filed 6–9–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATE: Weeks of June 9, 16, 23, 30, July 7, 14, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 9, 2014

There are no meetings scheduled for the week of June 9, 2014.

Week of June 16, 2014—Tentative

Tuesday, June 17, 2014

9:30 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public Meeting) (Contact: Trent Wertz, 301–415–1568)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov/.*

4:00 p.m. Briefing on Security Issues (Closed—Ex. 1)

Thursday, June 19, 2014

9:00 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting) (Contact: Barry Miller, 301–415–4117)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov/.*

Week of June 23, 2014—Tentative

There are no meetings scheduled for the week of June 23, 2014.

Week of June 30, 2014—Tentative

There are no meetings scheduled for the week of June 30, 2014.

Week of July 7, 2014—Tentative

There are no meetings scheduled for the week of July 7, 2014.

Week of July 14, 2014—Tentative

Tuesday, July 15, 2014

9:00 a.m. Briefing on Nuclear Power Plant Decommissioning (Public

Meeting) (Contact: Louise Lund, 301–415–3248)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov/*.

Thursday, July 17, 2014

9:00 a.m. Briefing on Radiation Source Protection and Security (Part 1) (Public Meeting) (Contact: Kim Lukes, 301–415–6701)

This meeting will be Web cast live at the Web address—*http://www.nrc.gov/*.

10:35 a.m. Briefing on Radiation Source Protection and Security (Part 2) (Closed—Ex. 9) (Contact: Kim Lukes, 301–415–6701)

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call 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: June 5, 2014.

Rochelle C. Bavol

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–13526 Filed 6–6–14; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0123]

Reliability Assurance Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 17.4, ''Reliability Assurance Program.''

DATES: The effective date of this Standard Review Plan (SRP) update is July 10, 2014.

ADDRESSES: Please refer to Docket ID NRC–2013–0123 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0123. 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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision and previously issued draft revision for public use and comment, and redline strikeout comparing the final revision with the draft revision are available in ADAMS under the following Accession Nos.:

SRP section	Final revision	Draft revision	Redline strikeout
17.4	ML13296A435	ML13296A435	ML13296A436

- *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.
- The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6992, email: *Jonathan.DeGange@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 2013 (78 FR 35072), the NRC published for public comment a proposed revision to SRP Section 17.4, ''Reliability Assurance Program.'' Comment submissions were received on the proposed revision. The staff made changes to the proposed revision after consideration of the comments.

The staff made several administrative changes to the text in the document to facilitate flow and better clarify the guidance based on comments received. Additional changes were made to add clarity to guidance on programmatic controls, and clarify how applicants must address Combined License Action Items and Certification Requirements and Restrictions.

A summary of the comments and the staff's disposition of the comments are available in a separate document, ''Response to Public Comments on Draft Standard Review Plan (SRP),'' Section 17.4, ''Reliability Assurance Program'' (ADAMS Accession No. ML13296A437).

II. Backfitting and Issue Finality

Issuance of this final SRP section does not constitute backfitting as defined in Section 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52. The NRC staff's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, since the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the staff on how to review an application for NRC regulatory approval in the form of

licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR Part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR Part 52. This is because neither the Backfit Rule nor the issue finality provisions were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not currently intend to impose the positions represented in this SRP section in a manner that is inconsistent with any issue finality provisions of 10 CFR Part 52. If in the future the NRC staff does indeed intend to impose positions inconsistent with these issue finality provisions, the NRC staff must address the regulatory criteria for avoiding issue finality.

3. *The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the SRP section to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals—in this case, design certifications. Hence, the issuance of this SRP guidance, even if considered guidance which is within the purview of the issue finality provisions in 10 CFR Part 52, need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision, as applicable.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 30th day of May 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–13516 Filed 6–9–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: June 18, 2014, at 1:00 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, June 18, 2014 at 1:00 p.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2014–13536 Filed 6–6–14; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 433;
SEC File No. 270–558, OMB Control No. 3235–0617.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') this request for extension of the previously approved collection of information discussed below.

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce the restrictions on communications that an issuer can make to investors during a registered offering of its securities, while maintaining important investor protections. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.28 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 respondents approximately 3.43 times per year for a total of 9,968 responses. We estimate that 25% of the 1.28 burden hours per response (0.32 hours) is prepared by the issuer for total annual reporting burden of approximately 3,190 hours (0.32 hours × 3,190 responses).

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 public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13466 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 31a–1;
SEC File No. 270–173, OMB Control No. 3235–0178.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension.

Rule 31a–1 (17 CFR 270.31a–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled ''Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.'' Rule 31a–1 requires registered investment companies (''funds''), and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a fund, to maintain and keep current accounts, books, and other documents which constitute the record forming the basis for financial statements required to be filed pursuant to section 31 of the Act (15 U.S.C. 80a–30) and of the auditor's certificates relating thereto. The rule lists specific records to be maintained by funds. The rule also requires certain underwriters, brokers, dealers, depositors, and investment advisers to maintain the records that they are required to maintain under federal securities laws.

There are approximately 4132 investment companies registered with the Commission, all of which are required to comply with rule 31a–1. For purposes of determining the burden imposed by rule 31a–1, the Commission staff estimates that each fund is divided into approximately four series, on average, and that each series is required to comply with the recordkeeping requirements of rule 31a–1. Based on conversations with fund representatives, it is estimated that rule 31a–1 imposes an average burden of approximately 1750 hours annually per series for a total of 7000 annual hours per fund. The estimated total annual burden for all 4132 funds subject to the rule therefore is approximately 28,924,000 hours. Based on conversations with fund representatives, however, the Commission staff estimates that even absent the requirements of rule 31a–1, 90 percent of the records created pursuant to the rule are the type that generally would be created as a matter of normal business practice and to prepare financial statements. Thus, the Commission staff estimates that the total annual burden associated with rule 31a–1 is 2,892,400 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13464 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 173;
SEC File No. 270–557, OMB Control No. 3235–0618.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') this request for extension of the previously approved collection of information discussed below.

Securities Act Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). A Rule 173 notice must be provided by each underwriter or dealer to each investor who purchased securities from the underwriter or dealer. The Rule 173 notice is not publicly available. We estimate that it takes approximately 0.0167 hour per response to provide the information required under Rule 173 and that the information is filed by approximately 5,338 respondents approximately 43,546 times a year for a total of 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is 3,881,891 hours (0.0167 hours per response x 232,448,548 responses).

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 public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13465 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 3a–8;
SEC File No. 270–516, OMB Control No. 3235–0574.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

Rule 3a–8 (17 CFR 270.3a–8) of the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Act''), serves as a nonexclusive safe harbor from investment company status for certain research and development companies (''R&D companies'').

The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.[1] An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

Rule 3a–8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a–8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a–8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a–8 are to ensure that: (i) The board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a–8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Commission staff estimates that approximately 48,393 R&D companies may take advantage of rule 3a–8.[2] Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),[3] the Commission believes that all the R&D companies that existed prior to the adoption of rule 3a–8 adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that R&D companies formed subsequent to the adoption of rule 3a–8 would adopt the board resolution and investment guidelines simultaneously with their formation documents in the ordinary course of business.[4] Therefore, we estimate that rule 3a–8 does not impose additional burdens.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13461 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 3a–8(a)(6) (17 CFR 270.3a–8(6)).

[2] *See* National Science Foundation/Division of Science Resources Statistics, Business Research and Development and Innovation Survey: 2010 (results published September 18, 2013).

[3] In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

[4] In order for these companies to raise sufficient capital to fund their product development stage, Commission staff believes that they will need to present potential investors with investment guidelines. Investors generally want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 18f–3;
SEC File No. 270–385, OMB Control No. 3235–0441.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 18f–3 (17 CFR 270.18f–3) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) exempts from section 18(f)(1) a fund that issues multiple classes of shares representing interests in the same portfolio of securities (a ''multiple class fund'') if the fund satisfies the conditions of the rule. In general, each class must differ in its arrangement for shareholder services or distribution or both, and must pay the related expenses of that different arrangement. The rule includes one requirement for the collection of information. A multiple class fund must prepare, and fund directors must approve, a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges (''rule 18f–3 plan''). Approval of the plan must occur before the fund issues any shares of multiple classes and whenever the fund materially amends the plan. In approving the plan,

the fund board, including a majority of the independent directors, must determine that the plan is in the best interests of each class and the fund as a whole.

The requirement that the fund prepare and directors approve a written rule 18f–3 plan is intended to ensure that the fund compiles information relevant to the fairness of the separate arrangement and expense allocation for each class, and that directors review and approve the information. Without a blueprint that highlights material differences among classes, directors might not perceive potential conflicts of interests when they determine whether the plan is in the best interests of each class and the fund. In addition, the plan may be useful to Commission staff in reviewing the fund's compliance with the rule.

Based on an analysis of fund filings, the Commission estimates that there are approximately 5,831 multiple class funds offered by 969 registrants. The Commission estimates that each of the 969 registrants will make an average of 0.5 responses annually to prepare and approve a written 18f–3 plan.[1] The Commission estimates each response will take 6 hours, requiring a total of 3 hours per registrant per year.[2] Thus the total annual hour burden associated with these requirements of the rule is approximately 2,907 hours.[3]

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 18f–3 is mandatory. The information provided under rule 18f–3 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13463 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[1] The Commission estimates that each registrant prepares and approves a rule 18f–3 plan every two years when issuing a new fund or new class or amending a plan (or that 484.5 of all 969 registrants prepare and approve a plan each year).

[2] 0.5 responses per registrant × 6 hours per response = 3 hours per registrant.

[3] 3 hours per registrant per year × 969 registrants = 2,907 hours per year.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 24F–2; SEC File No. 270–399, OMB Control No. 3235–0456.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 24f–2 (17 CFR 270.24f–2) under the Investment Company Act of 1940 (15 U.S.C. 80a) requires any open-end management companies (''mutual funds''), unit investment trusts (''UITs'') or face-amount certificate companies (collectively, ''funds'') deemed to have registered an indefinite amount of securities to file, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 6946 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be two hours. The total annual burden for all respondents to Form 24F–2 is estimated to be 13,892 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available 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.

The Commission requests written comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13467 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 0–1;

SEC File No. 270–472, OMB Control No. 3235–0531.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (''Commission'') plans to submit to the Office of Management and Budget a request for extension of the previous approved collection of information discussed below.

The Investment Company Act of 1940 (the ''Act'') [1] establishes a comprehensive framework for regulating the organization and operation of investment companies (''funds''). A principal objective of the Act is to protect fund investors by addressing the conflicts of interest that exist between funds and their investment advisers and other affiliated persons. The Act places significant responsibility on the fund board of directors in overseeing the operations of the fund and policing the relevant conflicts of interest.[2]

In one of its first releases, the Commission exercised its rulemaking authority pursuant to sections 38(a) and 40(b) of the Act by adopting rule 0–1 (17 CFR 270.0–1).[3] Rule 0–1, as subsequently amended on numerous occasions, provides definitions for the terms used by the Commission in the rules and regulations it has adopted pursuant to the Act. The rule also contains a number of rules of construction for terms that are defined either in the Act itself or elsewhere in the Commission's rules and regulations. Finally, rule 0–1 defines terms that serve as conditions to the availability of certain of the Commission's exemptive rules. More specifically, the term ''independent legal counsel,'' as defined in rule 0–1, sets out conditions that funds must meet in order to rely on any of ten exemptive rules (''exemptive rules'') under the Act.[4]

The Commission amended rule 0–1 to include the definition of the term ''independent legal counsel'' in 2001.[5] This amendment was designed to enhance the effectiveness of fund boards of directors and to better enable investors to assess the independence of those directors. The Commission also amended the exemptive rules to require that any person who serves as legal counsel to the independent directors of any fund that relies on any of the exemptive rules must be an ''independent legal counsel.'' This requirement was added because independent directors can better perform the responsibilities assigned to them under the Act and the rules if they have the assistance of truly independent legal counsel.

If the board's counsel has represented the fund's investment adviser, principal underwriter, administrator (collectively, ''management organizations'') or their ''control persons'' [6] during the past two years, rule 0–1 requires that the board's independent directors make a determination about the adequacy of the counsel's independence. A majority of the board's independent directors are required to reasonably determine, in the exercise of their judgment, that the counsel's prior or current representation of the management organizations or their control persons was sufficiently limited to conclude that it is unlikely to adversely affect the counsel's professional judgment and legal representation. Rule 0–1 also requires that a record for the basis of this determination is made in the minutes of the directors' meeting. In addition, the independent directors must have obtained an undertaking from the counsel to provide them with the information necessary to make their determination and to update promptly that information when the person begins to represent a management organization or control person, or when he or she materially increases his or her representation. Generally, the independent directors must re-evaluate their determination no less frequently than annually.

Any fund that relies on one of the exemptive rules must comply with the requirements in the definition of ''independent legal counsel'' under rule 0–1. We assume that approximately 3751 funds rely on at least one of the exemptive rules annually.[7] We further assume that the independent directors of approximately one-third (1250) of those funds would need to make the required determination in order for their counsel to meet the definition of independent legal counsel.[8] We estimate that each of these 1250 funds would be required to spend, on average, 0.75 hours annually to comply with the recordkeeping requirement associated with this determination, for a total annual burden of approximately 938 hours. Based on this estimate, the total annual cost for all funds' compliance with this rule is approximately $196,907. To calculate this total annual cost, the Commission staff assumed that approximately two-thirds of the total annual hour burden (625 hours) would be incurred by a compliance manager with an average hourly wage rate of $283 per hour,[9] and one-third of the annual hour burden (313 hours) would be incurred by compliance clerk with an average hourly wage rate of $64 per hour.[10]

These burden hour estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

[1] 15 U.S.C. 80a.

[2] For example, fund directors must approve investment advisory and distribution contracts. *See* 15 U.S.C. 80a–15(a), (b), and (c).

[3] Investment Company Act Release No. 4 (Oct. 29, 1940) (5 FR 4316 (Oct. 31, 1940)). Note that rule 0–1 was originally adopted as rule N–1.

[4] The relevant exemptive rules are: rule 10f–3 (17 CFR 270.10f–3), rule 12b–1 (17 CFR 270.12b–1), rule 15a–4(b)(2) (17 CFR 270.15a–4(b)(2)), rule 17a–7 (17 CFR 270.17a–7), rule 17a–8 (17 CFR 270.17a–8), rule 17d–1(d)(7) (17 CFR 270.17d–1(d)(7)), rule 17e–1(c) (17 CFR 270.17e–1(c)), rule 17g–1 (17 CFR 270.17g–1), rule 18f–3 (17 CFR 270.18f–3), and rule 23c–3 (17 CFR 270.23c–3).

[5] *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) (66 FR 3735 (Jan. 16, 2001)).

[6] A ''control person'' is any person—other than a fund—directly or indirectly controlling, controlled by, or under common control, with any of the fund's management organizations. *See* 17 CFR 270.01(a)(6)(iv)(B).

[7] Based on statistics compiled by Commission staff, we estimate that there are approximately 4168 funds that could rely on one or more of the exemptive rules. Of those funds, we assume that approximately 90 percent (3751) actually rely on at least one exemptive rules annually.

[8] We assume that the independent directors of the remaining two-thirds of those funds will choose not to have counsel, or will rely on counsel who has not recently represented the fund's management organizations or control persons. In both circumstances, it would not be necessary for the fund's independent directors to make a determination about their counsel's independence.

[9] The estimated hourly wages used in this PRA analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. See Securities Industry and Financial Markets Association, Report on Management and Professional Earnings in the Securities Industry—2013 (2013), modified to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead; and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry—2013 (2013), modified to account for an 1800-hour work year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[10] (625 × $283/hour) + (313 × $64/hour) = $196,907.

comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13460 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 10b–17;
SEC File No. 270–427, OMB Control No. 3235–0476.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 10b–17 (17 CFR 240.10b–17), under the Securities Exchange Act of 1934 (15 U.S.C 78a et seq.). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) A dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering.

There are approximately 6,668 respondents per year. These respondents make approximately 22,354 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total compliance burden per year is 3,726 burden hours. The total internal labor cost of compliance for the respondents, associated with producing and filing the reports, is approximately $254,038.68.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: June 4, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13462 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31071; 812–13951]

ValMark Advisers, Inc. and Northern Lights Variable Trust; Notice of Application

June 4, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: ValMark Advisers, Inc. (''ValMark Advisers'' or the ''Adviser'') and Northern Lights Variable Trust (the ''Trust'').

Filing Dates: The application was filed on August 30, 2011, and amended on December 8, 2011, March 30, 2012, and May 9, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 30, 2014 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: c/o James Ash, Gemini Fund Services, LLC, 450 Wireless Boulevard, Hauppauge, New York 11788.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and is comprised of multiple series, including the TOPS Protected Balanced ETF Portfolio, TOPS Protected Moderate Growth ETF Portfolio, and TOPS Protected Growth ETF Portfolio (collectively, the ''Protected Portfolios''). Each series has its own investment objectives, policies and restrictions.[1]

[1] Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included

Continued

2. ValMark Advisers, an Ohio corporation, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). ValMark Advisers serves as the investment adviser of the Protected Portfolios, and an Adviser will serve as investment adviser to the future Funds. The Protected Portfolios have entered into an investment advisory agreement with ValMark Advisers (''Advisory Agreement''),[2] approved by the Trust's board of trustees (''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees''), and by the shareholders representing a majority of each of the Protected Portfolio's shares. The terms of each Advisory Agreement comply or will comply with section 15(a) of the Act.

3. Under the terms of the Advisory Agreement, the Adviser is responsible for the overall management of the Protected Portfolios' business affairs and selecting investments according to each Protected Portfolio's investment objectives, policies and restrictions. For the investment management services that it provides to the Protected Portfolios, the Adviser receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Adviser to retain one or more subadvisers for the purpose of managing the investments of all or a portion of the assets of each Protected Portfolio. Pursuant to this authority, the Adviser has entered into an investment subadvisory agreement with one unaffiliated investment subadviser (''Subadviser'') to provide investment advisory services to the Protected Portfolios (''Subadvisory Agreement'') and intends to enter into Subadvisory Agreements with one or more Subadvisers to provide investment advisory services to the Funds. The Subadviser is, and each future Subadviser will be, an ''investment adviser'' as defined in section 2(a)(20)(B) of the Act and registered as an investment adviser under the Advisers Act, or not subject to such registration.[4] The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

4. Applicants request an order to permit the Adviser, subject to Board approval, to select Subadvisers and enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The terms of the Subadvisory Agreements comply or will comply fully with the requirements of section 15(a) of the Act. Each Subadvisory Agreement has been, or will be, approved by the Board, including by a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. Each Fund's prospectus has contained or will contain, at all times following shareholder approval of the Manager of Managers Structure, the disclosure required by condition 2 below.

5. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (''Affiliated Subadviser'').

6. Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [5] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board.

within the term ''Adviser''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the Protected Portfolios, the ''Funds'' and each individually, a ''Fund''). For the purposes of the requested order, ''successor'' is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All existing investment companies that currently intend to rely on the requested order are named as applicants, and the Protected Portfolios are the only Funds that currently intend to rely on the requested order.

[2] The Adviser will enter into substantially similar investment advisory agreements to provide investment management services to future Funds (''Future Advisory Agreements''). The terms of Future Advisory Agreements will comply with section 15(a) of the Act and Future Advisory Agreements will be approved by shareholders and by the Board, including a majority of the Independent Trustees (as defined below), in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. References to any Advisory Agreement or Advisory Agreements include Future Advisory Agreements as they pertain to future Funds.

[3] The term ''Board'' also includes the board of trustees or directors of a future Fund.

[4] If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13459 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72314; File No. SR–NYSEArca–2014–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF Under NYSE Arca Equities Rule 8.600

June 4, 2014.

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 May 28, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares [4]: ARK Innovation ETF, ARK Genomic Revolution ETF, ARK Industrial Innovation ETF, and ARK Web x.0 ETF (each, a ''Fund'' and, collectively, the ''Funds''). The Shares will be offered by ARK ETF Trust (''Trust''), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.[5] ARK Investment Management LLC (''Adviser'') will serve as the investment adviser to the Funds. Foreside Fund Services, LLC (''Distributor'') will be the principal underwriter and distributor of the Funds' Shares. The Bank of New York Mellon will serve as administrator, custodian and transfer agent (''Administrator'').[6]

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[7] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

ARK Genomic Revolution ETF

According to the Registration Statement, the ARK Genomic Revolution ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances [8] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of genomics. Companies relevant to this theme are those that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments, improvements and advancements in genetics into their business, such as by offering new products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On March 31, 2014, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act''), and under the 1940 Act relating to the Funds (File Nos. 333–191019 and 811–22883) (''Registration Statement''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 31009 (April 7, 2014) (File No. 812–14172) (''Exemptive Order'').

[6] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving listing and trading of five fixed income funds of the PIMCO ETF Trust); 66343 (February 7, 2012), 77 FR 7647 (February 13, 2012) (SR–NYSEArca–2011–85) (order approving listing and trading of SPDR SSgA Real Assets ETF; SPDR SSgA Income Allocation ETF; SPDR SSgA Conservative Global Allocation ETF; SPDR SSgA Global Allocation ETF; and SPDR SSgA Aggressive Global Allocation ETF).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

equity investments or ownership interests in business enterprises.[9]

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[10]

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the health care sector. Issuers in the health care sector include manufacturers and distributors of health care equipment and supplies, owners and operators of health care facilities, health maintenance organizations and managed health care plans, health care providers and issuers that provide services to health care providers.

ARK Industrial Innovation ETF

According to the Registration Statement, the ARK Industrial Innovation ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances [11] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of industrial innovation. Companies relevant to this theme are those that are expected to focus on and benefit from the development of new products or services, technological improvements and advancements in scientific research related to, among other things, disruptive innovation in energy (''energy transformation companies''), automation and manufacturing (''automation transformation companies''), materials, and transportation.[12]

According to the Registration Statement, in selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.[13]

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[14]

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the industrials [15] and information technology sectors.[16]

ARK Innovation ETF

According to the Registration Statement, the ARK Innovation ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances[17] primarily (at least 65% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of disruptive innovation. Companies relevant to this theme are those that rely on or benefit from the development of new products or services, technological improvements and advancements in scientific research relating to the areas of genomics (''genomic companies''), industrial innovation (''industrial innovation companies'') or the increased use of shared technology, infrastructure, and services (''Web x.0 companies'').

According to the Registration Statement, in selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The types of companies that the Adviser believes are genomic companies, industrial innovation companies or Web x.0 companies are listed below:

- Genomics companies are companies that are focused on and are expected to benefit from extending and enhancing the quality of human and other life by incorporating technological and scientific developments in genetics into their business, such as by offering products or services that rely on genetic sequencing, analysis, synthesis or instrumentation. These companies may include ones that develop, produce, manufacture or significantly rely on bionic devices, bio-inspired computing, bioinformatics, molecular medicine, and agricultural biology.
- Industrial innovation companies are companies that are focused on and are expected to benefit from the development of new products or services, technological improvements and advancements in scientific research related to, among other things, disruptive innovation in energy (''energy transformation companies''), automation and manufacturing (''automation transformation

[9] According to the Adviser, at least 90% of each Fund's investments in equity securities (including Global Depositary Receipts (''GDRs''), American Depositary Receipts (''ADRs''), rights, warrants and preferred securities, discussed under ''Other Investments,'' below) will be in securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[10] The Adviser generally considers emerging market countries to be developing market countries whose gross domestic product per person is classified below ''high income'' by the World Bank. Investments in emerging markets equity securities will not exceed 20% of a Fund's total assets.

[11] *See* note 8, *supra.*

[12] According to the Registration Statement, the Adviser will consider a company to be an energy transformation company if it seeks to capitalize on innovations or evolutions in: (i) Ways that energy is stored or used; (ii) the discovery, collection and/or implementation of new sources of energy, including unconventional sources of oil or natural gas and/or (iii) the production or development of new materials for use in commercial applications of energy production, use or storage. The Adviser will consider a company to be an automation transformation company if it is focused on man capitalizing on the productivity of machines, such as through the automation of functions, processes or activities previously performed by human labor or the use of robotics to perform other functions, activities or processes.

[13] *See* note 9, *supra.*

[14] *See* note 10, *supra.*

[15] According to the Registration Statement, the industrials sector includes companies engaged in the manufacture and distribution of capital goods, such as those used in defense, construction and engineering, companies that manufacture and distribute electrical equipment and industrial machinery and those that provide commercial and transportation services and supplies.

[16] According to the Registration Statement, the information technology sector includes software developers, providers of information technology consulting and services and manufacturers and distributors of computers, peripherals, communications equipment and semiconductors.

[17] *See* note 8, *supra.*

companies''), materials, and transportation.[18]

• Web x.0 companies are companies that are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure and services. These companies may also include ones that develop, use or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

The Adviser will select investments for the Fund that represent its highest-conviction investment ideas within the theme of disruptive innovation, as described above, in constructing the Fund's portfolio. The Adviser's process for identifying genomic companies, industrial innovation companies and Web x.0 companies will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental and quantitative measures) approaches. The Adviser's highest-conviction investment ideas are those that it believes present the best risk-reward opportunities.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.[19]

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[20]

According to the Registration Statement, the Fund will be concentrated in issuers in any industry or group of industries in the industrials[21] and information technology[22] sectors.

ARK Web x.0 ETF

According to the Registration Statement, the ARK Web x.0 ETF's investment objective will be long-term growth of capital.

According to the Registration Statement, the Fund will invest under normal circumstances [23] primarily (at least 80% of its assets) in domestic and foreign equity securities of companies that are relevant to the Fund's investment theme of Web x.0. Companies relevant to this theme are focused on and expected to benefit from shifting the bases of technology infrastructure from hardware and software to the cloud, enabling mobile and local services, such as companies that rely on or benefit from the increased use of shared technology, infrastructure and services. These companies may also include ones that develop, use or rely on innovative payment methodologies, big data, the internet of things, and social distribution and media.

In selecting companies that the Adviser believes are relevant to a particular investment theme, it will seek to identify, using its own internal research and analysis, companies capitalizing on disruptive innovation or that are enabling the further development of a theme in the markets in which they operate. The Adviser's internal research and analysis will leverage insights from diverse sources, including internal and external research, to develop and refine its investment themes and identify and take advantage of trends that have ramifications for individual companies or entire industries. The Adviser will use both ''top down'' (macro-economic and business cycle analysis) and ''bottom up'' (valuation, fundamental and quantitative measures) approaches to select investments for the Fund.

Under normal circumstances, substantially all of the Fund's assets will be invested in equity securities, including common stocks, partnership interests, business trust shares and other equity investments or ownership interests in business enterprises.[24]

According to the Registration Statement, the Fund's investments will include issuers of micro-, small-, medium- and large-capitalizations. The Fund's investments in foreign equity securities will be in both developed and emerging markets.[25]

According to the Registration Statement, the Fund will be concentrated in issuers in any group of industries in the information technology sector.[26] The Fund's investments may include issuers in the telecommunications services sector.[27]

Other Investments

While each Fund will invest, under normal circumstances, primarily in the equity securities described above, each Fund may invest in other investments, as described below. With the exception of the ARK Innovation ETF, under normal circumstances such other investments will not exceed 20% of a Fund's assets. Regarding the ARK Innovation ETF, under normal circumstances such other investments will not exceed 35% of the Fund's investments.

According to the Registration Statement, each Fund may invest no more than 35% of its assets in depositary receipts, rights, warrants, preferred securities and convertible securities.

ADRs and GDRs are securities typically issued by a bank or trust company that evidence ownership of underlying securities issued by a foreign corporation and entitle the holder to all dividends and capital gains that are paid out on the underlying foreign securities. Rights and warrants are option securities permitting their holders to subscribe for other securities. Preferred securities are contractual obligations that entail rights to distributions declared by the issuer's board of directors but may permit the issuer to defer or suspend distributions for a certain period of time. ADRs may be traded over the counter (''OTC'').

According to the Registration Statement, each Fund may invest in the securities of open-end or closed-end investment companies, subject to applicable limitations under the 1940 Act. A Fund's investment in other investment companies may include shares of exchange traded funds registered under the 1940 Act (''ETFs''),[28] closed-end investment companies (which include business development companies), unit investment trusts, and other open-end investment companies. In addition, the Funds may invest in other exchange-traded products (''ETPs'') such as commodity pools,[29] or other entities that are traded on an exchange.

[18] *See* note 12, *supra.*

[19] *See* note 9, *supra.*

[20] *See* note 10, *supra.*

[21] *See* note 15, *supra.*

[22] *See* note 16, *supra.*

[23] *See* note 8, *supra.*

[24] *See* note 9, *supra.*

[25] *See* note 10, *supra.*

[26] *See* note 16, *supra.*

[27] According to the Registration Statement, the telecommunications services sector includes companies that provide fixed-line or wireless telecommunication and data transmission services.

[28] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

[29] For purposes of this filing, ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities

In addition, according to the Registration Statement, each Fund may use derivative instruments. Specifically, the Funds may use options, futures, swaps and forwards, for hedging or risk management purposes or as part of its investment practices. Derivative instruments are contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate or index. These underlying assets, reference rates or indices may be any one of the following: stocks, interest rates, currency exchange rates and stock indices.

The options in which the Funds may invest may be exchanged-traded or OTC. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The futures in which the Funds may invest will be exchange-traded. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. The swaps in which the Funds will invest may be cleared swaps or non-cleared. The Funds will collateralize their obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser reasonably believes are capable of performing under the contract and will post as collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser will review approved counterparties using various factors, which may include the counterparty's reputation, the Adviser's past experience with the counterparty and the price/market actions of debt of the counterparty.

According to the Registration Statement, the Funds may invest in currency forwards. A currency forward transaction is a contract to buy or sell a specified quantity of currency at a specified date in the future at a specified price which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract. Currency forward contracts may be used to increase or reduce exposure to currency price movements.

According to the Registration Statement, the Funds may enter into futures contracts and options, including options on futures contracts. Futures contracts generally provide for the future sale by one party and purchase by another party of a specified instrument, index or commodity at a specified future time and at a specified price. Futures contracts are standardized as to maturity date and underlying instrument and are traded on futures exchanges. An option is a contract that provides the holder the right to buy or sell shares or futures at a fixed price, within a specified period of time.

According to the Registration Statement, the Funds may invest in participation notes (''P-Notes''). P-Notes are issued by banks or broker-dealers and are designed to offer a return linked to the performance of a particular underlying equity security or market. P-Notes can have the characteristics or take the form of various instruments, including, but not limited to, certificates or warrants.

According to the Registration Statement, each Fund may invest in repurchase agreements with commercial banks, brokers or dealers and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a Fund acquires a money market instrument from a seller, subject to resale to the seller at an agreed upon price and date.

According to the Registration Statement, the Funds may invest in structured notes. A structured note is a derivative security for which the amount of principal repayment and/or interest payments is based on the movement of one or more ''factors.'' These factors include, but are not limited to, currency exchange rates, interest rates (such as the prime lending rate or LIBOR), referenced bonds and stock indices.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance.[30] Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of each Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[31]

Each Fund will be classified as a ''non-diversified'' investment company under the 1940 Act[32] and therefore may concentrate its investments in any particular industry or group of industries, such that: (i) ARK Genomic Revolution ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector; (ii) ARK Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the health care sector, the industrials sector, the information technology sector, or the telecommunications services sector; (iii) ARK Industrial Innovation ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the industrials sector or the information technology sector; and (iv) ARK Web x.0 ETF will concentrate in securities of issuers having their principal business activities in any industry or group of industries in the information technology sector or the

Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

[30] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the asset; the number of dealers wishing to purchase or sell the asset and the number of other potential purchasers; dealer undertakings to make a market in the asset; and the nature of the asset and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the asset, the method of soliciting offers, and the mechanics of transfer).

[31] *See* Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A) (stating that Guide 4 ''permit[s] a fund to invest up to 15% of its assets in illiquid securities''). The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

[32] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

telecommunications services sector.[33] Each Fund will consider an issuer to have its ''principal business activities'' in an industry or group of industries if the issuer derives more than 50% of its revenues from a business considered to be a part of such industry or group of industries according to a third party's industry classification system or that of the Adviser.

The Funds intend to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[34]

According to the Registration Statement, each Fund may take a temporary defensive position (investments in cash or cash equivalents) in response to adverse market, economic, political or other conditions.[35] Cash equivalents include short-term high quality debt securities and money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements and bonds that are rated BBB or higher and shares of short-term fixed income or money market funds.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 [36] under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share for each Fund will be calculated daily and that the NAV and the Disclosed Portfolio for each Fund will be made available to all market participants at the same time. Each Fund's investments will be consistent with its respective investment objective in accordance with the 1940 Act and will not be used to enhance leverage. Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs or 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[37]

Net Asset Value

According to the Registration Statement, the NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund will be determined each business day as of the close of trading (ordinarily 4:00 p.m., Eastern time (''E.T.'') on the New York Stock Exchange (''NYSE'')). Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

According to the Registration Statement, the values of each Fund's portfolio securities holdings will be based on market prices.

Price information for exchange-traded equity securities, including equity securities of domestic and foreign companies, such as common stock, partnership interests, business trust shares, ETFs and ETPs as well as depositary receipts (excluding ADRs traded OTC), rights, warrants and preferred securities, will be taken from the exchange where the security or asset is primarily traded.

ADRs traded OTC will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed.

Investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and other open-end investment companies, will be valued at NAV, utilizing pricing services.

Non-exchange-traded derivatives, including forwards, swaps and certain options, will normally be valued on the basis of quotes obtained from brokers and dealers or independent pricing services using data reflecting the earlier closing of the principal markets for those assets. Prices obtained from independent pricing services use information provided by market makers or estimates of market values obtained from yield data relating to investments or securities with similar characteristics.

Exchange-traded options (excluding options on futures) will be valued at market closing price. Futures and options on futures will be valued at the settlement price determined by the applicable exchange.

Fixed income securities generally trade in the OTC market rather than on a securities exchange. A Fund will generally value these portfolio securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds by relying on independent pricing services. A Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other securities that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield curves. Matrix price is an estimated price or value for a fixed-income security. Matrix pricing is considered a form of fair value pricing.

Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more sources.

In the absence of a last reported sales price for an exchange-traded security or asset, if no sales were reported, if a market quotation for a security or asset is not readily available or the Adviser believes it does not otherwise accurately reflect the market value of the security or asset at the time a Fund calculates its NAV, the security or asset will be valued based on fair value as determined in good faith by the Adviser in accordance with the Trust's valuation policies and procedures approved by the Board of Trustees and in accordance with the 1940 Act. A Fund may also use fair value pricing in a variety of circumstances, including but not limited to, trading in a security or asset has been suspended or halted. Fair value pricing involves subjective judgments and it is possible that a fair value determination for a security or asset may be materially different than

[33] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[34] 26 U.S.C. 851 *et seq.*

[35] According to the Adviser, circumstances under which a Fund may temporarily depart from its normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[36] 17 CFR 240.10A–3.

[37] Each Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following each Fund's first full calendar year of performance.

the value that could be realized upon the sale of the security or asset.

Values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Prices obtained by an outside independent pricing service will use information provided by market makers or estimates of market values obtained from data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities.

Creation and Redemption of Shares

According to the Registration Statement, each Fund will issue, sell and redeem Shares only in aggregations of a specified number of Shares (each, a ''Creation Unit'') on a continuous basis at its NAV next determined after receipt, on any business day, of an order in proper form. A Creation Unit will initially consist of 50,000 Shares.

According to the Registration Statement, the consideration for a purchase of Creation Units will generally consist of an in-kind deposit of specified securities that would be consistent with the relevant Fund's investment objective and portfolio (''Deposit Instruments'') and an amount of cash (''Cash Amount'') or, as permitted or required by the Fund, of cash. The Cash Amount together with the Deposit Instruments, as applicable, are referred to as the ''Creation Deposit,'' which represents the minimum initial and subsequent investment amount for Creation Units. The Cash Amount represents the difference between the NAV of a Creation Unit and the market value of Deposit Instruments.

According to the Registration Statement, the Trust reserves the right to accept a basket of securities or cash that differs from Deposit Instruments or to permit or require the substitution of an amount of cash (*i.e.,* a ''cash in lieu'' amount) to be added to the Cash Amount to replace any Deposit Instrument which may, among other reasons, not be available in sufficient quantity for delivery, not be permitted to be re-registered in the name of the Trust as a result of an in-kind creation order pursuant to local law or market convention or which may not be eligible for transfer through the clearing process, or which may not be eligible for trading by a participating party.

According to the Registration Statement, all orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of the relevant Fund as determined on such date.

According to the Registration Statement, Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor, only on a business day and only through an authorized participant.

According to the Registration Statement, unless cash redemptions are permitted or required for a Fund, the redemption proceeds for a Creation Unit will generally consist of in-kind securities and instruments (''Redemption Instruments'') as announced by the Administrator on the business day of the request for redemption, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Redemption Instruments, less the applicable fees. Should the Redemption Instruments have a value greater than the NAV of the Shares being redeemed, a compensating cash payment to the Trust equal to the differential plus the applicable redemption transaction fee will be required to be arranged for by or on behalf of the redeeming shareholder. Each Fund reserves the right to honor a redemption request by delivering a basket of securities or cash that differs from the Redemption Instruments.

According to the Registration Statement, an order to redeem Creation Units of a Fund will be deemed received on the transmittal date if such order is received by the Distributor not later than 4:00 p.m. E.T. on such transmittal date and all other procedures are properly followed; such order will be effected based on the NAV of a Fund as next determined.

According to the Registration Statement, the Administrator, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m. Eastern time), (a) the list of the names and the required number of each Deposit Instrument to be included in the current Creation Deposit (based on information at the end of the previous business day) as well as the Cash Amount for each Fund and (b) the Redemption Instruments that will be applicable to redemption requests received in proper form on that day. In addition, the Administrator, through the NSCC, also makes available on a continuous basis throughout the day, the indicative optimized portfolio value (''IOPV'').

Availability of Information

The Funds' Web site (*www.ARK-Funds.com*) will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[38] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for each Fund's calculation of NAV at the end of the business day.[39]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Funds the following information on the Funds' Web site: Ticker symbol (if applicable), name of security and/or financial instrument, number of shares, if applicable, and dollar value of financial instruments and securities held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket will represent one Creation Unit of the relevant Fund.

Investors will also be able to obtain the Trust's Statement of Additional

[38] The Bid/Ask Price of each Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the relevant Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[39] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Information (''SAI''), the Funds' Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and underlying securities that are exchange listed, including equities (including common stock, partnership interests and business trust shares, as well as depositary receipts (excluding ADRs traded OTC and GDRs), rights, warrants, preferred securities, ETFs and ETPs (collectively, ''Exchange Traded Equities'')), will be available via the Consolidated Tape Association (''CTA'') high-speed line and from the securities exchange on which they are listed. Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

Every fifteen seconds during NYSE Arca Core Trading Session, an IOPV relating to each Fund will be widely disseminated by one or more major market data vendors.[40] The IOPV is the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3).[41] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[42] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[43] 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 federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. 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.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from markets and other entities that are

[40] The IOPV calculations are estimates of the value of the Funds' NAV per Share using market data converted into U.S. dollars at the current currency rates. The IOPV price is based on quotes and closing prices from the securities' local market and may not reflect events that occur subsequent to the local market's close. Premiums and discounts between the IOPV and the market price may occur. This should not be viewed as a ''real-time'' update of the NAV per Share of the Funds, which is calculated only once a day.

[41] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the CTA or other data feeds.

[42] *See* NYSE Arca Equities Rule 7.12.

[43] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[44] At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[45] 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 8.600. 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 federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying Exchange Traded Equities, exchange traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and Exchange Traded Equities, exchange traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of each Fund's investments in equity securities (including GDRs and ADRs) will be in securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The exchange-traded options in which the Funds may invest will trade on markets that are members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange. Each Fund will not invest more than 10% of its assets in futures that trade in markets that are not members of the ISG or parties to a comprehensive surveillance sharing agreement with the Exchange.

The Adviser is not registered as a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or any sub-adviser becomes, or becomes newly affiliated with, a broker-dealer, or (b) any new adviser or sub-adviser is, or becomes affiliated with, a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser consistent with Commission guidance. Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on its Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information for the Shares and underlying securities that are exchange listed, including Exchange Traded Equities, will be available via the CTA high-speed line and from the securities exchange on which they are listed. Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures

[44] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for each Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[45] 15 U.S.C. 78f(b)(5).

and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC, investment company securities (other than ETFs), including closed end investment companies, unit investment trusts and open-end investment companies, non-exchange-traded derivatives, including forwards, swaps and certain options, and fixed income securities, including P-Notes, structured notes, debt securities, money market instruments such as commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, bonds and convertible securities, and shares of short-term fixed income or money market funds. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that hold equity securities and 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 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–NYSEArca–2014–64 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca-2014–64. 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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-2014–64 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13458 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72311; File No. SR–NASDAQ–2014–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend IM–5900–7 to, Among Other Things, Modify the Free Services Offered to Certain Newly Listing Companies

June 4, 2014.

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 May 27, 2014, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend IM–5900–7 to modify the services offered to certain newly listing companies. Nasdaq will implement the proposed rule upon approval. However, any company that applies to list on Nasdaq before July 31, 2014, and lists before September 30, 2014, may elect to instead receive services under the terms of the rule as in effect before this amendment.[3]

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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq will maintain, in its online rule book, a link to the text of the rule as in effect before this amendment.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In December 2011, Nasdaq adopted a rule to provide complimentary services to companies listing on the Nasdaq Global and Global Select Markets in connection with an initial public offering, upon emerging from bankruptcy, or in connection with a spin-off or carve-out from another company (''Eligible New Listings'') and to companies that switch their listing from the New York Stock Exchange to the Nasdaq Global or Global Select Markets (''Eligible Switches'').[4] Under this rule, Eligible Switches with a market capitalization of $500 million or more receive complimentary services for four years from the date of their listing. All other Eligible Switches and Eligible New Listings receive complimentary services for two years from the date of their listing. In addition, Eligible Switches and Eligible New Listings with a market capitalization of $500 million or more receive additional services that companies with a market capitalization below $500 million do not receive (the ''Additional Services'').[5]

Based on Nasdaq's experience with the program, Nasdaq now proposes to modify certain aspects of the program. First, Nasdaq proposes to increase the threshold for an Eligible Switch or Eligible New Listing to receive Additional Services from $500 million to $750 million or more in market capitalization. Nasdaq believes that this higher threshold better reflects the level where a company will most benefit from the Additional Services, and will most likely continue to purchase those services after the complimentary period has expired. In addition, Nasdaq believes that the higher threshold will better reflect the type of companies that, when listing on Nasdaq, will assist in Nasdaq's efforts to attract and retain other listings. Nasdaq also proposes to provide three years of services, instead of four, to Eligible Switches with a market capitalization of $750 million or more.

Next, based on customer usage and demand for services, Nasdaq proposes to remove Directors Desk, an online board portal, from the program and instead offer companies four interactive webcasts, which can be used in connection with a company's quarterly earnings call. A number of companies have expressed interest in interactive webcasts during their discussions with Nasdaq and many purchase this service from NASDAQ OMX Corporate Solutions. Furthermore, Nasdaq has observed that companies offered the complimentary Directors Desk package may decline to use it, or may only use a few of the available seats. As such, Nasdaq believes that while the interactive webcasts may cost less than Directors Desk, the expected increase in utilization by companies could make this substitution more valuable to companies. Nasdaq also proposes to change its offer for market analytic tools from four users to two users. First, the price stated for four users is significantly below the current retail price of that offering, and companies could not renew the service for four users at that stated price. Nasdaq also has observed that many companies contracted for four users of the market analytic tools just because they were available, and not because they were actually needed by the company, and these companies may not be interested in continuing to pay for those users at the retail price when the package expires.

Nasdaq also proposes to update the retail values for individual components and the total package in the rule text. These prices have changed since the original adoption of the rule based on enhancements to the services and as a result of the competitive environment in which NASDAQ OMX Corporate Solutions operates.

The cumulative effect of these changes would reduce the stated annual value of the package from approximately $94,000 to approximately $70,000 for companies with a market capitalization of up to $750 million and from approximately $169,000 to approximately $125,000 for companies with a market capitalization of $750 million or more.[6] The stated annual value of the package available to Eligible New Listings and Eligible Switches with a market capitalization between $500 million and $750 million would change from approximately $169,000 to approximately $70,000.

Finally, since adopting this program, companies have needed time after the listing date to complete the contracting process and training for the service, and therefore were unable to start using

[4] Exchange Act Release No. 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (SR–NASDAQ–2011–122, approving the adoption of IM–5900–7) (the ''Prior Filing'').

[5] The Additional Services include extra licenses for Directors Desk, additional press release distribution services and market surveillance tools.

[6] The prior value for each package is the amount currently reflected in the rule text. The value of the proposed package is based on retail prices as of May 2014.

them until after their listing date. To address these situations, Nasdaq proposes to remove the language in IM–5900–7 that now states the complimentary period starts from the date of listing and add new paragraph (d) to describe the start of the complimentary period. Under the proposed rule, the complimentary period generally will begin on the listing date. However, if a company first uses a service within 30 days after the listing date, Nasdaq will use the date the company first uses that particular service as the start of the complimentary period, in order to help insure that eligible companies receive the full intended benefit.[7] If the company does not actually start using a service within 30 days of its listing, the starting date of the period during which the complimentary services could be used would begin on the date of listing.[8]

Nasdaq will implement the proposed rule upon approval. However, companies near a listing or switch may have relied upon the services described in the current rule in making their decision. As such, Nasdaq will allow any company that applies before July 31, 2014, and lists before September 30, 2014, to elect to receive services under the terms of the rule as in effect before this amendment.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and Sections 6(b)(4), 6(b)(5), and 6(b)(8), in particular, in that the proposal is designed, among other things, to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and issuers and other persons using its facilities and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between issuers, and that the rules of the Exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In the Prior Filing, the Commission determined that existing IM–5900–7 is consistent with these provisions of the Act.[10] The proposed rule change, which modifies the packages available to companies and provides some additional flexibility for companies to choose the starting date for the complimentary services available under IM–5900–7, does not change that conclusion.

Nasdaq faces competition in the market for listing services,[11] and it competes, in part, by offering valuable services to companies, including services that ease the companies' transition to being public or listed on a new exchange. Nasdaq believes that the changes to the package, including the proposed substitution of webcasts for board portal tools, and the increased flexibility surrounding the start date of services will result in a more enticing package for potential new listings, even though the individual value of the services offered may be less, and therefore will enhance competition among listing exchanges. Nasdaq also does not believe that any of these changes impose an additional burden not necessary or appropriate in furtherance of the purposes of the Act on the competition between NASDAQ OMX Corporate Solutions and other service providers.

The change to the services in the packages is not designed to permit unfair discrimination. All listed companies receive services from Nasdaq, including Nasdaq Online and the Market Intelligence Desk and Nasdaq has justified why providing services to Eligible New Listings and Eligible Switches is not unfairly discriminatory in the Prior Filing. The proposed rule change would slightly reduce the value of the additional services provided to larger Eligible New Listings and Eligible Switches and therefore would reduce any discrimination between larger and smaller companies.

Nasdaq also believes that the proposed change to allow Additional Services to Eligible New Listings and Eligible Switches with a market capitalization of $750 million or more, instead of $500 million or more, is not designed to permit unfair discrimination between issuers. In the Prior Filing, Nasdaq noted that it offers more services to larger companies because they need more and different governance, communication and intelligence services and because attracting these larger companies will likely bring greater future value to Nasdaq. The proposed change from $500 million to $750 million reflects Nasdaq's conclusion, based on its experience with the program, that this higher threshold is appropriate to differentiate the companies that will most benefit from the Additional Services and provide the most future value to Nasdaq. As such, Nasdaq does not believe that this change unfairly discriminates between issuers. In addition, the proposed change to reduce the free services available to larger Eligible Switches from four years to three years reduces an existing difference between Eligible Switches and other Eligible New Listings, and therefore also does not unfairly discriminate between issuers.

Allowing companies up to 30 days after their listing to start using the services is a reflection of Nasdaq's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their listing. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thereby enabling companies to receive the full intended benefit. This change also more closely aligns Nasdaq's treatment of these companies with other customers of NASDAQ OMX Corporate Solutions, who do not receive or pay for services until they are contracted. As such, the proposed change does not permit unfair discrimination or impose a burden on competition.

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. As described in the statutory basis section, above, the proposed rule change responds to competitive pressures in the market for listings. Nasdaq believes that the changes to the package and the increased flexibility surrounding the start date of services will result in a more enticing package for potential new listings, even though the individual value of the services offered may be less, and therefore will enhance competition among listing exchanges.

In addition, the proposed rule change will result in fewer companies receiving the Additional Services and shorten the

[7] The Commission notes that the proposed rule states that ''if an Eligible New Listing or Eligible Switch begins to use a particular service provided under [IM–5900–7] within 30 days after the date of listing, the complimentary period for that service will begin on the date of first use'' and ''in all other cases, the period for each complimentary service shall commence on the listing date.'' *See* proposed IM–5900–07(d).

[8] The proposed rule change would also modify the rule to consistently call the elements of the offering ''services'' instead of interchangeably using ''products'' and ''services''.

[9] 15 U.S.C. 78f.

[10] Exchange Act Release No. 65963, 76 FR at 79267.

[11] The Justice Department has noted the intense competitive environment for exchange listings. *See* ''NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandon Their Proposed Acquisition Of NYSE Euronext After Justice Department Threatens Lawsuit'' (May 16, 2011), available at *http://www.justice.gov/atr/public/press_releases/2011/271214.htm.*

period for which some companies receive services, which may have the result of enhancing competition with other listing venues and with other service providers.

Nasdaq does not believe that allowing companies up to an additional 30 days to begin their complimentary period will cause any burden on competition. This change would only confer a short period prior to using services for companies that have already determined where to list and which services to use. In fact, a competing service provider could continue to offer its services during that 30 day period, which would enhance competition among service providers.

Accordingly, Nasdaq does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (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–NASDAQ–2014–058 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ-2014-058. 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, 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–2014–058 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13455 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72308; File No. SR–DTC–2014–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change in Connection With the Implementation of a Fee for ACATS-Related Deliveries and Receives

June 4, 2014.

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 May 29, 2014, the Depository Trust Company (''DTC'') 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 primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As more fully described below, the proposed rule change consists of changes to the DTC fee schedule[5] to add new fees for securities deliveries and receives relating to customer account transfers that utilize a new process to be implemented by National Securities Clearing Corporation (''NSCC'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The DTC fee schedule is available at *http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.ashx.*

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose [6]

Pursuant to its rule filing SR–NSCC–2014–04 (the ''NSCC Rule Filing''),[7] National Securities Clearing Corporation (''NSCC'') will implement a new process, called the ''ACATS Settlement Accounting Operation,'' to facilitate the settlement of Automated Customer Account Transfer Service (''ACATS'') [8] activity relating to securities eligible for processing through DTC. The ACATS Settlement Accounting Operation will have a DTC omnibus account (''New Account'') associated with it against which Participants will, via their respective DTC accounts, deliver securities to, or receive securities from, NSCC in order to satisfy their ACATS obligations in eligible securities.

Pursuant to the proposed rule change, in order to align costs with revenues of processing deliveries and receives of securities for Participants against the New Account, DTC will incorporate the following new fees into its fee schedule:

Fee description	Fee amount
Deliveries to the NSCC ACATS Settlement Accounting Operation omnibus account.	$0.06 per item; charged to delivering Participant.
Receives from the ACATS Settlement Accounting Operation omnibus account.	$0.06 per item; charged to the receiving Participant.

Implementation Timeframe

The proposed fee changes will take effect on May 30, 2014, for Participant deliveries and receives of securities to and from the New Account occurring on or after that date.

2. Statutory Basis

The proposed fee changes will align DTC's revenue related to processing of ACATS transactions versus the New Account with the associated costs to DTC, and the fees will apply to each Participant equally in accordance with each Participant's use of the applicable DTC services. Therefore, DTC believes that the proposed rule change is consistent with the requirements of the Act, in particular Section 17A(b)(3)(D) [9] of the Act, which requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Participants. In addition to the above, DTC's provision of the related services facilitates the safe and secure delivery of customer securities for ACATS transfers. Therefore, DTC further believes that the proposed rule change is consistent with Rule 17Ad–22(d)(6) [10] under the Act which requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost-effective in meeting the requirements of Participants while maintaining safe and secure operations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition. As stated above, the proposed changes will align DTC's fees with the costs of delivering services to its Participants, and the new fee will apply equally to all DTC Participants in accordance with their use of the applicable services.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received with respect to this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) [12] 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 No. SR–DTC–2014–07 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–DTC–2014–07. 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 DTC and on DTC's Web site at *http://dtcc.com/legal/sec-rule-filings.aspx*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[6] Terms not defined herein have the meaning set forth in DTC's Rules & Procedures (the ''Rules'').

[7] Release No. 34–72223 (May 22, 2014), 79 FR 30912 (May 29, 2014) (SR–NSCC–2014–04).

[8] ACATS is a service of NSCC designed for the automated transfer of customer accounts between broker-dealers.

[9] 15 U.S.C. 78q–1(b)(3)(D).

[10] 17 CFR 240.17Ad–22(d)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2014–07 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13453 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72306; File No. SR–ICC–2014–07]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change to Revise End-of-Day Price Discovery Policies and Procedures

June 4, 2014.

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 May 22, 2014, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. 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 purpose of the proposed rule change is to revise the ICC End-of-Day Price Discovery Policies and Procedures (''EOD Pricing Policy'') to revise the expectations surrounding the unwind of any Firm Trade transaction. This revision does not require any changes to the ICC Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed revision to ICC's EOD Pricing Policy is intended to make the policy more readily enforceable, while maintaining the same or similar level of incentive for ICC Clearing Participants to provide quality price submissions.

ICC believes such revision will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revision is described in detail as follows.

ICC Clearing Participants (''CPs'') may be required from time to time, under the ICC EOD Pricing Policy, to enter into trades with other CPs as part of the ICC end-of-day price discovery process (''Firm Trade''). ICC does not require CPs to maintain Firm Trades as outstanding positions for any particular length of time. Currently, the ICC EOD Pricing Policy requires CPs that elect to unwind a Firm Trade to do so ''at the then-current market price.'' There are practical difficulties with objectively determining whether an unwind transaction was executed at the ''then-current market price'' and therefore such policy is difficult to enforce. ICC proposes revising the ICC EOD Pricing Policy to replace references to the ''then-current market price'' with the requirement that unwind transactions be executed in a competitive manner. Further, ICC proposes adding the requirement that, upon request, CPs be able to demonstrate to ICC's satisfaction that such unwind transaction was executed in a competitive manner. Additionally, ICC proposes adding a non-exclusive list of examples of how CPs may be able to demonstrate competitive execution of unwind transactions. Specifically, such examples include: (i) Execution on an available trading venue (e.g., a SEF or DCM); (ii) multiple dealer quotes received and execution of the unwind transaction at the best quoted price; or (iii) placement of the unwind transaction with an interdealer broker with price terms and instructions commensurate with a competitive execution.

Section 17A(b)(3)(F) of the Act[3] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed revision to the EOD Pricing Policy is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[4] because ICC believes that the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. The update to ICC's EOD Pricing Policy regarding Firm Trade unwind transactions makes the policy more readily enforceable, while maintaining the same or similar level of incentive for CPs to provide quality price submissions. ICC considers the proposed revision to be an enhancement of its consistent underlying intention to assure that CPs unwind Firm Trades competitively. The inclusion of Firm Trades in ICC's end-of-day price discovery process provides incentive for CPs to submit quality price submissions. If CPs unwound Firm Trades non-competitively at the original Firm Trade Price, thereby alleviating the Firm Trade's impact to their portfolio, the incentive to provide quality price submissions would be diminished. Receiving quality prices from its CPs is paramount to the pricing process and ICC believes the proposed revision both clarifies and enhances its EOD Pricing Policy. As such, the proposed revision will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible within the meaning of Section 17A(b)(3)(F)[5] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The revision to ICC's EOD Pricing Policy regarding the unwinding of Firm Trades apply uniformly across all CPs. Therefore, ICC does not believe the proposed revision imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] Id.

[5] Id.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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–ICC–2014–07 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ICC–2014–07. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings*.

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–ICC–2014–07 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13451 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72305; File No. SR–FICC–2014–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Government Securities Division Fee Schedule, the Mortgage-Backed Securities Division Fee Schedule for Dealers and the Mortgage-Backed Securities Division EPN Fee Schedule

June 4, 2014.

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 May 21, 2014, the Fixed Income Clearing Corporation (''FICC'') 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 clearing agency. FICC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder[4] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Fee Schedule in the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''MBSD Clearing Rules''), the MBSD EPN Rules (the ''EPN Rules'', together with the MBSD Clearing Rules, the ''MBSD Rules'') and the Government Securities Division (''GSD'') Rulebook (the ''GSD Rules''), as applicable.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) The purpose of this filing is to modify the GSD Fee Schedule, the MBSD Fee Schedule for dealers, and the MBSD EPN Fee Schedule. The fee changes are effective as of July 1, 2014.

To guard against fluctuations in trading volume and size, FICC is proposing a revised GSD fee structure which reduces its fees associated with comparison and netting and increases the fee for obligation par, a revenue category deemed to be more stable. The proposed changes in their totality are revenue neutral.

With respect to MBSD, over the last 18 months, FICC has experienced a significant decrease in the volume of transactions that MBSD processes. FICC believes that this decrease represents a fundamental shift in the MBS market. FICC's discussions with member firms indicate that the change in the mortgage-backed securities market will be more long term than originally anticipated. As a result, FICC is proposing to increase the MBSD fees.

FICC has discussed the proposed fee changes with the majority of the GSD, MBSD and MBSD EPN members. FICC will discuss the proposed changes with

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

the remainder of its members over the next several weeks.

The proposed changes to the GSD Fee Schedule, the MBSD Fee Schedule for dealers, and the MBSD EPN Fee Schedule are outlined below.

GSD FEE SCHEDULE

Current tiers	Current charge per submission	New breakpoint schedule	New charge per submission
TRADE SUBMISSION SCHEDULE			
		(Charge is applied to all submissions if breakpoint is reached).	
Per submission for up to 50,000 per month	$0.27	Per submission for total monthly submissions up to 49,999.	$0.250
Per submission for 50,001 to 100,000 per month	0.15	Per submission for total monthly submissions between 50,000 to 99,999.	0.200
Per submission for 100,001 or greater per month	0.01	Per submission for total monthly submissions between 100,000 to 249,999.	0.150
		Per submission for total monthly submissions between 250,000 to 399,999.	0.125
		Per submission for total monthly submissions between 400,000 to 499,999.	0.100
		Per submission for total monthly submissions 500,000 and greater.	0.085

Current charge	Current charge per side	New breakpoint schedule	New charge per side
NETTING SCHEDULE			
		(Charge is applied to all sides if breakpoint is reached).	
Per side that is netted	0.18	Per side for total monthly sides up to 49,999	0.150
		Per side for total monthly sides between 50,000 to 99,999.	0.125
		Per side for total monthly sides between 100,000 to 249,999.	0.125
		Per side for total monthly sides between 250,000 to 399,999.	0.100
		Per side for total monthly sides between 400,000 to 999,999.	0.050
		Per side for total monthly sides that are 1MM and greater.	0.035
Current charge per 1 MM of par value that is Netted.	0.018 per MM	New charge per 1 MM of par value that is Netted	0.015 per MM
OBLIGATION SCHEDULE			
Current charge per 1 MM of Obligation par value	0.15 per MM	New charge per 1 MM of Obligation par value	0.17 per MM

MBSD FEE SCHEDULE FOR DEALERS

Fee description	Current charge	Measurement	New charge	Measurement
CLEARING FEES				
Account Maintenance Fee (dealer) Primary/Secondary Account	$350.00	Per account	$0.00	N/A.
Account Maintenance Fee (dealer) Investment Manager Accounts	350.00	1 account	0.00	N/A.
	185.00	2–3 accounts	0.00	N/A.
	150.00	4–7 accounts	0.00	N/A.
	130.00	8–10 accounts	0.00	N/A.
	120.00	Greater than 10 accounts.	0.00	N/A.
SBO Destined Processing—Trade Creates (dealer)	1.68/MM	01–2,500	1.93/MM	01–2,500.
	1.54/MM	2,501–5,000	1.77/MM	2,501–5,000.
	1.39/MM	5,001–7,500	1.60/MM	5,001–7,500.
	1.30/MM	7,501–10,000	1.49/MM	7,501–10,000.
	1.15/MM	10,001–12,500	1.32/MM	10,001–12,500.
	0.99/MM	12,501 and over	1.14/MM	12,501 and over.

MBSD FEE SCHEDULE FOR DEALERS—Continued

Fee description	Current charge	Measurement	New charge	Measurement
TBA Netting Balance Orders (SBON and SBOO) (dealer)	0.00	N/A	0.75	Per MM Par value.
Trade-for-Trade (including TBA and SPT)—Trade Creates (dealer)	0.50	Per side	1.00	Per MM par value.
Option Trade Creates (dealer)	2.25	Per side	1.00	Per MM par value.
POOL NETTING FEES				
Matched Pool Instructs (dealer)	0.20	Per side	0.60	Per side.
Pool Obligations (dealer)	0.50	Per side	0.00	N/A.
Clearance Pool vs. FICC (dealer)	1.25	Per pool	0.00	N/A.
MBSD Bank Allocation				
	0.00	N/A	Calculated monthly	Calculated monthly based on MBSD bank clearance fees.

EPN FEE SCHEDULE

Fee Description	Current charge	Measurement	New charge	Measurement
Account Maintenance Fee Direct Account	$250.00	Month (per account)	$1,000.00	Month (per account).
Account Maintenance Fee Investment Manager Accounts	0.00	N/A	1,000.00	Month/per account.
	0.00	N/A	530.00	2–3 accounts/mo./each.
	0.00	N/A	430.00	4–7 accounts/mo./each.
	0.00	N/A	370.00	8–10 accounts/mo./each.
	0.00	N/A	340.00	Greater than 10 accounts/mo./each.
Message Processing Fee ON Send	0.15	Per MM current face Opening of Business to 1:00 PM.	0.17	Per MM current face Opening of Business to 1:00 PM.
	0.75	Per MM current face 1:00 PM to 2:00 PM.	0.86	Per MM current face 1:00 PM to 2:00 PM.
	1.50	Per MM current face 2:00 PM to 3:00 PM.	1.73	Per MM current face 2:00 PM to 3:00 PM.
	1.25	Per MM current face 3:00 PM to Close of Business.	1.44	Per MM current face 3:00 PM to Close of Business.
Message Processing Fee ON Receive	0.40	Per MM current face Opening of Business to 1:00 PM.	0.46	Per MM current face Opening of Business to 1:00 PM.
	0.20	Per MM current face 1:00 PM to 2:00 PM.	0.23	Per MM current face 1:00 PM to 2:00 PM.
	0.20	Per MM current face 2:00 PM to 3:00 PM.	0.23	Per MM current face 2:00 PM to 3:00 PM.
	0.00	Per MM current face 3:00 PM to Close of Business.	0.00	3:00 PM to Close of Business.
Cancel/Correct Send	0.15	Per MM current face Opening of Business to 11:00 AM.	0.17	Per MM current face Opening of Business to 11:00 AM.
	0.75	Per MM current face 11:00 AM to 12:00 PM.	0.86	Per MM current face 11:00 AM to 12:00 PM.
	1.50	Per MM current face 12:00 PM to 12:15 PM.	1.73	Per MM current face 12:00 PM to 12:15 PM.
	0.15	Per MM current face 12:15 PM to End of Day.	0.17	Per MM current face 12:15 PM to End of Day.

(ii) The proposed rule change will align the GSD fees and the MBSD fees with the costs of delivering services. Therefore, FICC believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (''Act'') and the rules and regulations thereunder applicable to FICC, in particular Section 17A(b)(3)(D) of the Act [5], which requires that the GSD Rules and the MBSD Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members, respectively.

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition. As stated above, the proposed changes will align the fees in the GSD Rules and the MBSD Rules with the costs of delivering services to its members.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has discussed the proposed fee changes with the majority of the GSD, MBSD and MBSD EPN members. FICC will discuss the proposed changes with the remainder of its members over the next several weeks. Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and Rule 19b–4(f)(2) [7] 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–FICC–2014–03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–FICC–2014–03. 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 FICC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2014–03 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13450 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[5] 5 U.S.C. 78q–1(b)(3)(D) [sic].

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72312; File No. SR–NYSEArca–2014–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Lead Market Maker Rights Fees

June 4, 2014.

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 May 23, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') relating to Lead Market Maker (''LMM'') Rights fees. The Exchange proposes to implement the fee change effective June 1, 2014. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Exchange's fees so as to provide a discount to LMMs that have a large number of issues in their LMM Allocation.

Currently, LMMs pay a Lead Market Maker Rights fee on each issue in their allocation, ranging from $45 per month to $1,500 per month, depending on the activity level in the issue. The Monthly Issue Fee is based on the Average National Daily Customer Contracts.

The Exchange is proposing that LMMs that have been allocated 400 or more issues receive a 50% discount in total Lead Market Maker Rights fees, from June 1, 2014 through December 31, 2014.

At the present time, there are approximately 2,600 different underlying issues listed on NYSE Arca Options. The Exchange regularly receives five to 10 requests to list new issues each week. The Exchange then surveys the LMM community to invite applications for allocation. At present, most surveys only receive one or two responses per issue, and a key factor in applying for allocation is the profitability of trading in an issue given the anticipated rights fee.

The Exchange believes that by providing a discount to LMM firms that have a large number of issues allocated to them will encourage LMM firms to apply for additional allocations. NYSE Arca proposes to have this discount in effect for the balance of the year, reverting back to the current total amount for all firms in January 2015.

NYSE Arca is not proposing any additional changes to Floor and Equipment Fees with this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed discount on Lead Market Maker Rights fees is reasonable as it will reduce the overhead costs of LMM firms with a large number of issues in their allocation. In addition, the proposed discount is reasonable because it will help some LMMs meet their obligation to provide liquidity in a diverse selection of issues. The increased number of issues in their allocation will allow LMM firms to spread their risk across different industry sectors.

It is also not unfairly discriminatory to provide a discount to LMM firms because the reduced overhead costs will enhance the ability of LMMs to provide liquidity which will benefit all market participants.

The discount is also not unfairly discriminatory because it is available to any LMM firm that wishes to apply for appointment in a large number of issues.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[6] 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 that the proposed discount reduces the burden on competition because it will enhance the ability for LMM firms to quote competitively in more issues.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, and providing a discount on LMM Rights fees will allow LMM Firms to both expand the number of issues allocated to them and to reduce the overhead, which, in turn, encourages liquidity to compete for business. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–63 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2014–63. 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 Internet Web site (*http://www.sec.gov/*

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

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 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–2014–63, and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13456 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72313; File No. SR–NYSEMKT–2014–48]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 900.3NY(d)(3) in Order To Delete Reserve Orders and References Thereto From the Rules

June 4, 2014.

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 May 23, 2014 NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 900.3NY(d)(3) in order to delete Reserve Orders and references thereto from the rules. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Rule 900.3NY(d)(3) to delete ''Reserve Order'' as an order type. The proposed rule change mirrors a similar deletion by the NASDAQ Options Market (''NOM'').[4] Reserve Orders are limit orders that have both a displayed size as well as an additional non-displayed amount. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming orders. If the displayed portion of a Reserve Order is fully executed, the System will replenish the displayed portion from the reserve up to the size of the original displayed amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry. Due to a lack of demand for Reserve Orders, the Exchange proposes to discontinue functionality supporting the order type. Accordingly, the Exchange proposes to delete the definition of Reserve Order from Rule 900.3NY(d)(3).

The Exchange also proposes to make corresponding amendments to Rules 935NY Commentary .06, 964NY(b)(2)(A), 964NY(c)(2)(A), 964NY(c)(2)(D), 964NY(c)(2)(E)(iii) and 971.1NY(c)(5)(E) in order to remove references to Reserve Orders. No substantive changes are being proposed to these rules themselves. The Exchange will announce the implementation date of this change through a Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that, by eliminating a little-used order type and making corresponding changes to the rules, the proposal will remove impediments to and perfect the mechanisms of a free and open market and add transparency and clarity to the Exchange's rules. The Exchange further believes that deleting corresponding references to a deleted order type also removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the orders types available for trading on the Exchange.

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. Specifically, the Exchange believes that the proposed rule change will relieve a burden on competition by following another options market in no longer offering a seldom used rule type. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 65873 (December 2, 2011); 76 FR 76786 (December 8, 2011) (SR–NASDAQ–2011–164).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

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, it has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(6)[8] 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–48 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEMKT–2014–48. 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 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–NYSEMKT–2014–48, and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13457 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72307; File No. SR–NSCC–2014–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Its Fee Schedule

June 4, 2014.

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 May 28, 2014, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Rules & Procedures (''Rules'') of NSCC to modify its fee schedule, as more fully described below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) Purpose

The purpose of the proposed rule changes is to revise NSCC's fee schedule (as listed in Addendum A of the Rules) in order to update the fees related to processing voluntary reorganizations, and to update the fees related to reporting certain Index Receipt Portfolio Composition Files.

NSCC has recently enhanced the system that applies corporate actions to Members' open failed positions within its Continuous Net Settlement (''CNS'') system (''CAD Enhancement'').[5] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Release No. 34–71725; File No. SR–NSCC–2014–03 (March 14, 2014), 79 FR 15780 (March 21, 2014).

connection with these enhancements, NSCC is proposing to charge a US $500.00 fee each time a Member submits instructions to place a ''protect'' on an open fail position in CNS in order to participate in an upcoming corporate action, or to add shares to a voluntary corporate action either on ''protect'' expiration date or, when there is no ''protect'' for that corporate action, on the expiration date of the corporate action (''Late Protect''). This fee will cover the costs incurred by NSCC to enhance its corporate action system to process Late Protects, and is intended to encourage Members to submit a ''protect'' by the earlier submission date. Under the Rules a lower fee of US $15.00 is charged if Members submit a ''protect'' instruction either on or prior to the business day prior to ''protect'' expiration date or, when there is no ''protect'' for that corporate action, on the business day prior to the expiration date of the corporate action.

NSCC is also proposing to update the fees for the enhanced Portfolio Composition File reports which contain information on the Index Receipt portfolios that the subscribing Member requests (''Subscription-Based Portfolio Composition File reports''). These reports are available as a machine readable output (''MRO'') file, as well as through a web-based interface from which Members may download and print reports. The existing fees for these reports are charged in relation to the number of portfolios received by the Member on an average daily basis per month.[6] Since NSCC introduced the Subscription-Based Portfolio Composition File reports it has been able to recover the costs of developing these reports earlier than it had expected. As a result, NSCC is proposing to reduce the fees for the Subscription-Based Portfolio Composition File reports, as reflected on Exhibit 5, to more accurately reflect the costs of delivering this service to subscribing Members. NSCC will also introduce a maximum and minimum monthly fee related to this service. The minimum monthly fee will cover the costs to NSCC of providing this service to Members on an on-going basis; however, as the number of units being reported increases over time with the growth of the market, NSCC will realize an economies of scale, which it will pass on to its Members by capping the monthly fees.

Implementation Timeframe

The implementation date of the fee change with respect to the Late Protect will coincide with the implementation date of the CAD Enhancement, and will be announced by an NSCC Important Notice. The fee change with respect to Subscription-Based Portfolio Composition File reports will be effective on June 2, 2014.

Proposed Rule Changes

NSCC proposes to amend Addendum A as marked on Exhibit 5 hereto. No other changes to the Rules are contemplated by this proposed rule change.

(ii) Statutory Basis

The proposed rule changes will be applied equitably to the NSCC Members that submit a Late Protect or that subscribe for the Subscription-Based Portfolio Composition File reports, respectively. The proposed fee for Late Protects is reasonable as it will cover the costs incurred by NSCC to enhance its corporate action system to process Late Protects, and is intended to encourage Members to submit a ''protect'' by the earlier submission date. Furthermore, the maximum and minimum monthly fees related to the Subscription-Based Portfolio Composition File reports will ensure that NSCC is able to charge fees that reflect the costs of providing this service, and will pass on to NSCC Members any economies of scale. Therefore, the proposed rule changes are each consistent with the requirements of the Securities Exchange Act of 1934, as amended (''Act'') and the rules and regulations thereunder applicable to NSCC, in particular Section 17A(b)(3)(D) of the Act, which requires that NSCC's Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule changes will have any impact, or impose any burden, on competition. As stated above, the proposed changes will be applied equitably to NSCC Members that use the respective services, and will not disproportionally impact any NSCC Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule changes have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[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 No. SR–NSCC–2014–06 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–NSCC–2014–06. 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

[6] *See* Release No. 34–69596; File No. SR–NSCC–2013–06 (May 16, 2013), 78 FR 30362 (May 22, 2013).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

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 NSCC and on its Web site (*http://www.dtcc.com*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NSCC–2014–06 and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13452 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72309; File No. SR–NYSEArca–2014–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Fees on Strategy Executions

June 4, 2014.

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 May 23, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') relating to fees on Strategy Executions. The Exchange proposes to implement the fee change effective June 1, 2014. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Exchange's Limit of Fees on Options Strategy Executions (''Strategy Cap'') to include Flexible Exchange Option (''FLEX'')[4] transactions executed as part of a qualifying Strategy Execution.

Currently, certain Strategy Executions are eligible to be capped at $750 per day in transaction fees, and further capped at $25,000 per month per initiating firm. Strategies eligible for the Strategy Cap involve reversals and conversions; box spreads; short stock interest spreads; merger spreads; and jelly rolls.[5] The Exchange, however, currently deems FLEX transactions ineligible for the Strategy Cap. OTP Holders and OTP Firms occasionally receive orders for eligible Strategy Executions where one or more legs is comprised of a FLEX trade. Because FLEX trade fees are not eligible to be capped as part of a Strategy Execution, the OTP Holders and OTP Firms lose business to other markets that include FLEX transactions in their own competing Strategy Cap.[6]

NYSE Arca proposes to allow fees from FLEX transactions that are part of an otherwise eligible Strategy Execution to be included in the Strategy Cap.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed inclusion of Strategy Executions that are comprised in whole or in part by FLEX transactions in the Strategy Cap to be reasonable as it will reduce the total transaction costs for these types of trades. In addition, the proposed fee change is reasonable because it is similar to the strategy caps available on other Exchanges.[9] The use of these Strategy Executions benefit all market participants by increasing liquidity in general and allowing significantly large business to be brought together to enhance price discovery. By encouraging this type of business on the Exchange, the increased liquidity benefits all market participants.

The Exchange also believes that the proposed inclusion of Strategy Executions that are comprised in whole or in part by FLEX transactions in the Strategy Cap is also not unfairly discriminatory, as Strategy Executions

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* NYSE Arca Rule 5.30(4) [sic] (defining Flexible Exchange Option as a ''customized options contract'').

[5] *See* NYSE Arca Options Fees and Charges, *available at, https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_arca_options_fee_schedule_for_4-1-14.pdf, n. 10,* defining the eligible Strategy Executions as follows:

(a) Reversals and Conversions. A ''reversal'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

(b) Box spread. A ''box spread'' is defined as transactions involving a long call option and a short put option at one strike, combined with a short call option and long put at a different strike, to create synthetic long and synthetic short stock positions, respectively.

(c) Short stock interest spread. A ''short stock interest spread'' is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

(d) Merger spread. A ''merger spread'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

(e) Jelly rolls. A ''jelly roll'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

[6] *See, e.g.,* NYSE Amex Options Fee Schedule, *available at, https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_for_2-3-14_0.pdf.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See supra* n. 6.

can be conducted by any OTP Holder or OTP Firm.

Finally, the Exchange believes that it is subject to significant competitive forces, including from options exchanges that do not exclude FLEX transactions from their strategy caps, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fee change reduces the burden on competition because it will allow OTP Holders and OTP Firms to compete for business by broadening the scope of eligible transactions to be included in the Strategy Cap, which change would bring the Strategy Cap in line with the strategy caps available on other options exchanges.[11]

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues, and providing a cap on Strategy Executions comprised in whole or in part by FLEX transactions in a manner consistent with other trading venues will encourage competition. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–62 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2014–62. 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 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–2014–62, and should be submitted on or before July 1, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–13454 Filed 6–9–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(8).

[11] *See supra* n. 6.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Prospect Ventures, Inc.; Order of Suspension of Trading

June 6, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Prospect Ventures, Inc. (''Prospect'') because of questions regarding the accuracy of assertions by Prospect to investors in public filings concerning, among other things, the company's beneficial ownership, assets, and operations. Prospect is a Nevada corporation based in Medellin, Colombia. Prospect's securities are quoted on OTC Link (formerly ''Pink Sheets'') operated by OTC Markets Group Inc., under the symbol IVAP.

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. EDT on June 6, 2014 through 11:59 p.m. EDT on June 19, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–13574 Filed 6–6–14; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Alternative Energy Partners, Inc. and SK3 Group, Inc; Order of Suspension of Trading

June 6, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alternative Energy Partners, Inc. because of questions concerning the accuracy and adequacy of publicly available information about the company, including, among other things, its business activities, the control of the company, and trading in its securities. Alternative Energy Partners, Inc. is a Florida corporation with a business address in Boca Raton, Florida and its common stock is quoted on OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc. (''OTC Link'') under the ticker symbol AEGY.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SK3 Group, Inc. because of questions concerning the accuracy and adequacy of publicly available information about the company, including, among other things, its business activities, the control of the company, and trading in its securities. SK3 Group, Inc. is a Delaware corporation with a business address in Los Angeles, California and its common stock is quoted on OTC Link under the ticker symbol SKTO.

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 companies.

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 companies is suspended for the period from 9:30 a.m. EDT on June 6, 2014, through 11:59 p.m. EDT on June 19, 2014.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–13573 Filed 6–6–14; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map; Notice for Merrill Field Airport, Anchorage, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Municipality of Anchorage, for Merrill Field Airport under the provisions of 49 U.S.C. 47501 et. seq (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is June 3, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Edelmann, Federal Aviation Administration, 222 W7th Ave. Suite 14, Anchorage, AK 99513, 907 271–5026, *mike.edelmann@faa.gov*

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Merrill Field Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''Part 150''), effective June 3, 2014. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the Municipality of Anchorage. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Existing Conditions NEM (2013), Forecast Conditions NEM (2018), narrative report titled Noise Exposure Map Update, Merrill Field Airport, including appendices. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on June 3, 2014.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration,
Alaskan Region,
Airports Division, AAL–600,
222 W7th Ave, Suite 14,
Anchorage, AK 99513,
Available for review 8 a.m. to 4 p.m. local time.

Municipality of Anchorage, Merrill Field Airport,
800 Merrill Field Drive,
Anchorage, AK 99501,
Available for review normal business hours.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Anchorage, AK, June 3, 2014.

Byron K. Huffman,

Alaskan Region Airports Division Manager, Anchorage, AK.

[FR Doc. 2014–13496 Filed 6–9–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2014–0014]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.):

Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 8, 2014 (79 FR 19413). No comments were received.

DATES: Comments must be submitted before July 10, 2014. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Office of Management Planning, (202) 366–0354.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (*OMB Number: 2132–0572*)

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Federal Transit Administration and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Below we provide the Federal Transit Administration's projected average estimates for the next three years:

Estimated Total Annual Burden: 581.8 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: June 3, 2014.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–13448 Filed 6–9–14; 8:45 am]

BILLING CODE;P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2014–0013]

Notice of Request for the Extension of a Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to renew the following information collection:

Bus Testing Program

This collection involves our Bus Testing Program. The information to be collected for the Bus Testing Program is necessary to ensure that buses have been tested at the Bus Testing Center for maintainability, reliability, safety, performance (including breaking performance), structural integrity, fuel economy, emissions, and noise.

DATES: Comments must be submitted before August 11, 2014.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Web site: www.regulations.gov*. Follow the instructions for submitting comments on the U.S. Government electronic docket site. (**Note:** The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting

electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

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 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to *www.regulations.gov*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.*

Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the 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 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Bus Testing Program—Mr. Gregory Rymarz, Office of Research, Demonstration and Innovation (202) 366–6410, or email: *gregory.rymarz@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Bus Testing Program.

OMB Control No.: 2132–0550.

Background: 49 U.S.C. 5323(c) provides that no Federal funds appropriated or made available after September 30, 1989, may be obligated or expended for the acquisition of a new bus model (including any model using alternative fuels) unless the bus has been tested at the Bus Testing Center in Altoona, Pennsylvania. 49 U.S.C. Section 5318(a) further specifies that each new bus model is to be tested for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The operator of the Bus Testing Center, the Larson Transportation Institute of the Penn State University (LTI), has entered into a cooperative agreement with FTA. LTI operates and maintains the Center, and establishes and collects fees for the testing of the vehicles at the facility. Upon completion of the testing of the vehicle at the Center, a test report is provided to the manufacturer of the new bus model. The bus manufacturer certifies to an FTA grantee that the bus the grantee is purchasing has been tested at the Center. Also, grantees about to purchase a bus use this report to assist them in making their purchasing decisions. LTI maintains a reference file for all the test reports which are made available to the public.

Respondents: Bus manufacturers and FTA grantees.

Estimated Annual Burden on Respondents: 28 partial testing determination requests at 1.71 hours each and 18 test requests at 9 hours each.

Estimated Total Annual Burden: 210 hours.

Frequency: On occasion.

Dated: June 3, 2014.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–13446 Filed 6–9–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2014–0015]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Federal Transit Administration invites public comment about our intention to request the Office of Management and Budget's (OMB) approval to renew the following information collection under the Paperwork Reduction Act (PRA) (*44 U.S.C. 3501* et. seq.):

Survey of FTA Stakeholders

The **Federal Register** Notice with a 60-day comment period soliciting comments was published on April 8, 2014 (79 FR 19414). No comments were received.

DATES: Comments must be submitted before July 10, 2014. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Office of Management Planning, (202) 366–0354.

SUPPLEMENTARY INFORMATION:

Title: Survey of FTA Stakeholders (*OMB Number: 2132–0564*).

Abstract: Executive Order 12862, ''Streamlining Service Delivery and Improving Customer Service,'' requires FTA to identify its stakeholders and address how the agency will provide services in a manner that seeks to streamline service delivery and improve the experience of its customers. The survey covered in this request will provide FTA with a means to gather data directly from its stakeholders. The information obtained from the survey will be used to assess how FTA's services are perceived by stakeholders, determine opportunities for improvement and establish goals to measure results. The survey will be limited to data collections that solicit voluntary opinions and will not involve information that is required by regulations.

Estimated Total Annual Burden: 1,200 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: June 3, 2014.

Matthew M. Crouch,

Associate Administrator for Administration.

[FR Doc. 2014–13447 Filed 6–9–14; 8:45 am]

BILLING CODE

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (STB) is publishing the annual inflation-adjusted index factors for 2013. These factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology insures that railroads are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent to which individual railroads must comply with STB reporting requirements.

The STB's annual inflation-adjusted factors are based on the annual average Railroad's Freight Price Index which is developed by the Bureau of Labor Statistics (BLS). The STB's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

STB Railroad Inflation-Adjusted Index and Deflator Factor Table

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09
2007	588.30	69.52
2008	656.78	62.28
2009	619.73	66.00
2010	652.29	62.71
2011	708.80	57.71
2012	740.61	55.23
2013	764.19	53.53

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million (1978 dollars) to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from $10 million (1978 dollars) to $20 million (1991 dollars).

Effective Date: January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar 202–245–0323. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339]

By the Board,

William F. Huneke,

Director, Office of Economics.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–13394 Filed 6–9–14; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, et al.

Integration of National Bank and Federal Savings Association Regulations: Licensing Rules; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 4, 5, 7, 14, 32, 34, 100, 116, 143, 144, 145, 146, 150, 152, 159, 160, 161, 162, 163, 174, 192, 193

[Docket ID OCC–2014–0007]

RIN 1557–AD80

Integration of National Bank and Federal Savings Association Regulations: Licensing Rules

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to integrate its rules relating to policies and procedures for corporate activities and transactions involving national banks and Federal savings associations, to revise some of these rules in order to eliminate unnecessary requirements consistent with safety and soundness, and to make other technical and conforming changes. The OCC also is proposing amendments to update its rules for agency organization and function.

DATES: Comments must be received on or before August 11, 2014.

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Paper mail in Washington, DC and at the OCC may be subject to delay, however, and the OCC encourages commenters to submit comments through the Federal eRulemaking Portal or by email. For comments submitted to the OCC, please use the title ''Integration of National Bank and Savings Association Regulations: Licensing Rules'' to facilitate the organization and distribution of these comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov,* enter ''Docket ID OCC–2014–0007'' in the Search Box, and click ''Search''. You can filter results by using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments. Alternatively, click on the ''Help'' tab on the site's home page to get information on using this site, including instructions for submitting public comments.
- *Email:* Submit comments at *regs.comments@occ.treas.gov.*
- *Paper Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: Include ''OCC'' as the agency name and ''Docket ID OCC–2014–0007'' in each comment. In general, the OCC will enter each comment received into the docket and publish each comment on the Regulations.gov Web site without change, including any business or personal information, name and address, email addresses, and phone numbers. Comments received, including attachments and other supporting material, are part of the public record and subject to public disclosure. Do not enclose any information in a comment or supporting material that is confidential or inappropriate for public disclosure.

You may review all comments received by the OCC and related materials by the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov,* enter ''Docket ID OCC–2014–0007'' in the Search box, and click ''Search''. Comments can be filtered using the filtering tools on the left side of the screen. Alternatively, click on the ''Help'' tab on the site's home page to get information on using this site, including instructions for viewing public comments, other supporting and related material, and the complete docket after the close of the comment period.
- *Viewing Comments in Person:* You may inspect and photocopy comments in person at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, you first must call (202) 649–6700 to make an appointment. Upon arrival at the OCC, you must present a valid government-issued photo identification and submit to a security screening.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Heidi Thomas, Special Counsel; Melissa Lisenbee, Law Clerk; or Stuart Feldstein, Director, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; or Kevin Corcoran, Assistant Director, or Richard Cleva, Senior Counsel, Bank Activities and Structure, (202) 649–5500, or Stephen Lybarger, Deputy Comptroller for Licensing, (202) 649–6319, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010), transferred to the OCC all functions of the former Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations. As a result, the OCC is now responsible for the ongoing examination, supervision, and regulation of Federal savings associations, in addition to national banks and Federal branches and agencies. With a few exceptions, the OCC has one set of rules applicable to national banks and another set of rules applicable to Federal savings associations, or, where appropriate, to all savings associations.[1] The OCC is now reviewing its rules to determine whether it is appropriate to integrate them into a single set of rules for both national banks and savings associations, taking into account consistency with the underlying statutes that apply to each type of institution. The key objectives of this review are to reduce regulatory duplication, promote fairness in supervision, eliminate unnecessary burden consistent with safety and soundness, and create efficiencies for both national banks and savings associations, as well as the OCC.[2] In

[1] Title III of the Dodd-Frank Act transferred the functions of the former OTS relating to state savings associations to the Federal Deposit Insurance Corporation (FDIC). Dodd-Frank Act, section 312(b)(2)(C), 12 U.S.C. 5412(b)(2)(C). The Act also transferred to the OCC the rulemaking authority of the OTS relating to all savings associations, both State and Federal, unless rulemaking authority is provided to another agency by a specific statute. *See* Dodd-Frank Act, section 312(b)(2)(B)(i)(II), 12 U.S.C. 5412(b)(2)(B)(i)(II). On July 21, 2011, the OCC issued an interim final rule and request for comments that restated the former OTS regulations as 12 CFR parts 100 through 197, with nomenclature and other technical changes. *See* 76 FR 48950 (Aug. 9, 2011). The FDIC has identified a number of independent bases for rulemaking authority for State savings associations in some cases. Where there is no such independent rulemaking authority, the FDIC will enforce applicable OCC regulations for State savings associations.

[2] Concurrent with our integration of national bank and Federal savings association rules, the OCC also is reviewing OTS-issued supervisory policies to integrate them into the OCC's policy framework and to rescind any issuances that are duplicative, outdated, or replaced by other supervisory guidance. Our goal is to produce uniform policies for national banks and Federal savings associations, while recognizing differences that exist in statute. This policy review is occurring in conjunction with this integration rulemaking project. Many OTS-issued supervisory policies already have been integrated, rescinded, or replaced by new or existing OCC guidance. We will update this policy guidance, as appropriate, to reflect the integration of OCC rules as of the effective date of the final rules. Until that time, the Dodd-Frank Act provides

addition, the OCC is in the latter stages of developing an electronic applications filing system capable of handling applications and other filings from both national banks and Federal savings associations. Accordingly, another important objective of this proposal is to complete the integration of our licensing rules expeditiously so that we can include these integrated rules in this new applications system.

Based on this review of our national bank and savings association rules, the OCC is proposing to integrate its rules relating to corporate activities and transactions involving national banks and Federal savings associations (licensing rules).[3] This integration would create, where possible, filing parity for all activities and transactions addressed in the OCC's licensing rules. The OCC believes that it is more equitable and efficient to have a single filing and review process for corporate activities and transactions of national banks and Federal savings associations.

II. Review Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996

The OCC also will be participating in an interagency review of regulations pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[4] EGRPRA requires the Federal Financial Institutions Examination Council (FFIEC) and the OCC, the FDIC, and the Board of Governors of the Federal Reserve System (Federal Reserve Board) (collectively, the Agencies) to conduct a review of all their regulations to identify outdated, unnecessary, or unduly burdensome regulations applicable to insured depository institutions. The FFIEC and the Agencies must conduct this review at least once every 10 years, and the next review must be completed by December 31, 2016. Over the next two years the OCC, FDIC and Federal Reserve Board will issue joint notices requesting comments on their rules pursuant to EGRPRA. The EGRPRA contemplates that the Agencies will initiate appropriate rulemakings to change or eliminate outdated, unnecessary, or unduly burdensome rules, as appropriate, based on the comments received.

The Agencies published the first EGRPRA notice on June 4, 2014.[5] This interagency notice requests comments on three categories of rules, including the Agencies' licensing rules. Thus, the timing of the OCC's licensing integration review and the EGRPRA review of licensing rules overlaps. To ensure that the OCC's final licensing rules take account of all comments we receive, the OCC will consider comments received on both this Notice of Proposed Rulemaking (NPRM) and this first EGRPRA notice when finalizing its licensing integration rule.

To minimize the potential for overlap and confusion going forward, and to afford the OCC the benefit of public comment through the EGRPRA process on potential ways to streamline and reduce burden for all of our rules, the OCC does not intend to publish further integration-specific proposals until the Agencies have completed the EGRPRA notice process. However, as has been the practice since the OCC assumed supervisory oversight of Federal savings associations, the OCC will continue to evaluate whether to integrate rules as they are otherwise revised (for example, as we did when amending the OCC's lending limits rules to conform to the Dodd-Frank Act).[6]

III. Overview of the Proposal

Part 5 sets forth the OCC's rules, policies and procedures for national bank corporate activities and transactions. Subpart A sets forth the generally applicable rules and procedures, while subparts B through D contain the rules for national bank initial activities, the expansion of activities, and other changes in activities and operations. Subpart E addresses a national bank's payment of dividends, and subpart F addresses Federal branches and agencies. The OCC's equivalent rules, policies and procedures for Federal savings associations are dispersed throughout parts 100–199, with the generally applicable rules and procedures in part 116. The OCC proposes to revise part 5 to include the rules applicable to Federal savings associations and, to the extent appropriate, to delete the corresponding provisions found in parts 100 through 199.

The proposal would consolidate most licensing provisions for Federal savings associations into the existing national bank rule in part 5 of the OCC's regulations and would eliminate parts 116, 146, 152, 159, 174 and the corresponding provision in parts 143, 144, 145, 150, 160, and 163. These combined rules would be as follows:

- Rules of general applicability (subpart A)
- Organizing a national bank or Federal savings association (§ 5.20)
- Conversion from a national bank or Federal savings association (§ 5.25)
- Fiduciary powers of national banks or Federal savings associations (§ 5.26)
- Business combinations involving a national bank or Federal savings association (§ 5.33)
- Bank service company investments of a national bank or Federal savings association (§ 5.35)
- Investment in national bank or Federal savings association premises (§ 5.37)
- Change in location of a main office of a national bank or home office of Federal savings association (§ 5.40)
- Corporate title of a national bank or Federal savings association (§ 5.42)
- Voluntary liquidation of a national bank or Federal savings association (§ 5.48)
- Change in control of a national bank or Federal savings association; reporting of stock loans (§ 5.50)
- Changes in directors and senior executive officers of a national bank or Federal savings association (§ 5.51)
- Change of address of national bank or Federal savings association (§ 5.52)
- Substantial asset change by a national bank or Federal savings association (§ 5.53)

In other cases, we propose separate rules for national banks and Federal savings association in part 5 because the rules do not apply to both charters, are better organized as separate rules, or because their differences and complexity make integration difficult. The new Federal savings association rules would be as follows:

- Federal mutual savings association charters and bylaws (§ 5.21)
- Federal stock savings association charters and bylaws (§ 5.22)
- Conversion to become a Federal savings association (§ 5.23)

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that all such OTS issuances continue in effect until modified, terminated, set aside, or superseded. *See* Dodd-Frank Act section 316(b)(2) (12 U.S.C. 5414(b)(2)); OCC Bulletins 2011–47 (Dec. 11, 2011), 2012–2 (Jan. 06, 2012), 2012–3 (Jan. 06, 2012), 2012–15 (May 17, 2012), and 2013–34 (Nov. 20); and *www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html.*

[3] The OCC previously has issued rulemakings that integrated, or proposed to integrate, its rules for national banks and Federal savings associations relating to lending limits, capital, flood insurance, and safety and soundness standards. *See* 78 FR 37930 (June 25, 2013); 78 FR 62018 (Oct. 11, 2013), 78 FR 65108 (October 30, 2013), and 79 FR 4282 (Jan. 27, 2014), respectively. Furthermore, the OCC recently issued a final rule that integrates its rules relating to consumer protection in insurance sales, Bank Secrecy Act compliance, management interlocks, appraisals, disclosure and reporting of Community Reinvestment Act (CRA)-related agreements, and the Fair Credit Reporting Act. *See* 79 FR 28393 (May 16, 2014). Because the OCC and the OTS adopted these rules on an interagency basis with other Federal regulators, the OCC did not make any substantive changes to these rules.

[4] 12 U.S.C. 3311.

[5] 79 FR 32172.

[6] *See* 78 FR 37930 (June 25, 2013).

- Establishment, acquisition, and relocation of a branch of a Federal savings association (§ 5.31)
- Operating subsidiaries of a Federal savings association (§ 5.38)
- Increases in permanent capital of a Federal savings association (§ 5.45)
- Capital distributions by a Federal savings association (§ 5.55)
- Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary (tier 2) capital (§ 5.56)
- Pass-through investments by a Federal savings association (§ 5.58)
- Service corporations of a Federal savings association (§ 5.59)

The remaining rules in part 5 would continue to be applicable only to national banks, with the exception of subpart E. (Subpart E applies only to Federal branches and agencies, and we do not propose to amend it in this proposal.) We propose to revise some of these rules to be consistent with the changes proposed for Federal savings associations, revise the titles of some of these rules to reflect the inclusion of rules applicable to Federal savings associations in part 5, and to make other technical changes. These national bank-only rules would be as follows:

- Establishment, acquisition, and relocation of a branch of a national bank (§ 5.30)
- Expedited procedures for certain reorganizations of a national bank (§ 5.32)
- Operating subsidiaries of a national bank (§ 5.34)
- Other equity investments by a national bank (§ 5.36)
- Financial subsidiaries of a national bank (§ 5.39)
- Changes in permanent capital of a national bank (§ 5.46)
- National bank subordinated debt as capital (§ 5.47)
- Conversion to become a national bank (§ 5.24)
- Payment of Dividends by National Banks, Subpart E

In addition to the placement and integration of Federal savings association rules, this proposal would make substantive changes to the OCC's licensing rules in order to eliminate unnecessary requirements or further the safe and sound operation of the institutions the OCC supervises. Furthermore, the proposal would make conforming and technical changes to the rules in parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings associations to part 5, to adjust section titles, and to conform cross-references. In particular, the OCC is proposing to replace, where appropriate, references to ''bank'' with ''national bank,'' the term that parallels ''Federal savings association.'' Finally, the proposal would amend the OCC's licensing rules to make consistent the OCC office to which a national bank or Federal savings association must file its notice or application. Specifically, the proposal would amend each rule in part 5 to direct such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as applicable, and, in clarifying amendments, would update the description of the OCC's supervisory structure in part 4.

A detailed description of each amendment in this NPRM is set forth below in Section IV of the preamble. Section V of the preamble summarizes the significant changes for national banks and Federal savings associations that would result from this NPRM. Section VIII of the preamble contains a redesignation table that indicates changes in the numbering of the rules as proposed. Sections V and VIII may be used as a quick-reference guide to our rulemaking and are intended to assist national banks and Federal savings associations, especially community institutions, in understanding the changes we propose.

IV. Description of the Proposed Rule

A. Part 4—District Offices (§ 4.5)

Part 4 comprises regulations on a range of topics, including regulations pertaining to the OCC's organizational structure. Section 4.4 describes the role of the OCC's Washington office. Section 4.5 describes the role of the OCC's district and field offices and sets forth the address of, and the geographical area covered by, each district office. However, § 4.4 and § 4.5 do not completely describe all of the OCC's supervisory offices. The OCC proposes to amend 12 CFR part 4 by restructuring 12 CFR 4.5 to reflect more accurately the current supervisory structure for national banks and Federal savings associations. Specifically, the proposal revises § 4.5 to include a description and address of the OCC's Midsize Bank Supervision program, and to provide that the district offices supervise community banks not otherwise supervised by the Washington office or Midsize Bank Supervision. The proposal also replaces the outdated reference to ''duty stations'' with the currently used ''field office satellite offices.''

B. Part 5—Rules, Policies, and Procedures for Corporate Activities Rules of General Applicability (Part 5, Subpart A)

Twelve CFR part 5, subpart A, and 12 CFR part 116 set forth the OCC's generally applicable rules and procedures for processing filings [7] related to corporate activities and transactions of national banks and Federal savings associations, respectively. Both sets of regulations include filing requirements and explain where and how to file. The OCC believes that it is more efficient to have a single filing process for national banks and Federal savings associations, where possible, and proposes to amend subpart A to apply to both sets of institutions and to remove part 116. The OCC also proposes additional substantive and technical subpart A changes, as explained below.

§ 5.2 Rules of General Applicability. Current rules differ with respect to the scope and applicability of the generally applicable licensing procedures for national banks and Federal savings associations. The national bank rule at 12 CFR 5.2(a) states that the subpart A procedures apply to all part 5 filings, unless otherwise stated.[8] Section 5.2(b) states that the OCC may adopt materially different procedures if it provides notice to affected parties. In contrast, the Federal savings association rule at § 116.1 states that the part 116 prefiling and filing procedures and the rules on OCC review apply to all required filings related to Federal savings associations, but that the publication requirements and the comment and meeting procedures apply only when an OCC regulation specifically incorporates these procedures or the OCC otherwise requires. Section 116.1(b) also specifies that part 116 does not apply to filings related to transactions under sections 13(c) or (k) of the Federal Deposit Insurance Act (FDI Act); [9] certain final agency action requests; certain requests related to litigation, enforcement proceedings, or supervisory directives or agreements; or applications filed

[7] Current rules use slightly different terminology for national banks and Federal savings associations. Under 12 CFR 5.3(i), a ''filing'' is an application or notice submitted under part 5. Twelve CFR 116.1(a) uses the word ''application'' to mean an application, notice or filing related to a Federal savings association. In this preamble, when it is not necessary to distinguish among the three, we use the word ''filing'' to refer to an application, notice, or filing.

[8] Certain substantive activity or transaction rules in part 5 specify that one or more of the procedures in subpart A do not apply. In some cases, the rule specifies other procedures.

[9] 12 U.S.C. 1823(c) and (k).

under an OCC regulation that prescribes other application processing procedures and time frames.

As proposed, all subpart A procedures would apply to all part 5 OCC filings, unless the substantive rule specifically exempts the filing or the OCC states otherwise. This change would create filing parity for all national banks and Federal savings association activities and transactions addressed in proposed part 5. The effect of this change on a specific activity or transaction is discussed below, in the context of that activity or transaction.

Section 5.2(c) also states that the Comptroller's Licensing Manual (Manual) provides additional filing information and is available on-line and, for a fee, in print. The OCC proposes to revise this provision to state only that the Manual is available on-line. This proposed revision reflects the OCC's decision to stop printing the Manual in hard copy, in order to reduce paper consumption and to ensure that the public receives only the most up-to-date information. The OCC also is in the process of updating the Manual, as well as filing forms, to contain information on both national bank and Federal savings association filings. As indicated earlier in this preamble discussion, we also anticipate updating our electronic filing system so that a single system can receive filings from both national banks and Federal savings associations.

Finally, § 5.2(d) states that the OCC may permit electronic filing for any class of filings. In order to reflect the agency's move toward the more efficient and less costly electronic filings, we propose to revise this provision to state that the OCC encourages all filings to be made electronically.

§ 5.3 Definitions. Section 5.3 contains definitions of terms used throughout part 5. The OCC is proposing amendments to this section as part of the proposal to address both national bank and Federal savings association filings in part 5. For example, we propose to amend the definition of ''capital and surplus'' to include reference to Federal savings associations.[10]

The OCC also proposes to amend the § 5.3 definition of ''eligible bank'' to add ''eligible savings associations.'' Currently, an ''eligible bank'' is a national bank that (1) is well capitalized under the OCC's Prompt Corrective Action (PCA) regulations, (2) has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS), (3) has an ''Outstanding'' or ''Satisfactory'' CRA rating, and (4) is not subject to a cease and desist order, consent order, formal written agreement, or PCA directive, or, if it is, the OCC has informed the bank that it may nonetheless be treated as an ''eligible bank.'' Under certain of the substantive activity or transaction rules in part 5, an eligible bank may receive expedited review of a filing in the manner set out in the rule. Section 5.13(a)(2) sets out additional information about the expedited review process.

Part 116 also has an expedited review process for certain filings. Specifically, § 116.5 provides that a Federal savings association filing will receive expedited treatment unless: (1) It has a composite or compliance rating below 2 or a CRA rating of Needs to Improve or Substantial Noncompliance, (2) it fails any part 3 or 167 capital requirement, as applicable, and has been notified that it is in troubled condition,[11] (3) it does not have a composite, compliance, or CRA rating, or (4) the applicable regulation does not specifically state that expedited treatment is available.

The OCC proposes to amend § 5.3 by defining ''eligible bank or eligible savings association'' (instead of ''eligible bank'') and by adding an OCC compliance rating of 1 or 2 to the eligibility requirements for all institutions. This proposal will create parity for all OCC filings with respect to the criteria that a filing must satisfy to receive expedited processing. Furthermore, because some limited purpose banks, such as trust banks, are not subject to the CRA, the proposal also would clarify that the CRA rating component applies only if the CRA is applicable to the institution.

The addition of the OCC compliance rating would be a change for national banks, but not for Federal savings associations. The OCC believes that a bank's compliance with statutes and regulations, particularly consumer-related laws, should be a factor imposed by regulation in determining whether a bank may qualify for expedited treatment. Furthermore, as explained in greater detail below, because § 5.13(a)(2) permits the OCC to remove a filing from expedited review if it raises certain issues, including compliance concerns,[12] this proposal would not be a significant change for national banks and would in fact provide more certainty regarding their eligibility for expedited review.

With respect to Federal savings associations, the proposal may result in changes for some filings because the criteria in §§ 5.3 and 116.5 are not identical. Under the current rules, the two tests are similar in that they both require a composite CAMELS rating of 1 or 2 and a CRA rating of outstanding or satisfactory. In addition, if an institution has not received a rating, it is not eligible for expedited treatment under either set of current rules and would remain ineligible under the proposed rule. However, there are some differences. The first difference involves the capital requirement. Under the current savings association rule, both well and adequately capitalized institutions are eligible for expedited treatment. Under the proposal, only savings associations that are well capitalized would qualify for expedited review. The OCC proposes to apply the well capitalized requirement to savings associations because, in the OCC's experience, national banks and Federal savings associations that are less than well capitalized are more likely than other institutions to present supervisory concerns such that expedited review is not necessarily appropriate. This requirement may exclude some savings associations that qualify for expedited treatment under the current rule.

A second difference involves the supervisory condition of the savings association. Under the current savings association rule, the institution must not have been notified it is in troubled condition, while under the proposal, an eligible savings association must not be subject to certain orders, agreements or directives. Although different, these supervisory condition tests generally should have similar outcomes.

The OCC also proposes to amend the definition of ''eligible depository institution'' to address the fact that either a national bank or a Federal savings association may enter into a transaction with an eligible depository institution, consistent with the changes proposed to 12 CFR 5.33 and discussed elsewhere in this rulemaking.

Another proposed change is to the § 5.3 definition of ''notice.'' Section 5.3 defines a notice as a submission informing the OCC that a national bank intends to engage in or has commenced certain corporate activities or

[10] We note that the OCC issued a final rule on October 11, 2013 that, among other things, integrates the OCC's national bank and Federal savings association capital rules. This integration has a two-tier effective date, with the integration complete for all savings associations on January 1, 2015. *See* 78 FR 62018. The OCC issued an interim final rule on February 28, 2014 that amends the OCC's rules, including part 5, to reflect this integration. 79 FR 11300.

[11] ''Troubled condition'' is currently defined at 12 CFR 163.555.

[12] In addition, § 5.2(b) provides the OCC with the authority to make exceptions for particular filings, where appropriate.

transactions. Under § 5.3, an ''application'' is a submission requesting prior OCC approval to engage in various corporate activities and transactions. The two definitions suggest that a ''notice'' does not require OCC approval. However, the rules use the term ''notice'' in several different ways. In some rules, a ''notice'' is the same as an application in that the filer must obtain prior OCC approval before engaging in the activity or transaction. In other rules, a ''notice'' is similar to an application in that, while the OCC does not ''approve'' the filing, the OCC may disapprove it. In still other rules, the notice only informs the OCC that the filer intends to engage in or has engaged in a transaction. The OCC may review the notice, but there is no requirement of prior OCC approval. Some of the latter notices can be filed after-the-fact. We propose to add provisions to § 5.3(j) to clarify the scope of ''notice,'' as well as adding Federal savings associations to § 5.3(j).

The OCC also proposes to strike the § 5.3 definition of ''appropriate district office'' and, instead, to define ''appropriate OCC licensing office'' as described at OCC.gov and ''appropriate OCC supervisory office'' as described in subpart A of 12 CFR part 4. This change will eliminate confusion caused by the current definition with respect to where a filing should be made. Conforming changes are proposed throughout part 5.

Another proposed change is to the current definition of ''short-distance relocation,'' a term that is used in current national bank branch and main office relocations regulations.[13] The OCC proposes to amend this definition to reference both national bank main office relocations and Federal savings association home office relocations, consistent with the changes proposed in 12 CFR 5.40 and discussed elsewhere in this rulemaking.[14]

The current ''short-distance relocation'' definition also references whether a branch is located within a ''central city of a MSA (metropolitan statistical area).'' The Office of Management and Budget (OMB), which designates MSAs, uses the term ''principal city'' in describing MSAs.[15] The OCC proposes to amend its current rule to use the term ''principal city,'' thereby bringing the rule into conformity with the MSA terminology used by OMB. In addition, we propose to strike the § 5.3 definition of ''central city'' and add a definition of ''principal city.'' ''Principal city'' will be defined as an area designated as such by OMB. These changes have no material effect. Under this proposal, this definition will apply to Federal savings associations without any other change to the current regulatory language. The current Federal savings association regulation uses the term ''principal city.''

Under this proposal, other definitions also will apply to Federal savings association filings without any language changes. These include the definitions of ''applicant,'' ''application,'' ''depository institution,'' and ''filing.'' Other non-substantive and technical changes are proposed to § 5.3. As noted above, the effect, if any, of a proposed § 5.3 change is discussed in the context of the substantive provision at issue.

§ 5.4 Filing required. Section 5.4(a) directs a depository institution to file an application or notice with the OCC to engage in national bank activities and transactions described in part 5. As a result of the other proposed changes to part 5, this directive would apply to Federal savings associations with respect to part 5 transactions and activities. No change is needed to the regulatory language in § 5.4 to achieve this result.

Section 5.4(b) states that forms and instructions for filings are available in the Manual or from an OCC district office. The OCC proposes to revise this section to reflect the fact that the Manual is now available only on-line. As noted above, the OCC will be updating this Manual and it will contain information on both national bank and Federal savings association filings.

Section 5.4(c) states that, at a filer's request, the OCC may accept another agency's form or filing if it contains substantially the same information required by the OCC. Section 116.25(c), which allows the OCC to waive certain filing requirements, has been used for this same purpose with respect to Federal savings association filings. Under proposed § 5.4(c), this option will remain available for both national banks and Federal savings associations with no changes to the regulatory text.

Section 5.4(d) directs a filer to submit a filing or other submission to the OCC's Director for District Licensing at the appropriate district office, unless directed otherwise in a pre-filing communication. For Federal savings associations, § 116.40(a) directs filings to the Director for District Licensing at the appropriate OCC licensing office or the OCC licensing office at OCC headquarters. In addition, under § 116.40(b), if a filing involves significant issues of law or policy, or if the applicable regulation or form so directs, the applicant must also file copies at the OCC headquarters licensing office.

As proposed, § 5.4(d) directs that part 5 filings and related submissions be addressed to the appropriate OCC licensing or appropriate OCC supervisory office (unless the OCC advises otherwise through a pre-filing communication) and states that the relevant addresses are on the OCC's Internet Web page, *www.OCC.gov.*

Furthermore, the OCC's current rules do not specify the number of copies of a filing that must be provided to the OCC. This information generally is stated on the form itself or in the Manual. In contrast, § 116.40(a) states that Federal savings association filers must submit to the appropriate licensing office or the OCC licensing office at headquarters the original form plus the number of copies specified on the application. If none is specified, § 116.40(a) directs applicants to submit the original plus two copies. The OCC is removing this requirement and, instead, directs Federal savings association filers to consult the appropriate form and the Manual for information on the number of required copies.

Section 5.4(e) permits an applicant to incorporate by reference relevant, current information contained in another OCC application or filing, provided that the material (1) is attached to the application, (2) is current, and (3) is responsive to the requested information. The filing must clearly indicate that the information is incorporated and include a cross-reference to the incorporated information. With respect to Federal savings association filings, § 116.25(c), which allows the OCC to waive certain filing requirements, is currently used to allow incorporation by reference. Moreover, the Federal savings association filing forms themselves typically provide for incorporating by reference other documents. As proposed, § 5.4(e) would apply to all filings with the OCC, without any change to the regulatory language and with no material change to affected institutions or persons.

Finally, § 116.15(b)(2) encourages all applicants to contact the appropriate OCC licensing office to determine whether the applicant must attend a prefiling meeting or whether the submission of a draft business plan or other information would expedite the application review process. Section 116.20 describes the required contents

[13] *See* 12 CFR 5.30(h)(2) and 12 CFR 5.40(d)(5)(ii), respectively.

[14] As explained in the discussion of the proposed changes to 12 CFR 5.40, the Federal savings association home office is the equivalent of a national bank main office.

[15] *See, e.g., www.ffiec.gov/Geocode/help1.aspx* (referencing MSAs and principal cities).

of a draft business plan.[16] In contrast, part 5, subpart A does not include rules on prefiling meetings, although specific activity or transaction rules may address these meetings,[17] and the OCC may request such a meeting on a case-by-case basis under § 5.2(b). Subpart A also does not address the submission of business plans to the OCC.

The OCC has found that prefiling meetings, as well as the submission of business plans or other information before such meetings, often result in a more efficient review process. In order to highlight this opportunity, the OCC proposes to revise subpart A by adding a new § 5.4(f) that encourages application filers to contact the OCC to determine the need for a prefiling meeting, regardless of whether a prefiling meeting is specifically required by another regulation. This new provision also states that the OCC will decide on a case-by-case basis whether a meeting is necessary and states that the prior submission of a draft business plan or other relevant information may expedite the process. Unlike part 116, however, the proposal does not specify what must be included in a draft business plan because the OCC does not believe that this level of detail is necessary in regulatory text. The proposed rule does note, however, that information on model business plans can be found in the Manual.

§ 5.5 Filing fees. Section § 5.5 states that an applicant shall submit filing fees in the form of a check made payable to the OCC. The rule also states that the OCC publishes a fee schedule annually and does not generally refund filing fees. Section 116.45(a)(3) addresses the payment of Federal savings association filings fees, directing applicants to submit fees to the appropriate OCC licensing office and permitting fees to be paid by check, money order, cashier's check, or wire transfer.

Under this proposal, § 5.5 will apply to all fees paid to the OCC and will be revised to state that fees may be paid by check, money order, cashier's check, or wire transfer. This statement is consistent with both the current Federal savings association rule and the OCC's ability to accept these forms of payment from all filers. The section also will state that additional filing fee information, including where to submit the fee, can be found in the Manual. Finally, as a technical amendment, the OCC proposes to remove the word ''annually'' from the § 5.5 description of when it publishes a fee schedule, to clarify that, as stated in 12 CFR 8.8, the OCC may publish an interim or amended filing fee schedule, in addition to its annual publication.

§ 5.7 Investigations. Section 5.7 states that the OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision. Section 116.230 has a somewhat narrower scope and time frame, providing that the OCC may conduct an eligibility examination at any time before it deems an application complete. As proposed, § 5.7 would apply to all filings received by the OCC, including those related to Federal savings associations, because the OCC believes that the more flexible approach in § 5.7 is preferable.

Section 5.7 also states that, as described in 12 CFR 8.6, the OCC has the authority to assess fees for special examinations and investigations. Section 8.6 is currently applicable to both national banks and Federal savings associations and related filings, as a result of the July 21, 2011 final rule,[18] discussed above. As a result, the application of § 5.7 under this proposal to Federal savings association filings will be a technical change only.

§ 5.8 Public notice. Under § 5.8(a), on the date of filing or as soon as practicable before or after filing, a national bank applicant shall publish a public notice in a general circulation newspaper in the community in which the applicant proposes to engage in business. The rules do not specify the language in which the notice must be published.

Under § 116.60, a Federal savings association applicant shall publish notice no earlier than seven days before and no later than the date of the filing. Under § 116.80, this notice must be published in an English-language newspaper unless the OCC determines that the primary language of a significant number of adult residents of the community is not English, in which case the agency may require the applicant simultaneously to publish one or more additional notices in the appropriate language or languages.

Under this proposal, § 5.8(a) would apply to all applicants. As a result, Federal savings associations would no longer have to publish a public notice within the seven days before the filing date but may publish as soon as practicable before or after filing, unless otherwise required.[19] This change would provide Federal savings association filers with the same flexibility that national bank filers have with respect to when to publish a public notice while still providing the public with timely notice.

In addition, the OCC proposes to add to § 5.8(a) the requirements in § 116.80 that notices must be published in English and, if the OCC determines it is necessary, also in other languages. As a result, national bank filers would be required to publish their notices in English and may be required simultaneously to publish in languages other than English, as is currently the case for Federal savings associations. This change will further ensure that interested persons have meaningful access to the § 5.8(a) notice.

Section 5.8(b) now states that a public notice must include: (1) A statement that a filing is being made, (2) the date of the filing, (3) the applicant's name, (4) the subject matter of the filing, (5) a statement that the public may submit comments to the OCC and where such comments should be sent, (6) the comment period closing date, and (7) any other information that the OCC requires. Section § 116.55 requires that similar, but not identical, information be included in a public notice.

The OCC proposes to revise § 5.8(b) to include Federal savings associations and to add some requirements to the notice included in § 116.55. As a result, in addition to what § 5.8(b) currently requires, a public notice related to a national bank filing also would be required to include (1) the name of the institution that is the subject of the filing, (2) a statement that the public portion of the filing is available on request, and (3) the address of the applicant. The public notice also would need to state that the public may submit comments to the appropriate OCC *licensing* office and provide the address of this office. A public notice related to a Federal savings association filing, in addition to the information currently required under § 116.55, also would need to include a specific statement that a filing is being made and the date of the filing. The OCC believes that proposed § 5.8(b) would provide the public with the full range of helpful information and treat all part 5 filings consistently, while requiring negligible additional work from filers. We also propose other minor technical changes to § 5.8(b).

[16] Certain Federal savings association activity and transaction rules also address these meetings. *See, e.g.,* 12 CFR 116.15(a)(1) (discussing prefiling meetings when organizing a Federal savings association).

[17] *See, e.g.,* 12 CFR 5.20(i) (discussing prefiling meetings when organizing a national bank); 12 CFR 5.24(d)(2) (discussing prefiling meetings when converting to a national bank); and 12 CFR 116.15(a)(1) (discussing prefiling meetings when organizing a Federal savings association).

[18] 76 FR 43549.

[19] Certain activities and transactions are exempt from the § 5.8 notice requirements and subject to other notice requirements. *See, e.g.,* 12 CFR 5.50(g) (notice of change in bank control).

Section 5.8(c) currently requires a filer to confirm that the § 5.8(a) notice has been published by delivering to the OCC a statement of the date of publication, the name and address of the paper in which notice was published, and a copy of the notice. Federal savings association filers are required to do the same, although this requirement is set forth on the application itself and not included in the regulatory text. The OCC proposes to apply § 5.8(c) to both national bank and Federal savings association filings pursuant to part 5.

Section 5.8(d) currently states that the OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the filer shall explain in the notice how the transactions are related. Although this is not specifically permitted under part 116, it has been an accepted practice for Federal savings association filings. Under this rulemaking, both national banks and Federal savings associations may continue to engage in this practice, which eliminates unnecessary publications while ensuring that the public's need for notice is met.

Under § 5.8(e), upon the request of an applicant for a transaction subject to a public notice requirement of both the OCC and another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency. For example, a merger filing where there is an application to the OCC for approval of the merger and a filing with the FDIC for approval under the Bank Merger Act when the merger is between an insured national bank and an entity that is not FDIC-insured. Although there is no specific part 116 provision addressing this practice, the OCC has permitted such joint notices for Federal savings associations. As part of the integration of Federal savings associations into part 5, the OCC also will accept joint public notices for both national bank and Federal savings association transaction or activity applications. This provision would benefit filers and serve the public's needs.

Section 5.8(f) allows the OCC to require or give public notice and request comment on any filing and in any manner that it determines is appropriate for a particular filing. There is no specific equivalent to this provision in part 116. As part of this proposal, this provision would apply to both national banks and Federal savings association filings, allowing the OCC to ensure that the notice provided to the public is appropriate for each filing.

Finally, § 116.240(b) provides that, prior to the end of the applicable review period, if the OCC determines that an issue of law or change in circumstances has arisen that will substantially affect an application, it may require an applicant to publish, among other things, a new public notice. Although no specific national bank rule provides for this result, the OCC has a similar practice for national bank filings. In order to codify and clarify this practice, the OCC proposes to add a new § 5.8(g) that states that the OCC, at its discretion, may require an applicant to publish a new public notice if (1) the applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances arises after a filing, or (3) the agency determines that a new public notice is appropriate. This provision does not represent a material change for either national bank or Federal savings association filers.

§ 5.9 Public availability. Section 5.9 addresses both access to the public portion of a filing and the confidential treatment that may be provided to certain information in a filing. Specifically, § 5.9(a) states that the OCC will provide a copy of the public portion of a *pending* filing in response to a written request made to the appropriate district office. A person may submit a written request to the OCC's Communication's Division for a copy of the public portion of a *decided* or *closed* application. In either case, the OCC may impose a fee for the copy. Section 5.9(b) explains that a public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons to the extent that these items have not been afforded confidential treatment.

Section 5.9(c) addresses the confidential treatment of information included in a filing, explaining both that an applicant and an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and how to make this request. The provision also states that if the OCC does not consider the information to be confidential, the agency may include that information in the public portion of a filing after providing notice to the submitter. It also permits the OCC to determine, on its own initiative, that certain information should be treated as confidential and to withhold that information from the public file.

Section 116.35 addresses the public and confidential aspects of a Federal savings association filing. Paragraph (a) states that the OCC generally makes part 116 submissions available to the public but may keep portions confidential. Section 116.35(b) provides that an applicant may request confidential treatment of certain portions of a filing and explains specifically how to make this request. It also states that the OCC will not treat as confidential the portion of a filing that describes how an applicant plans to meet its CRA objectives and notes that the agency will advise an applicant before it makes information designated as confidential available to the public.

Under this proposal, § 5.9 would apply to all filings made pursuant to part 5, as revised. This revision is not intended to result in material changes for either national bank or Federal savings association filings. It should be noted that although § 5.9 does not explicitly address the OCC's treatment of filing information about how a filer plans to meet its CRA objectives, the OCC does not treat this information as confidential. The proposal contains other minor changes to §§ 5.9(a) and (c), including which OCC office a request should be submitted either to obtain the public portion of a decided or closed application or to withhold information from a public file.

§ 5.10 Comments. Section 5.10(a) provides that during the comment period, any person may submit a comment to the appropriate district office. Section 5.10(b)(1) provides that, unless otherwise stated, the comment period runs for 30 days after publication of the § 5.8(a) public notice. Under § 5.10(b)(2), the OCC may extend the comment period if an applicant either fails to file in a timely manner all required publicly available information or makes a request for confidential treatment that is not granted by the OCC and that delays the public availability of information. The comment period also may be extended to develop factual information needed to consider the application or if the OCC determines that other extenuating circumstances exist. In addition, the rule provides that the OCC may give an applicant an opportunity to respond to comments received during the comment period.

The Federal savings association rules are much more detailed, particularly with respect to application comments. Section 116.110 provides that any person may comment on a filing and § 116.120(a) states that a comment

should include all relevant facts supporting the commenter's position. It further provides that a comment should address at least one reason why the OCC may deny the application under relevant law, recite facts and data supporting these reasons, and discuss how the approval could harm the commenter or any community. Under § 116.120(b), any request for a meeting must be included with the comment. Section 116.130 states that a commenter must file with the appropriate OCC licensing office and further directs that a copy of any written comment shall simultaneously be provided to the applicant. Under § 116.140, a commenter must file a comment within 30 days after publication of the initial public notice and further states that the OCC may consider later filed comments if the comment will assist in the disposition of the application.

The OCC has found that the less detailed and prescriptive approach in the current part 5 rules works well for both filers and the public and proposes to apply § 5.10 to all filings received by the OCC, with one clarification. This application would result in two changes with respect to Federal savings association filings. First, the proposal does not specify what information should be included in a comment. Second, a commenter on a Federal savings association filing would not be required to provide a copy of the comment to the Federal savings association. Instead, the Federal savings association would obtain a copy of the public portion of any comment from the OCC. The proposal would clarify that comments relating to either a national bank or a Federal savings association should be submitted to the appropriate OCC licensing office, as provided in the current Federal savings association rule.

As both sets of current rules include a 30-day comment period that begins when the public notice is published, the proposal generally does not affect the length of the comment period. In addition, although neither current nor proposed § 5.10(b) expressly states that the OCC can consider late-filed comments, as is stated in § 116.140, the OCC's practice generally has been to consider all comments, including late-filed comments.

The OCC proposes other changes to § 5.10 that would affect both national banks and Federal savings associations. First, as revised, § 5.10(b)(1) would provide that the OCC may require a new comment period of up to 30 days if a new public notice is required under proposed § 5.8(g). This change is necessary to provide interested parties with an opportunity to comment when a new notice is published, which, as explained in the discussion of proposed § 5.8(g), may be required in certain circumstances. Finally, a minor change is proposed to § 5.10(b)(2) to clarify that the OCC can extend any comment period, either an original or a new comment period.

§ 5.11 Hearings and other meetings. Pursuant to § 5.11(a), any person can request a hearing on a filing by submitting to the appropriate district office a description of the issues or facts to be presented and explaining why a written submission is not adequate. The requestor must simultaneously provide the request to the applicant. As noted above, under § 116.120(b), a request for a meeting must be included in a comment and explain why written submissions are insufficient. Also under § 116.130, this comment and hearing request must be filed with the appropriate OCC licensing office, with a copy to the applicant.

As proposed, § 5.11(a) would apply to all OCC hearing requests. Therefore, a person seeking a hearing on a filing pertaining to a Federal savings association would no longer be required to request a hearing as part of a comment submission, and a hearing request would be submitted to the appropriate OCC office. This revision would provide added flexibility to those requesting hearings related to Federal savings association filings.

Section 5.11(b) states that the OCC may grant or deny a hearing request, limit the issues to those it deems relevant or material, and order a hearing in the public's interest. Under § 5.11(c), if the OCC denies a hearing request, the agency will notify the requestor of the reason for the denial. Sections 116.170(a) and (b) are substantively the same as §§ 5.11(b) and (c). Under this proposal, §§ 5.11(b) and (c) would apply to all hearings with no substantive change for affected parties.

Section § 5.11(d) describes the OCC's pre-hearing procedures. Specifically, under § 5.11(d)(1), if the OCC decides to hold a hearing, it sends a Notice of Hearing to the applicant, the person requesting the hearing, and anyone else who requests a copy. The Notice states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed at the hearing. Section 5.11(d)(2) states that the OCC appoints a presiding officer to conduct a hearing.

There are no equivalent provisions in the Federal savings association regulations. Instead, § 116.170(a) states that the OCC may either grant a meeting request or hold one on its own initiative, and it may limit the issues considered at a meeting to those it deems relevant or material. Under this proposal, § 5.11(d)(1) will apply to all part 5 OCC hearings and all interested persons will receive a Notice of Hearing when a hearing is scheduled. This revision ensures that all interested parties are notified of an upcoming hearing. The OCC also proposes to amend § 5.11(d)(1) to state, as in § 116.170(a), that the agency may limit the issues considered at a hearing to those it determines are relevant or material.

Section 5.11(e) states that a person who wishes to appear at a hearing shall notify the appropriate district office within 10 days of when the OCC issues a Notice of Hearing. It also requires, at least five days before the hearing, that each participant submit the names of witnesses and one copy of each exhibit to be presented, to the OCC, the applicant, and any other person the OCC requires. There are no equivalent rules in the Federal savings association regulations. As proposed, § 5.11(e) would be applicable to all persons who wish to appear at an OCC hearing. Section 5.11(e) allows the OCC and other persons to prepare for a hearing and yields a more efficient and productive hearing.

Section 5.11(f) explains that the OCC arranges for a hearing transcript and states that the person requesting a hearing generally bears the cost of one copy of the transcript. There is no equivalent part 116 provision. The OCC proposes to apply this provision to all OCC hearings and also to replace the ''generally bears'' phrase with ''may be required to bear.'' This change reflects the fact that the OCC generally has not passed this cost onto a hearing requestor but, in certain cases, may find it appropriate to do so. Although this is a technical change with respect to national bank filers, a person requesting a hearing on a filing pertaining to a Federal savings association should be aware that, under this proposal, a hearing transcript will be prepared and that the requestor may be required to pay its cost.

Section 5.11(g) explains how a part 5 hearing is conducted, providing generally that the applicant and participants may make opening statements and present witnesses, material, and data. It also requires a copy of any documentary material to be provided to the OCC, the applicant, and each participant. In contrast, the § 116.180 procedures for Federal savings association hearings provide that the OCC may conduct a meeting in any format, including telephone conferences, face-to-face meetings, or

formal meeting. In addition, both §§ 5.11(g) and 116.180 provide that the Administrative Procedure Act, the Federal Rules of Evidence, the Federal Rules of Civil Procedure, and the OCC's relevant rules of practice and procedure (12 CFR part 19 and part 109, respectively) do not apply to these hearings.

Under this proposal, § 5.11(g) would apply to all subpart A hearings. As a result, all applicants and hearing participants may be permitted to make opening statements and to present witnesses, material, and data. Any person presenting documentary material at a hearing must furnish a copy to the OCC, the applicant, and each participant.

The OCC also proposes to add a new paragraph § 5.11(g)(4), stating that the OCC may conduct a meeting in any format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting. This new provision, which mirrors § 116.180(a), is not a change to what is permissible for the OCC, but rather highlights the options available to the agency.

Under § 5.11(h), at an applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following its receipt of the hearing transcript. The agency resumes processing the filing after the record closes. Section 116.190 states that if the OCC conducts a meeting, it may suspend the applicable filing time frames. If suspended, the time period will resume when the OCC determines that the record has been sufficiently developed to support a determination on the issue(s) considered at the meeting.

Under this proposal, § 5.11(h) will apply with respect to all filings on which a hearing is held. As a result, all applicants, commenters, and other interested persons should be aware that the hearing record may be kept open for up to 14 days following receipt of the transcript, after which the OCC will resume processing the filing. The OCC believes that the public and affected parties benefit from knowing how long the record will remain open, following a hearing.

Finally, § 5.11(i) addresses meetings other than hearings that the OCC may hold in connection with an application. Section 5.11(i)(1) states that the OCC may hold a public meeting, either in response to a written request received during the comment period or on its own initiative. These public meetings are arranged and presided over by a presiding officer. Alternatively, under § 5.11(i)(2), the OCC may arrange a private meeting with an applicant or other interested parties to clarify and narrow the issues and to facilitate the resolution of the issues. As noted above, § 116.180 states that the OCC may conduct meetings related to Federal savings association filings in any format.

Under this proposal, § 5.11(i) would apply to all applications received by the OCC and does not represent a change from what is currently permitted for filings related to Federal savings associations. In addition, the OCC proposes to add paragraph (i)(3) to § 5.11, stating that the OCC may limit the issues considered at a meeting to those it determines to be relevant or material. This provision is substantively the same as the provision the agency proposes to add to § 5.11(d) (regarding hearings) and permits the agency to ensure that meetings are meaningful and efficient. The OCC also proposes minor, clarifying changes to § 5.11(i).

Section 116.185 states that the OCC will not approve or deny an application at a meeting. Although no similar language is included in either current or proposed § 5.11, it is the OCC's practice not to decide on applications at hearings or other meetings. While hearings and meetings provide an opportunity for interested persons to share information with the OCC, the OCC considers information obtained at a hearing together with other materials and information pertaining to the application, before rendering a decision. Decisions on filings are discussed in greater detail below.

In addition, § 116.190 explains that if the OCC decides to conduct a meeting, it may suspend the application processing time frames. Although the part 5, subpart A, rules do not state this directly, current and proposed § 5.10(b)(2) allow the OCC to extend a comment period when necessary, current and proposed § 5.11(h) allow the OCC to keep a hearing record open for 14 days after a hearing and resume processing the filing only when the record closes, and proposed § 5.13(a)(2) allows the OCC to extend the expedited review period in certain circumstances or remove a filing from expedited review when necessary. These provisions provide the OCC with the tools it needs to adjust the processing time frames when appropriate, while balancing the need for interested persons to have a predictable set of procedures on which to rely.

§ 5.12 Computation of time. In computing the relevant time periods related to a national bank filing, the OCC includes the day of the act or event (*e.g.,* the date an application is received by the OCC) and the last day of a time period, regardless of whether that day is a Saturday, Sunday, or legal holiday. Under § 116.10, in computing the relevant time period with respect to a Federal savings association filing, the OCC does not include the day of the act or the event that commences the time period. When the last day is a Saturday, Sunday or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

Efficiency would be promoted by a single set of time computation rules for OCC filings. Accordingly, the OCC proposes to change § 5.12 to mirror the current Federal savings association rule. As a result, when computing time for national bank filings, the day of the act would no longer be included and the time period would no longer end on a Saturday, Sunday, or Federal holiday but would end on the next day that is not a Saturday, Sunday or Federal holiday. It also should be noted that proposed § 5.12 replaces ''legal holiday'' with ''Federal holiday,'' consistent with the current Federal savings association rule, to eliminate confusion when a legal state holiday is not also a Federal holiday.

§ 5.13 Decisions. Under § 5.13(a), the OCC may approve or deny a national bank filing based on its review and consideration of the record, including the activities, resources, or condition of a filer's affiliate to the extent relevant. Under § 5.13(a)(1), it may impose conditions on an approval, including to address significant supervisory, CRA (if applicable), or compliance concerns.

Section 5.13(a)(2) explains the OCC expedited review process for filings concerning ''eligible'' banks, as defined in § 5.3. Specifically, these filings are deemed approved a certain number of days after the filing date or the close of the public comment period (or extension of the comment period under § 5.10), unless, prior to this date, the OCC notifies the filer otherwise. The number of days after which a particular filing is deemed approved varies depending on the activity or transaction at issue and is set out in the substantive part 5 rule for that particular activity or transaction.[20]

Under § 5.13(a)(2)(i), the OCC may extend the expedited review period for filings subject to CRA up to 10 days if the OCC receives comments containing certain assertions about the bank's CRA

[20] For example, § 5.20(j) provides that certain applications to establish a national bank are deemed preliminarily approved as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC takes certain action to remove the filing from expedited review.

performance. Section 5.13(a)(2)(ii) states that the OCC will remove a filing from expedited review if a filing or a comment raises a significant supervisory, CRA (if applicable), compliance, legal, or policy concern or issue. If this removal happens, the OCC will provide a written explanation. Section 5.13(a)(2)(iii) explains that not all adverse comments cause the OCC to extend the expedited review period or remove a filing from expedited review.

Finally, § 5.13(a)(2)(iv) provides that if a filing is dependent upon the approval of another filing, or if multiple requests for approval are combined in a single application, none of the filings is deemed approved unless all of the applications are subject to expedited review procedures and the longest time period expires without the OCC issuing a decision or notifying the bank that the filings are not eligible for expedited review.

Filings that are not eligible for or do not receive expedited review are considered under the standard review process. The process and timeframes associated with the standard review process vary depending on the nature and circumstances of a filing and are set forth in the applicable substantive activity or transaction rule.

Section 5.13(b) explains that the OCC may deny a filing if a significant supervisory, CRA, compliance, legal, or policy concern exists or if an applicant fails to provide the OCC with information that it requests. Pursuant to § 5.13(c), a filing must contain the information required in the applicable substantive part 5 activity or transaction rule, and the OCC may require additional information as well. Section 5.13(c) further provides that the OCC may deem a filing abandoned if information that is required or requested is not provided within a specified time period and may return a filing found to be materially deficient.

Section 5.13(d) explains that the OCC will notify a filer and other interested party (or parties) of the final disposition of a filing, including a notification confirming expedited review. If a filing is denied, the OCC will explain why. Under § 5.13(e), the OCC will make a decision public if it represents new or changed policy or issues of general interest. In rendering decisions, the OCC also may elect not to disclose information that it deems to be private or confidential.

Section 5.13(f) explains that a filer can appeal a decision by writing to the Deputy Comptroller for Licensing or the OCC Ombudsman (or, in some cases, to the Chief Counsel). Section § 5.13(g) explains that when the OCC approves or conditionally approves a filing, the agency generally gives the filer a specified period of time in which to commence the activity and generally does not grant extensions.

Finally, § 5.13(h) states that the OCC can nullify a filing decision if, for example, it discovers a misrepresentation or omission in a filing or supporting material after it renders a filing decision. A person responsible for a material misrepresentation or omission may be subject to various sanctions, including criminal penalties. The OCC also may nullify a filing decision that is contrary to law, regulation, or OCC policy or that was granted due to clerical or administrative error or a material mistake of law or fact.

Pursuant to part 116, a savings association filing may receive either expedited treatment or standard treatment. If a filer is eligible for expedited treatment, as determined under § 116.5, it may file its application in the form of a notice. Pursuant to § 116.200, 30 days after filing a notice, the filer may engage in the proposed activity or transaction unless the OCC (1) requests additional information,[21] (2) determines that standard treatment is appropriate, (3) suspends the applicable time frame under § 116.190, or (4) disapproves the notice.

Pursuant to § 116.25, a filer files a standard application if it is not eligible for expedited treatment. Under § 116.210, within 30 calendar days after receiving a standard application, the OCC will (1) notify the applicant that the application is complete and review will commence, (2) request more information, or (3) determine that the application is materially deficient, in which case, the OCC will not process the filing. If the OCC takes no action, an application is deemed complete and the review period begins. Under § 116.270, this review period is generally 60 calendar days after an application is complete but may be extended. For example, under § 116.270(c), the OCC may extend the review period for up to 30 days for any reason or for as long as needed if the application presents a significant issue of law or policy requiring additional time to resolve. In either situation, the OCC must provide a written notification of any extension.

Section 116.280 explains that the OCC will approve or deny an application before the end of the applicable review period and will notify applicants of the decision. If the OCC fails to notify an applicant, under § 116.280(b), the application is approved.

Section 116.220 provides a detailed explanation of how the OCC will process an application if it requests more information to complete a filing, including the time frames within which certain actions must be taken. Section 116.240(a) explains that even if an application is deemed complete under § 116.210, the OCC may still require the filer to provide additional information to resolve or clarify an issue presented by the application. Or, if the OCC determines that a major issue or law or change of circumstances has arisen, it may notify the filer that the application is now incomplete and require a new public notice to be filed under § 116.250. Under § 116.290, an application that is not approved or denied within two calendar years of filing is deemed withdrawn, subject to certain exceptions.

As is clear, the OCC has two different, albeit similar, sets of application processing procedures. In order to gain the efficiencies inherent in administering a single set of procedures and to create parity for OCC-regulated institutions, the OCC proposes to apply § 5.13 to all OCC filings. As a result, Federal savings association filers will need to determine whether a filing is eligible for expedited review under subpart A based on the proposed § 5.3(h) definition of ''eligible bank or eligible savings association.'' The OCC does not anticipate that there will be a significant difference in which filings are eligible for expedited review under the current and proposed rules because, as explained above, the criteria in § 5.3 and § 116.5 are substantively similar.

Unlike § 116.200, part 5, subpart A, does not state the applicable expedited review time frames. These time frames are unique to the type of activity or transaction and set out in the relevant part 5 section detailing that activity or transaction. If a filing is not eligible for expedited review, the filer will have to follow the standard review procedures set out in the rules applicable to the particular activity or transaction at issue.

In addition, as part of this rulemaking, the OCC is proposing other changes to § 5.13, which would apply to filings related to both national banks and Federal savings associations. Specifically, it proposes to add a statement to the § 5.13(a) introductory language providing that when reviewing a filing, the OCC may consider information available from any source, including any comments submitted by interested parties or views expressed by

[21] Section 116.200(a) explains the sequence of events and timing when the OCC requests additional information about a notice.

interested parties at meetings with the OCC.

With respect to § 5.13(a)(2) concerning expedited review, the OCC proposes to strike the § 5.13(a)(2) clause that states that the OCC grants eligible banks expedited review within a specified time, ''including any extension of the comment period granted pursuant to § 5.10.'' This change reflects the fact that when the OCC grants an extension of the comment period under § 5.10, a filing is no longer considered under the expedited review procedures. The circumstances that lead to an extended comment period are generally not compatible with expedited review.

In addition, as discussed above, § 5.13(a)(2)(i) provides that the OCC may extend the expedited review period for a filing subject to CRA for up to 10 days if a comment makes certain assertions about CRA and § 5.13(a)(2)(ii) provides that the OCC will remove a filing from expedited review if the filing presents significant supervisory, CRA, compliance, legal or policy concerns or issues and explains specifically what constitutes a significant CRA concern in this context. The OCC proposes to combine §§ 5.13(a)(2)(i) and (ii) into proposed § 5.13(a)(2)(i) that addresses both extending the expedited review period and removing a filing from expedited review and to strike the description of CRA-related assertions in comments and what constitutes a significant CRA concern. These changes would simplify § 5.13(a)(2) and are not intended to have a substantive effect on expedited review procedures. Comments and concerns about CRA will continue to be given the same weight. Other minor, technical, or conforming changes are also proposed to § 5.13.

Finally, as part of this rulemaking, the OCC proposes to delete part 116 in its entirety. *Organizing a National Bank or Federal Savings Association; Federal Savings Association Charters and Bylaws (§ 5.20, new § 5.21, new § 5.22)*

Twelve CFR 5.20 sets forth the requirements and procedures involved in organizing a *de novo* national bank. Specifically, § 5.20(e) provides that the OCC will verify that organizers have fulfilled certain statutory requirements such as filing articles of association with the OCC, § 5.20(f) sets forth policy considerations that the OCC considers in evaluating an application, § 5.20(g) discusses the OCC's requirements with respect to the organizing group, § 5.20(h) lists requirements for the organizers' business plan or operating plan, § 5.20(i) lists the procedures that the organizers must follow, § 5.20(j) specifies the requirements for expedited review of an application, and § 5.20(l) lists requirements for the establishment of special purpose banks.

Corresponding rules applicable to organizing Federal savings associations are set forth in three CFR parts: Part 143, Federal Mutual Savings Associations—Incorporation, Organization, and Conversion; part 144, Federal Mutual Savings Associations—Charter and Bylaws; and part 152, Federal Stock Associations—Incorporation, Organization, and Conversion. In addition, § 163.1 imposes certain rules concerning a Federal savings association's charter and bylaws.

Part 143 sets forth the requirements and procedures for organizing a Federal mutual savings association. For example, §§ 143.2 and 143.3 describe the requirements for applying for a Federal mutual savings association charter and the factors the OCC will consider in such an application. Section 143.4 provides that the OCC's approval of the application constitutes the issuance of a charter and § 143.5 specifies the initial steps the organizers must undertake after issuance of the charter. Certain provisions of part 143 set forth rules and prohibitions, such as § 143.1(a), which prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers, and § 143.6, which prohibits a Federal savings association from transacting any business other than as provided in part 143. Finally, § 143.7 clarifies that part 143 does not apply to a Federal savings association chartered in connection with a Federal savings association in default or in danger of default.

Part 144 covers the charter and bylaws of Federal mutual savings associations. Section 144.1 sets forth the form and required provisions of the charter, § 144.2 lists the requirements for amending a charter, and § 144.4 states that the issuance of a Federal mutual savings association charter constitutes the incorporation of that association. Section 144.5 sets forth the required provisions of the bylaws and §§ 144.6 and 144.7 set forth rules with respect to the effect of a change to a charter or bylaws subsequent to a Federal mutual savings association's transaction; and the availability of the charter and bylaws.

Part 152 sets forth the requirements and procedures for organizing a Federal stock savings association and also contains the requirements for the charter and bylaws of Federal stock savings associations, as well as related matters including shareholders, board of directors, and officers. More specifically, § 152.1 describes the initial steps organizers must take in establishing a Federal stock savings association and also indicates the factors the OCC will consider in such an application; § 152.3 sets forth the form and required provisions of the charter; § 152.4 lists the requirements for amending a charter; § 152.5 covers the bylaws of Federal stock savings associations; §§ 152.6, 152.7 and 152.8 address shareholders, the board of directors, and officers, respectively; and § 152.9 covers certificates for shares and their transfer.

Section 163.1 requires a *de novo* Federal savings association to file its charter and bylaws with the OCC prior to commencing operations and requires a Federal savings association to make its charter and bylaws available to accountholders.

Many of the procedures organizers must follow to charter a national bank or Federal savings association are substantively similar, with only minor differences. With respect to many of these regulations, the OCC believes these rules should be coordinated and harmonized in order to promote consistency and equal treatment between the two types of institutions and to remove unnecessary regulatory burden where possible. These goals are accomplished by amending § 5.20 to include Federal savings associations, adding to § 5.20 some provisions that address the organizing process currently in parts 143 and 152, and removing other provisions in part 143, 152, and 163 that address the organizing process (§§ 143.2 through 143.7, 152.1 and 152.2, and 163.1).

The regulations for national banks and those for Federal savings associations treat the provisions related to ''organizing documents'' (organization certificate and articles of association for national banks, charter for Federal savings associations, and bylaws) differently.[22] For national banks, there are several applicable statutes, but few regulations.[23] For

[22] It may be helpful to clarify terminology. For national banks, the term ''charter'' is used to refer to the certificate of authority to commence banking issued by the OCC under 12 U.S.C. 27. A national bank's ''articles of association'' is similar to a business corporation's articles of incorporation setting out the general features of the business's organizational structure and purpose. A Federal savings association's ''charter'' issued by the OCC under 12 U.S.C. 1464(a)(2) is the agency's authorization to engage in business as a savings association, but it also contains provisions comparable to a national bank's articles of association.

[23] Additional guidance for national banks is provided by sample articles and bylaws in the Comptroller's Licensing Manual (*www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html#sd*) and by

Federal savings associations, there are no statutory requirements, but §§ 144.1 and 152.3 contain specific language and requirements to be used for the charter of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4 contain specific requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Also, the charter provisions for Federal mutual savings associations are substantially different from national banks and Federal stock savings associations. These differences stem from the unique characteristics of Federal mutual charters, such as the inability of members to communicate directly with each other (because membership is based on the depository relationship) under § 144.8, the use of ''running proxies,'' and the potential that certain charter or bylaw provisions could later affect a mutual-to-stock conversion by the association. These characteristics require a need to place greater controls over changes to the Federal mutual charter in order to prevent the inappropriate transfer of the association's equity and to prevent the introduction of provisions that may impede a mutual-to-stock conversion.

In order to preserve the enforceability of the Federal savings association charter and bylaw requirements and to ensure the necessary controls unique to the Federal mutual savings association charter, the OCC believes it is necessary and appropriate to continue to include separate provisions concerning a Federal savings association's charter and bylaws.

Therefore, the OCC proposes to amend 12 CFR part 5, subpart B, by: (1) Revising § 5.20 to apply to both national banks and Federal savings associations and to make certain other changes as described below; (2) adding a new § 5.21 (based on part 144) to specify the language and requirements for the Federal mutual savings association charter, bylaws, and charter amendments and to require a Federal mutual savings association to make its charter and bylaws available to accountholders; and (3) adding a new § 5.22 (based on §§ 152.3 through 152.11) to specify the language and requirements for the Federal stock savings association charter, bylaws, charter amendments, and related matters. In addition, the OCC proposes to amend parts 143, 144, 152, and 163 by rescinding various provisions in those parts concerning charters and bylaws.

As a result of this rulemaking, organizers of *de novo* Federal savings associations and national banks and existing Federal savings associations and national banks should be aware of the proposed changes that are detailed below.

Applying Existing National Bank Requirements to Federal Savings Associations. The majority of the proposed changes to § 5.20 apply existing requirements for organizing a national bank to organizing a Federal savings association by inserting ''Federal savings association'' where appropriate. Most of these amendments will result in little or no change to existing practices concerning an application to charter a Federal savings association. However, potential organizers should carefully review the following amendments that would change the current process.

First, under the proposal, an application to charter a Federal savings association would be subject to the two-part approval process contained in § 5.20(i)(5). Based on statute and longstanding practice, the OCC uses a two-part approval process for *de novo* national bank charters. After an application is filed, if the OCC determines it meets the applicable standards, the OCC issues a ''preliminary approval.'' Once it has received this approval, the national bank in organization proceeds to take the steps needed to organize, raise capital, obtain any other regulatory approvals, and generally become ready to commence business. Many of these steps are not specified in § 5.20 but instead are provided in the OCC's preliminary approval and in the Charters Booklet of the Comptroller's Licensing Manual. The OCC issues a ''final approval'' and the national bank's charter only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Under the current Federal savings association rule, the OCC issues only one approval before it issues the charter but this approval is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business. These steps and requirements are specified in §§ 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i). We propose to remove these provisions because they will no longer be necessary since final approval will be granted only after all organizational steps and other requirements are met. The two processes in practice may not be different, but use of a formal two-part approval framework provides more certainty and reduces any risk of an institution inadvertently operating before it has completed all required steps. Applying the bank rule's two-step approval process to savings associations also will enhance consistency between the chartering application process for national banks and Federal savings associations.

Second, § 5.20(i)(5)(iv) provides that preliminary approval expires if the national bank has not raised the required capital within twelve months or has not commenced business within eighteen months. Sections 143.5(d) and 152.1(i) provide that a Federal savings association's charter becomes void if organization is not completed within six months after approval. The proposal would amend § 5.20(i)(5)(iv) to apply the same twelve- and eighteen-month expiration periods to Federal savings associations, rather than the six-month period.

Third, the OCC proposes to amend § 5.20(j), which allows for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. We propose to add Federal savings associations and savings and loan holding companies. The current regulations for chartering a *de novo* Federal savings association do not have a comparable expedited review process. We also propose to limit the availability of this expedited review to applications to charter a national bank or Federal savings association where the existing lead depository institution is an eligible national bank or eligible Federal savings association. In those cases, the OCC will have knowledge and experience of the holding company's and lead institution's operations. In cases where a state institution is the lead depository institution, the OCC would not have that knowledge and experience, and we believe expedited review would not be appropriate.

Fourth, the proposal would add Federal savings associations to § 5.20(k)(3), which addresses investments in bankers' banks and § 5.20(l), which addresses chartering special purpose institutions. These provisions reflect authority that national banks and Federal savings associations possess.

Fifth, parts 143, 144, 152, and 163 contain various filing procedural matters. As discussed above, this proposed rule amends part 5, subpart A, rules of general applicability, to include filing rules and procedures for Federal savings associations for all matters

review of the proposed documents during the application process.

covered by part 5. Thus, once Federal savings associations are included in § 5.20 and new §§ 5.21 and 5.22 are added to part 5, filings related to the organizing process and to charters and bylaws will be governed by the filing provisions in subpart A. We therefore have not included the filing procedures provisions in parts 143, 144, 152, and 163 in the amendments to § 5.20, or in new §§ 5.21 and 5.22.

Amendments that Specifically Cover Federal Savings Association Matters. The OCC is proposing to incorporate certain provisions contained in parts 143 and 152 into § 5.20. Specifically, with respect to an application to organize a Federal savings association, section 5(e) of the Home Owners' Loan Act (HOLA) [24] requires the OCC to consider whether: (1) The applicants are of good character and responsibility; (2) there is a need for the association in the community to be served; (3) there is a reasonable probability of usefulness and success; and (4) there will be undue injury to existing local thrift and home financing institutions. These criteria are included in § 143.2(g)(1) and § 152.1(b)(1), and this proposed rule adds them to § 5.20(e).

Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Similar requirements appear in §§ 143.5(c) and 152.1(f) (when a charter is issued, a Federal savings association, or a Federal stock savings association, respectively, must promptly meet all requirements necessary to obtain FDIC insurance of its accounts), as well as §§ 143.5(d) and 152.1(h)(1) (organization of a Federal savings association, or a Federal stock savings association, respectively, is complete when, among other things, the OCC receives confirmation of FDIC insurance).

For these reasons, the OCC is proposing in § 5.20(e)(3) to retain the requirement that all Federal savings associations be insured by the FDIC. Nonetheless, we invite further comment on this matter.

Proposals to Apply Federal Savings Association Application Requirements to National Bank Applications. The OCC is proposing to amend § 5.20 to apply certain requirements applicable to Federal savings associations to both national banks and Federal savings associations. First, § 143.1(a) prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. The OCC believes that incorporating such a provision in a regulation is good public policy because it protects both customers and the institution. Therefore, the OCC proposes to amend § 5.20(e)(1) to apply this requirement to both Federal savings associations and national banks.

Second, § 143.3(b)(1) requires that all securities of a particular class in an initial offering must be sold at the same price. The proposal would amend § 5.20(i)(5)(iii) to apply this requirement to both Federal savings associations and national banks. Such a requirement promotes fairness and uniformity, does not allow insiders to gain an unfair advantage over other shareholders, and discourages the formation of an institution for speculative purposes. Moreover, the FDIC also imposes this requirement in determining whether to approve an application for deposit insurance.[25]

Third, §§ 143.5(d) and § 152.1(i) require that, in the event the organization of a Federal savings association is not completed, all cash collected on subscriptions shall be returned. The proposal would amend § 5.20(i)(5)(iv) to apply this requirement to both Federal savings associations and national banks.

Proposals to Eliminate Certain Federal Savings Association Approval Criteria. Sections 143.2(g)(1) and 152.1(b)(1) require the OCC to consider whether the Federal savings association will provide credit for housing in a safe and sound manner and whether the factors in § 143.3 (regarding capitalization, business and investment plans, the board of directors, management) will be met. These approval criteria are not statutorily required. In most cases, these factors are similar to factors the OCC currently considers either under § 5.20 or as a matter of practice. Moreover, provision of housing credit also is addressed by the lending and investment provisions of 12 U.S.C. 1464(c) and the qualified thrift lender test of 12 U.S.C. 1467a(m). Therefore, the OCC is not proposing to include these provisions in § 5.20.

The OCC is proposing to rescind provisions of parts 143 and 152 that are redundant, unnecessary, or no longer appropriate. For example, the OCC is proposing to rescind §§ 143.7 and 152.17, which exempt from the requirements of parts 143 and 157 Federal stock associations created in connection with an association in default or in danger of default. These provisions are not necessary in light of the FDIC's authority, as part of the resolution process, to create new and bridge Federal savings associations under 12 U.S.C. 1821(m) and (n).

Similarly, the OCC proposes to rescind § 143.3(f), which provides that the normal requirements that apply to an application to charter a Federal savings association do not apply to a supervisory transaction. This provision is not necessary because the OCC has the ability to waive such requirements under 12 CFR 5.2(b). Also, the OCC proposes to rescind the requirements in §§ 143.5(c) and 152.1(f) for a proposed Federal savings association to promptly qualify as a member of a Federal Home Loan Bank. The HOLA no longer requires such membership.

Proposals to Reflect Current OCC Policy or Practice. The OCC is proposing several amendments that would update § 5.20 to reflect current OCC policy or practice. Specifically, the proposal would amend § 5.20(f)(1) to update the OCC's general policy in making determinations regarding charter applications to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[26]

Second, § 5.20(g)(2) notes that, as a condition of a charter approval, the OCC retains the right to object to the hiring of any officer or appointment or election of any director for a two-year period from the date the institution commences business. We propose to clarify that, in appropriate instances, the OCC may impose this condition for a longer period. This regulatory change reflects current authority and practice.

Third, § 5.20(g)(3)(ii) requires a proposed director to be able to supply or have a realistic plan to enable the institution to obtain capital when needed. The OCC is proposing to clarify that this requirement applies to the proposed directors as a group, rather than each director individually.

Federal Mutual Savings Association Charter, Bylaws and Related Provisions. As discussed above, the OCC believes it is necessary and appropriate to continue to include separate regulations setting forth the provisions concerning a Federal savings association's charter and bylaws. With respect to Federal mutual savings associations, these provisions are currently in part 144. The OCC is proposing to add a new § 5.21, ''Federal Mutual Savings Associations Charters and Bylaws,'' which will incorporate most of part 144.

Proposed § 5.21(d) sets forth exceptions to the rules of general

[24] 12 U.S.C. 1464(e).

[25] FDIC Statement of Policy on Applications for Deposit Insurance. 63 FR 44752, 44757 (August 20, 1998).

[26] 12 U.S.C. 1.

applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not appropriate to subject the charter and bylaws requirements to these provisions. This belief is consistent with current requirements for Federal mutual savings associations as well as national banks.

Proposed § 5.21(e) prescribes the language and requirements for a Federal mutual savings association charter and is substantively identical to § 144.1. Proposed §§ 5.21(f) through (h) cover matters related to charter amendments and are substantively identical to § 144.2. Proposed § 5.21(i) requires a Federal mutual savings association to make its charter, bylaws, and all amendments available to accountholders at all times in each savings association office, and to deliver to any accountholders a copy of the charter, bylaws or amendments, upon request. This provision is substantively identical to § 144.7.[27]

Proposed § 5.21(j) would specify the language and requirements for Federal mutual savings association bylaws. This proposed new paragraph reflects the provisions in § 144.5.

Section 144.5(b)(11) provides that directors may only be removed ''for cause'' as defined in § 163.39 of this chapter, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors,'' and § 144.5(b)(10) provides that ''[a]ny officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any of the person so removed.'' For ease of use, the OCC is proposing to include the definition of ''for cause'' in proposed § 5.21(j)(1)(x)(B), the first time it appears in § 5.21, rather than cross-referencing § 163.39. Where the term ''cause'' is used elsewhere in § 5.21, and in § 5.22, for Federal stock savings associations, the regulation references the definition at § 5.21(j)(1)(x)(B).

The OCC believes that many of the bylaw provisions in § 144.5 are unnecessarily detailed or self-evident. Therefore, the proposal does not include the following provisions.[28]

Section 144.5(b)(1) discusses the annual meeting of members. It provides, among other things, that the meeting be held ''as designated by its board of directors, at a location within the state that constitutes the principal place of business of the association, or at any other any convenient place the board of directors may designate.'' Proposed § 5.21(j)(1)(i) does not include the requirement that the meeting be held in the state that constitutes the principal place of business of the association. The OCC believes that this requirement introduces unnecessary detail into the regulation, and that in certain cases there may be locations outside the state constituting the association's principal place of business at which the annual meeting may be held that are appropriately convenient to members.

Section 144.5(b)(2) provides, among other things, that the subject matter of a special shareholder meeting must be established in the notice for such meeting. The OCC believes this provision is self-evident and unnecessarily detailed and proposes not to include this requirement in § 5.21(j).

Section 144.5(b)(3) covers the requirements for providing notice of meetings to members. Among other things, it provides that notice must be provided at a member's last address appearing on the books of the association. The OCC believes this provision merely states the obvious and proposes not to include this requirement in § 5.21(j)(1)(iii).

Section 144.5(b)(4) states that the purpose of determining the record date is to determine the ''members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose.'' The OCC believes this provision is self-evident and proposes not to include this requirement in § 5.21(j)(1)(iv).

Section 144.5(b)(6) provides that procedures must be established for voting by proxy pursuant to the rules and regulations of the OCC, ''including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting.'' The OCC believes the inclusion language is self-evident and unnecessarily detailed and proposes not to include this requirement in § 5.21(j)(1)(vi).

Section 144.5(b)(9) provides that board of director meetings ''shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president.'' The OCC believes this provision is unnecessarily detailed and proposes not to include this requirement in § 5.21(j)(1)(ix).

Section 144.5(b)(10) provides, among other things, that ''[a]ll officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices.'' The OCC believes this provision is unnecessary and self-evident and proposes not to include this requirement in § 5.21(j)(1)(x).

Section 144.5(b)(11) covers vacancies, resignation, and removal of directors. Proposed § 5.21(j)(1)(xi) does not include the requirements in § 144.5(b)(11) that directors be elected by ballot and that resignation of a director be by written notice. The OCC believes that these provisions are self-evident.

Section 144.5(b)(12) covers the powers of the board of directors. It provides, among other things, that a board may, by resolution, ''appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law.'' This section further provides that a board may fix the compensation of directors, officers, and employees. The OCC believes these provisions are self-evident and unnecessarily detailed and therefore proposes not to include these requirements in § 5.21(j)(1)(xii).

Section 144.5(b)(14) provides in part that procedures for the introduction of new business at the annual meeting may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting. The OCC believes this provision is overly detailed and unnecessary. Accordingly, the OCC is proposing not to include this provision in § 5.21(j)(1)(xiv).

Finally, § 144.5(b)(16) provides that the bylaws may address age limitations for directors or officers as long as they are consistent with applicable Federal

[27] *See* related discussion concerning 12 CFR 163.1(b) *infra.*

[28] Federal mutual savings associations would not be required to amend existing bylaws to conform to these changes.

law, rules or regulations. The OCC believes this provision is self-evident and unnecessary and therefore is proposing not to include this provision in § 5.21(j)(1)(xvi).

Federal Stock Savings Association Charter, Bylaws and Related Provisions. The provisions concerning the charter and bylaws of a Federal stock savings association, as well as related provisions, are currently in §§ 152.3 through 152.9. The OCC is proposing to add a new § 5.22, ''Federal Stock Savings Associations Charters and Bylaws,'' which will incorporate most of §§ 152.3 through 152.9.

Proposed § 5.22(d) sets forth exceptions to the rules of general applicability. More specifically, it provides that §§ 5.8 through 5.11 do not apply to this section. These sections provide for public notice, public availability, comments and hearings on an application. The OCC believes it is not appropriate to subject the charter and bylaws requirements to these provisions. This belief is consistent with current requirements for Federal savings associations as well as national banks.

Proposed § 5.22(e) prescribes the language and requirements for a Federal stock savings association charter and is substantively identical to § 152.3. Proposed §§ 5.22 (f) through (i) cover matters related to charter amendments and are substantively identical to § 152.4, with the addition of one provision. Section 152.4(b)(8) provides that a Federal stock savings association may amend its charter by adding certain anti-takeover provisions following mutual to stock conversions. One such provision is a prohibition on a person acquiring more than 10 percent of any class of equity securities of the association, unless ''the purchase of shares [is] by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 174.3(c)(2)(i)(D) of the OCC's regulations.'' The OCC proposes to eliminate the cross-reference and include the appropriate language in § 5.22(g)(8). The OCC does not intend for this amendment to have any substantive effect.

Proposed § 5.22(j) would specify the requirements for adopting and filing Federal stock savings association bylaws. This proposed new paragraph reflects the provisions in § 152.5 with two exceptions. The first sentence of § 152.5(a) provides that ''[a]t its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs.'' The third sentence requires the bylaws to contain sufficient provisions to govern the association in accordance with the requirements of other sections of part 152 and prohibits the bylaws from containing a provision that is inconsistent with those sections or with applicable laws, rules, regulations or the association's charter. The OCC believes that these two provisions are unnecessarily detailed and self-evident and is therefore proposing not to include these provisions in proposed § 5.22(i).

The OCC is proposing to add a new § 5.22(k) to address shareholder meetings and related matters. This proposed new paragraph reflects the provisions in § 152.6 with two exceptions. Section 152.6(a) provides, among other things, that shareholder meetings must be held in the state in which the association has its principal place of business. With respect to shareholder voting by proxy, § 152.6(f) provides, in part, that a ''proxy may designate as holder a corporation, partnership or company as defined in part 174 of this chapter, or other person.'' Proposed § 5.22(k) does not include these provisions because the OCC believes they are unnecessary.[29]

The OCC is proposing to add a new § 5.22(l) addressing matters involving a Federal stock savings association's board of directors. This proposed new paragraph reflects the provisions in § 152.7, with certain exceptions. Section 152.7(b) sets forth the permissible number and terms of directors to be included in an association's bylaws. It provides, among other things, that in ''the case of a converting or newly chartered association where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.'' Section 152.7(g) addresses matters concerning executive and other committees of a board of directors. It provides in pertinent part that each committee, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, subject to certain exceptions. The OCC believes these provisions are overly detailed and unnecessary. Accordingly, proposed §§ 5.22(l)(2) and (7), respectively, do not include these provisions.

The OCC is proposing to add a new § 5.22(m) addressing matters involving a Federal stock savings association's officers. This proposed new paragraph is substantively identical to § 152.8, with one exception. Section 152.8 mandates that a Federal stock savings association have certain officers. It further provides that the ''board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.'' The OCC believes that the quoted provision is self-evident and unnecessary and therefore is not including it in new § 5.22(m).

The OCC is proposing to add a new § 5.22(n) concerning stock certificates. This proposed new paragraph is substantively identical to § 152.9, with one exception. Section 152.9(a) provides in pertinent part that the ''certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified.'' The OCC believes this provision is overly detailed and is proposing not to include it in new § 5.22(n)(1).

Federal Savings Association Charter and Bylaws Availability Requirement. Section 163.1(b) requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or amendments thereto, upon request. As discussed above, § 144.7 imposes the same requirement, but is applicable only to Federal mutual savings associations.

There is no comparable requirement for national banks and the OCC believes this provision is no longer necessary for Federal stock savings associations, as this information is relatively easy for accountholders of these types of institutions to obtain. Conversely, accountholders of Federal mutual savings associations may not have easy access to these documents in light of the inability of accountholders to communicate directly with each other under § 144.8. Accordingly, the proposal would continue applying this requirement only with respect to

[29] Federal stock savings associations would not be required to amend their existing bylaws to conform to these changes.

Federal mutual savings associations under new § 5.21(i).

Disposition of current Federal savings association organization, charter, and bylaws provisions. The proposed amendments discussed above would remove from Title 12 of the Code of Federal Regulations §§ 143.2 through 143.7, all of part 144 except § 144.8, § 152.1(b)(1), §§ 152.1(c) through 152.1(i), §§ 152.2 through 152.9, § 152.17, § 163.1(b), and §§ 163.22(b)(1)(ii) and (b)(2).

Section 144.8, which addresses communication between members of a Federal mutual savings association, is not a licensing regulation and does not involve an application process. The OCC proposes leaving it unchanged. Because it will be the only section that remains in part 144, the OCC proposes renaming part 144 as part 144—Federal mutual savings associations—communication between members.

Other provisions of § 152.2, which provides procedures for the organization of interim Federal savings associations, are addressed in revisions to the business combinations regulation—§ 5.33, described below. The remaining provisions of part 143, part 152, and part 163 contain other provisions applicable to Federal mutual and stock savings associations. The OCC is proposing to rescind some of these provisions elsewhere in this proposal.

Charter Conversions (New § 5.23, § 5.24, New § 5.25)

Twelve CFR 5.24 sets forth the rules and procedures that a state bank, state savings association, or Federal savings association must follow to convert to a national bank and for a national bank to convert to a state bank or Federal or state savings association. The OCC's rules for a mutual depository institution to convert to a Federal mutual savings association are at 12 CFR 143.8 through 143.14 and the rules for a stock form depository institution to convert to a Federal stock savings association are at 12 CFR 152.18. The rules for a Federal savings association to convert to a national bank or state bank are set forth at 12 CFR 152.19 and 163.22(b)(1)(ii) and (b)(2). While there are some differences in procedures, as discussed below, the rules for national banks and Federal savings associations are substantively similar.

The OCC proposes to simplify this regulatory framework by (1) revising § 5.24 to include only rules for converting into a national bank, (2) placing all rules for converting into a Federal savings association (either stock or mutual) in new § 5.23, and (3) placing rules for conversion from national bank and Federal savings association charters in new § 5.25. The agency also proposes additional substantive and technical changes to these rules. The substantive changes include provisions implementing section 612 of the Dodd-Frank Act, which prohibits conversions from state to Federal charter, or Federal to state charter, in certain circumstances and adds requirements to the conversion process. The changes to the OCC's regulations implementing section 612 are discussed as a group later in the preamble.

Conversion to a national bank charter. As part of the reorganization of the conversion rules, the OCC proposes to move the rules governing a national bank converting to a state bank or Federal savings association from § 5.24 to a new § 5.25. As a result, § 5.24 would apply only to conversions to become a national bank. The OCC also proposes to make several other changes in § 5.24.

Specifically, the proposal adds ''stock state savings associations'' to the description of the types of institutions that can apply to convert to a national bank and the word ''stock'' before the phrase ''Federal savings associations'' throughout revised § 5.24. Stock state savings associations currently are included in the rule because they are within the definition of ''state bank'' incorporated from 12 U.S.C. 214(a). We are proposing to add the express term both in the interest of eliminating any confusion and because section 612 added the term ''state savings association'' to 12 U.S.C. 35. We are adding the term ''stock'' to Federal savings association for clarity as well. National banks are corporate bodies, and so a mutual institution cannot become a national bank unless it has first changed into corporate form under other law. These changes merely clarify the existing regulation and would have no substantive impact.

In § 5.24(d), which states the OCC's policy for approving and disapproving conversions to national bank charters, the proposal adds a statement that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. Although this requirement is not new, it was not previously stated in § 5.24. There is a similar provision in the current Federal savings association regulation, § 143.8(a)(2). The OCC is continuing it for Federal savings associations in proposed § 5.23, and has determined it would be helpful to include it for national banks as well.

The proposal also clarifies the information the applicant must include in the application. First, proposed § 5.24(e)(2)(vii) would add bank service company investments and other equity investments to the current requirement to identify subsidiaries. This requirement reflects the current practice of the OCC to review the legal permissibility for the converted national bank to continue to hold these other investments when evaluating a conversion application. Second, proposed § 5.24(e)(2)(ix) would require the application to include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC. The OCC currently requests this information on a case-by-case basis. However, the OCC believes this requirement should be applied to all such applications, as it would provide valuable information about the financial institution's safety and soundness, thereby allowing the OCC to make a more informed decision as to whether to grant the application. Appendix G of the ''Charters'' booklet of the Comptroller's Licensing Manual (Significant Deviations after Opening) contains a discussion of what constitutes a ''significant change.''

Section 5.24 currently addresses the OCC's authority to permit a national bank to retain nonconforming assets of a converting state bank, subject to the requirements in 12 U.S.C. 35. The proposal would add language to this provision (which would be paragraph (e)(4) in the revised regulation) clarifying that a converted national bank also may be permitted to retain nonconforming activities of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. The OCC believes such retention is appropriate to facilitate the transition from a state institution or Federal savings association to a national bank. These additions also reflect current OCC practice.

The OCC also proposes to amend § 5.24(g) which allows for expedited review of a conversion application filed by an eligible depository institution. We propose to limit the availability of expedited review to applications by institutions already supervised by the OCC (*i.e.,* conversions from a Federal savings association to a national bank or from a national bank to a Federal savings association). In those cases, the OCC is already familiar with the institution. In cases where a state institution is the applicant, the OCC would require more time to review the institution's condition and proposal, and we believe expedited review would

not be appropriate. We are also proposing to extend the expedited review period from 30 days to 60 days. The expedited review provision in proposed § 5.23(d)(4) is similar.

In addition, the proposal adds a new paragraph (h) to § 5.24 codifying that the resulting national bank after a conversion is the same business and corporate entity as the converting institution, and all assets, rights, liabilities, obligations, and other business of the converting institution continue in the resulting national bank by operation of law. This paragraph reflects longstanding case law under 12 U.S.C. 35 and is similar to statutory provisions in 12 U.S.C. 214b (continuation in conversion of national bank to state bank or merger of national bank into state bank) and 12 U.S.C. 215(e) and 215a(e) (continuation in consolidation or merger of national or state bank into national bank). The specific language is based on 12 U.S.C. 214b and on current provisions governing Federal savings associations at §§ 146.14 (Federal mutual savings associations) and 152.18(b) (Federal stock savings associations).

Finally, the proposal adds provisions to § 5.24 to implement section 612 of the Dodd-Frank Act, which are discussed below, and makes several technical or housekeeping changes to § 5.24 to make it easier to read.

Conversion to a Federal savings association charter. As noted above, the OCC proposes to create a new § 5.23 to address conversions of a mutual depository institution to a Federal mutual savings association or of a stock depository institution to a Federal stock savings association. This new section is similar to the proposed § 5.24 rules applicable to converting to a national bank, except that references to national banking laws are replaced by references to the HOLA, including the statutory criteria in section 5(e) of the HOLA for granting a Federal savings association charter. The requirements of proposed § 5.23 include many of the requirements in the current Federal savings association conversion regulations. However, the OCC is proposing not to continue certain provisions in parts 143 and 152 for which there is no statutory requirement in the HOLA. These include the confidentiality provisions set forth at § 143.8, which the OCC believes are addressed under its general confidentiality regulations, 12 CFR part 4, and the public notice and inspection requirements set forth at § 143.9(a)(2) (incorporating § 143.2(d)), which the OCC believes generally are unnecessary in the case of conversions. We note that if there are instances where the OCC believes publication is warranted, the OCC could require publication under § 5.2(b), which allows the OCC to require materially different procedures for a particular filing. We also are not continuing in the regulation a number of provisions included in § 143.9 that advise applicants of the various steps in the process. Instead, the OCC addresses this information through its guidance to applicants in the Comptroller's Licensing Manual, application forms, and the application process.

There are four significant differences between proposed § 5.24 and proposed § 5.23. First, the definition of ''depository institution'' for purposes of § 5.23, which is based on the definition in §§ 143.8(a) and 152.13, includes credit unions, unlike the definition in § 5.3(f) applicable to § 5.24. Second, as included in the §§ 143.8(a)(1) and 152.18(a) and because all Federal savings associations are required to be FDIC-insured, paragraph (c) of proposed § 5.23 provides that the converting institution must have deposits insured by the FDIC or, if it is not so insured, must obtain insurance before converting. Third, proposed paragraph (d)(2)(ii)(K) of § 5.23, would require a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application. This requirement reflects agency practice but is not expressly included in the current regulation. Fourth, paragraph (e) of § 5.23 includes certain provisions contained in § 143.10 that are unique to conversions of a mutual depository institution to a Federal mutual savings association. These provisions reflect the unique organizational structure of mutual depository institutions, which are largely member based.

Finally, the proposal includes provisions in § 5.23 to implement section 612 of the Dodd-Frank Act, as discussed below.

Conversion from a national bank or Federal savings association charter. Proposed § 5.25 sets forth a new provision that addresses conversions from a national bank or Federal savings association to another charter. Specifically, paragraph (d) covers conversions from a national bank or Federal savings association to a state bank or state savings association charter, while paragraph (e) covers conversions between a national bank and a Federal savings association. The provisions concerning a national bank conversion to a different charter mostly reflect current provisions in § 5.24(e) that are being moved to § 5.25. Because section 612 of the Dodd-Frank Act applies to conversions from Federal to state charters, but does not apply to conversions between different Federal charters, § 5.25 applies different provisions for these different transactions.

Consistent with § 5.24(e), proposed § 5.25(d) provides that converting from a Federal charter does not require prior OCC approval.[30] Instead, the institution must file only a notice with the OCC. This process would be a change for some Federal savings associations. Under the current regulations, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank.[31] Under the proposal, this notice must contain a copy of its conversion application to the regulator to which it is applying for approval to convert (as required by section 612 of the Dodd-Frank Act), a showing of its compliance with applicable requirements for converting from the charter, and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. This section also would require the institution to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion, pursuant to section 612 of the Dodd-Frank Act, as discussed below.

For conversions between a national bank and a Federal savings association, proposed § 5.25(e) requires the institution planning to convert to file a notice for the conversion-out aspect of the transaction with the OCC. Currently, Federal savings associations must file an application, unless they qualify for expedited review. This notice must contain a showing of its compliance with applicable requirements for converting from the Federal charter. As discussed in footnote 29 of this preamble, the applicable ''converting-in'' regulation (§§ 5.24 or 5.23) would require the institution to file an application with the OCC with respect

[30] If it is a conversion between a national bank and a Federal savings association, the institution would require OCC approval for the ''converting-in'' perspective of the transaction under § 5.24 or § 5.25, as applicable. In essence, the institution must satisfy the requirements, and receive OCC approval, to convert in under the statutes and regulations governing conversions in. It must also satisfy the requirements under other laws to ''convert out'' and notify the OCC it has done so. The OCC believes having the requirements in separate regulations makes it easier to follow them and will help ensure that a converting institution is mindful of meeting the requirements of both ''sides'' of the transaction.

[31] *See* 12 CFR 152.19 and 163.22(b)(2).

to the ''converting-in'' aspect of the transaction.

Implementation of section 612 of the Dodd-Frank Act. Section 612 of the Dodd-Frank Act added several provisions to Federal law regarding conversions. First, section 612(b) amended 12 U.S.C. 35 to provide that the OCC may not approve an application by a state bank or a state savings association to convert to a national bank or Federal savings association during any period in which the state bank or state savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, a state banking supervisor or the appropriate Federal banking agency with respect to a significant supervisory matter or a final enforcement action by a state Attorney General. The OCC does not need to amend its regulations to implement this basic prohibition; the current and proposed regulations already include compliance with applicable law among the criteria for approval or denial.[32] Proposed §§ 5.24(e)(2)(x) and 5.23(d)(2)(ii)(J) require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612. The OCC would use this information to assess the permissibility of the proposed conversion under section 35, including the possibility of using the exception to the prohibition on conversions provided in section 612.[33] The information also will assist in making the OCC aware of the condition of the applicant.

Second, section 612(b) added a new section 12 U.S.C. 214d prohibiting a national bank from converting to a state bank or state savings association during any period in which the national bank is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OCC with respect to a significant supervisory matter. Section 612(c) similarly added a new paragraph (6) to the end of the HOLA [34] prohibiting a Federal savings association from converting to a state bank or state savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the OTS or the OCC with respect to a significant supervisory matter. The exception to the prohibitions on conversions in section 612(d), discussed above, applies to the prohibitions in sections 214d and 1464(i)(6). Proposed § 5.25(d)(3) would require that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6). This discussion will assist the OCC in monitoring compliance with these statutes.

Third, paragraph (e)(1) of section 612 requires that at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that would become the appropriate Federal banking agency for the institution after the proposed conversion. Reflecting this statutory requirement, as noted above, the proposal adds to our regulations at §§ 5.24(e)(2), 5.23(d)(2)(ii), 5.25(d)(3)(i)(last sentence), and 5.25(d)(3)(ii)(A) a requirement to send a copy of the conversion application to the appropriate Federal banking agencies. Including the requirement in our regulations will help ensure applicants are aware of this requirement.

Disposition of current Federal savings association conversion regulations. Sections 5.23 and 5.25 will replace most of the current Federal savings association regulations on conversions. Accordingly, this proposal removes §§ 143.8, 143.9, 143.10, 143.14, 152.18, and 152.19.[35] We also propose to remove § 143.11, which provides for an organizational plan for governance during the first six years after a state mutual savings bank converts to a Federal charter. The OCC believes it can provide this oversight of the process for the converting institution to come into compliance with the requirements for Federal mutual savings banks through the application process.

Question 1: The OCC requests comment on the benefit to converting institutions of retaining this organizational governance provision in § 143.11 as a regulation.

Section 143.12, which implements section 5(i)(4) of the HOLA,[36] addresses grandfathered authority of certain Federal savings associations. It is not a licensing regulation and does not involve an application process. The OCC proposes leaving it unchanged. As a result of other changes in this rulemaking, it will be the only section that remains in part 143. Therefore, the OCC proposes renaming part 143 as part 143—Federal Savings Associations—Grandfathered Authority.

Fiduciary Powers (§ 5.26)

Twelve 12 CFR 5.26 contains the application requirements and processes for national banks that wish to engage in the exercise of fiduciary powers. Twelve CFR part 150, subpart A (§§ 150.70 through 150.125) addresses the application requirements and processes for Federal savings associations that wish to engage in the exercise of fiduciary powers. We propose to consolidate the application and notice filing procedures for fiduciary powers for national banks and Federal savings associations by revising § 5.26 to cover Federal savings associations, incorporating certain provisions from part 150 in § 5.26, amending § 150.70 to remove the current language regarding filing requirements and direct Federal savings associations to § 5.26 for the application and notice procedures they should

[32] *See* proposed §§ 5.24(d) and 5.25(d)(1) (each incorporating § 5.13(b)).

[33] Subsection (d) of section 612 provides for an exception to the prohibition. Specifically, the prohibition on conversion does not apply if: (1) The Federal banking agency that would be the appropriate Federal banking agency after the conversion (the OCC in conversions of a state-chartered institution to a national bank or Federal savings association) gives written notice of the proposed conversion to the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action, including a plan to address the significant supervisory matter in a manner that is consistent with the safe and sound operation of the institution; (2) the current Federal appropriate banking agency or state bank supervisor that issued the enforcement action does not object to the conversion or the plan; (3) after conversion, the plan is implemented; and (4) in the case of a final enforcement action by a state Attorney General, approval of the conversion is conditioned on the institution's compliance with the terms of such final enforcement action. Section 612(d) is codified as a note attached to 12 U.S.C. 35. Applicants should be aware that the Agencies have issued interagency guidance stating the Agencies' position that such exceptions would be rare, and generally would occur only when the institution already has substantially addressed the matters in the enforcement action or there are substantial changes in circumstances. *See* Interagency Statement on Section 612 of the Dodd-Frank Act: Restrictions on Conversions of Troubled Banks (November 26, 2012), available at *www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-39a.pdf.*

[34] Section 5(i), 12 U.S.C. 1464(i)(6).

[35] This preamble discusses the removal of § 163.22(b)(1)(ii) and (b)(2) in the discussion of amendments to the OCC's rules regarding the organization a national bank or Federal savings association and Federal savings association charters and bylaws, above. Other provisions of this proposal would remove the remaining provisions of part 143 (except for § 143.12), part 152 and § 163.22.

[36] 12 U.S.C. 1464(i)(4).

follow, and deleting §§ 150.80 through 150.125, which contain additional current Federal savings association filing requirements.

In general, the proposal would revise § 5.26 by adding language that will make it applicable to both national banks and Federal savings associations. The proposal also would make the following revisions to the application requirements in § 5.26.

First, we propose to add § 5.26(e)(2)(iii) that would provide examples of factors the OCC will consider when reviewing an application to exercise fiduciary powers. These factors include financial condition, adequacy of capital, character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served.

These factors will help clarify the standard of review that will be used by the OCC. Three of the factors are requirements found in both the National Bank Act [37] and the HOLA: [38] capital adequacy, requiring that the needs of the community be served, and providing that the OCC may consider any other factors or circumstances that the agency considers proper. A review of the financial condition of the national bank or Federal savings association, the experience and character of the management of the institution, and the adequacy of any proposed business plan are all factors that the OCC already takes into account when reviewing an application submitted by a national bank or Federal savings association to conduct fiduciary powers. In addition, the Federal savings association rule, § 150.100, includes the factors requiring assessment of the financial condition, the overall performance, and the proposed supervision of the Federal savings association.

Second, we propose to add a new paragraph (e)(5) to § 5.26. This amendment would require a national bank or a Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide a notice to the OCC containing the information required by § 5.26 (e)(2)(i) 60 days in advance of commencing the activities. This amendment is similar to the requirement in the Federal savings association rule at § 150.560, which requires filing a notice if the savings association has not conducted the fiduciary activity for five years after it was approved to engage in the activity. We have determined, however, that 18 months is a more appropriate timeframe for this notice because the management and condition of a national bank or Federal savings association may change in a shorter period of time. This amendment will ensure that both a national bank and a Federal savings association previously granted fiduciary powers would still have the financial ability and managerial expertise necessary to conduct fiduciary activities in a safe and sound manner. This transfer also is consistent with the National Bank Act [39] and the HOLA,[40] which provide that if a national bank or Federal savings association, respectively, has not exercised previously granted fiduciary powers, the OCC may use specified procedures to revoke the authorized fiduciary powers. The OCC also believes this notification is important because it will enable the agency to allocate supervisory resources needed to evaluate the institution when it resumes fiduciary activities it has not engaged in for a long period of time.

Third, we propose adding a new § 5.26(e)(1)(iv) that specifies that a national bank or Federal savings association that has received approval from the OCC to offer limited fiduciary services and desires to offer full fiduciary services must apply to the OCC. This reflects current practice for national banks. An applicant can apply for approval for limited powers (authority for one or more specific type of fiduciary powers described in the application) or for full powers (authority to exercise all powers authorized under the law). If an institution that had previously been approved only for certain powers planned to begin exercising others, it would need to apply. However, an institution that had applied, and been approved, for full powers could add to the activities it engages in without additional application.

In addition, incorporating Federal savings associations in the application framework of § 5.26 also results in some other minor changes or clarifications of requirements for Federal savings associations. New paragraphs (b)(2) and (4) of § 5.26 set out circumstances in which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers. The new provision in § 5.26(e)(1)(iv), discussed above, requiring an application when an institution previously approved only to exercise specified limited powers planned to exercise more powers would replace a current provision requiring a Federal savings association to apply if it planned to conduct fiduciary activities that are ''materially different'' from those previously approved, regardless of whether the prior approval had been for limited or full powers. Section 5.26(e)(3) provides for expedited review of applications by eligible national banks and eligible Federal savings associations. Part 150 does not provide for expedited treatment of fiduciary powers applications by Federal savings associations.

Establishment, Acquisition, and Relocation of a Branch (§ 5.30 and § 5.31)

Overview. Section 5.30 of the OCC's rules addresses the establishment, acquisition, and relocation of branch offices of national banks. Sections 145.92, 145.93, 145.95 and 145.96 address these subjects, as well as agency offices, for Federal savings associations.[41] While these national bank and Federal savings association rules address a common subject there are two important differences between them, namely the definition of ''branch'' (and many provisions related to the definition) and the scope of the requirement for prior OCC approval.[42] As discussed below, these differences stem from the statutes applicable to national banks and Federal savings associations. At this time, the OCC is proposing to retain these differences. Accordingly, we are not proposing to add Federal savings associations to 12 CFR 5.30. Instead, we propose to add a new § 5.31 to part 5 in order to bring the establishment and relocation of branches by a Federal savings association within the licensing procedures of part 5. Section 5.31 would be similar in format to § 5.30, but would include provisions based on §§ 145.92 and 145.93 regarding the definition of ''branch'' and the scope of the application requirements. Section 5.31 also would include the provisions of § 145.96 regarding agency offices. We then also propose to remove 12 CFR 145.93, 145.95 and 145.96, and make a conforming change to § 145.92. Under this proposal, national banks and

[37] 12 U.S.C. 92a(i).

[38] 12 U.S.C. 1464(n)(8).

[39] 12 U.S.C. 92a(k).

[40] 12 U.S.C. 1464(n)(10).

[41] An agency office is an office of a Federal savings association that services, originates, or approves loans and contracts; manages or sells real estate owned by the savings association; or conducts fiduciary activities or activities ancillary to the savings association's fiduciary business, or, with the approval of the OCC, provides other services. *See* 12 CFR 145.96.

[42] There are also differences in the locations at which a national bank or a Federal savings association may establish a branch. Generally, Federal savings associations have somewhat broader branching authority than national banks. The relevant application procedure regulations do not address this subject.

Federal savings associations generally would continue to be subject to different branching application provisions and requirements.

As an alternative to this proposal, the OCC is considering whether to harmonize the treatment of the branch licensing regulations of national banks and Federal savings associations in order to simplify our licensing procedures and provide for comparable treatment of national banks and Federal savings associations. As a second alternative approach, we also are considering whether to adopt an after-the-fact branch notice requirement for Federal savings associations. These alternatives are discussed below, and the OCC invites comment on the desirability of adopting one of them rather than the proposal.

For national banks, the term ''branch'' is defined by statute. The McFadden Act defines a ''branch'' as an office ''at which deposits are received, or checks paid, or money lent.'' [43] Over the years, the meaning of the term in various contexts has been addressed extensively in case law and regulatory interpretation. The OCC codified much of that interpretive explanation in § 5.30 and in a number of provisions in part 7 that specify what constitutes a branching activity and what does not. For Federal savings associations, the HOLA does not have a general definition of ''branch.'' [44] Consideration of whether an office of a Federal savings association is a branch office has focused only on activities involving deposit accounts, not lending. Furthermore, there is little in the regulations specifying which activities are branching activities and which are not. The proposal retains this difference between national banks and Federal savings associations. In the alternative, harmonized approach, discussed below, the regulation would apply the national bank definition to Federal savings associations, and Federal savings associations would be added to all the provisions in § 5.30 and part 7 that address branching.

In addition, the statutes authorizing a national bank to establish a branch require that it obtain approval from the OCC.[45] Accordingly, the OCC licensing regulations at 12 CFR 5.30 require national banks to file an application and obtain OCC approval for every branch. The HOLA does not have a general provision requiring approval for a Federal savings association to establish a branch.[46] By regulation, at § 145.93, the OCC (continuing a provision originally adopted by the OTS) requires an application for a Federal savings association to establish or relocate a branch, but this rule also provides certain exceptions. The proposal also retains this difference between national banks and Federal savings associations. In the first alternative approach below, the regulation would require Federal savings associations to file applications to establish or relocate a branch without exceptions. The second alternative approach would require Federal savings to file an after-the-fact notice instead of an application.

Branches of national banks (§ 5.30). We are proposing several minor substantive clarifications in § 5.30. First, the proposal would revise § 5.30(c), the scope section, to divide it into paragraphs. Second, § 5.30(c)(2) (formerly part of § 5.30(c)) would continue to provide that the standards of § 5.30 (governing review and approval of applications by the OCC) and, as applicable, 12 U.S.C. 36(b), would apply to branches acquired or retained in a conversion approved under § 5.24 or a business combination approved under § 5.33, but such branches would be subject only to the application procedures set forth in §§ 5.24 or 5.33. The addition of branches acquired or retained in a conversion under § 5.24 to this section reflects current practice.

Third, the OCC is proposing revisions to portions of the definition of ''branch.'' Section 5.30(d)(1)(ii)(B), which currently excepts from the definition of ''branch'' a facility that is located at the site of, or is an extension of, an approved main office or branch office of the national bank, would be amended to state that the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be such an extension, provided the functions performed at the drive-in or pedestrian facility are limited to functions ordinarily performed at a teller window. This ''bright-line'' 500-foot test for national banks that a facility is an extension of an existing branch rather than a new, separate branch is consistent with § 145.93(b)(1), which provides an exception to the application requirement for branches for such a facility for Federal savings associations. The proposal also adds new § 5.30(d)(1)(iii) to describe more clearly what is not a branch, including ATMs and remote service units,[47] as well as loan production offices, deposit production offices, administrative offices, and any other office that does not engage in any of the activities set out in paragraph (d)(1).

Fourth, the proposal updates § 5.30(e), relating to the principles that guide the OCC in making determinations on applications under this section, to reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act.[48]

Finally, the proposal amends § 5.30(f)(6), which sets forth the procedures for expedited review of applications by eligible national banks, to clarify that the time period for review of an application for a short-distance relocation is the 15th day after the close of the comment period or the 30th day after the filing is received by the OCC, whichever is later, to be consistent with the shorter comment period for applications for short-distance relocations (15 days rather than the standard 30 days).

Branches and agency offices of Federal savings associations (§ 5.31). The OCC is proposing to add a new § 5.31 to address the establishment or relocation of branches, or the establishment of agency offices, by Federal savings associations. Its format follows that of § 5.30, but it does not include provisions from § 5.30 that apply only to national banks.

Section 5.31(a) recites the statutory authority under which the rule is issued. Section 5.31(b) sets out the basic requirement that a Federal savings association must file an application to establish or relocate a branch, unless the transaction would qualify for one of the exceptions in the rule.

Section 5.31(c), the scope section, generally describes what the section covers—namely, the procedures and standards for review and approval of applications to establish or relocate a branch, the circumstances in which an application is not required, and the authority to establish agency offices. Section 5.31(c)(2) (similar to proposed § 5.30(c)(2) and part of current § 5.30(c)) provides that the standards of § 5.31

[43] Section 5155 of the Revised Statutes, 12 U.S.C. 36(j).

[44] There is a definition in section 5(m) of the HOLA, 12 U.S.C. 1464(m), but it addresses branching only in the District of Columbia. In that subsection, branch is defined as an office ''at which accounts are opened or payments are received or withdrawals are made.'' 12 U.S.C. 1464(m)(2).

[45] *See* 12 U.S.C. 36(b), 36(c), 36(g).

[46] However, the provision regarding branching in the District of Columbia does require prior regulatory approval. 12 U.S.C. 1464(m)(1).

[47] We also are proposing to amend § 7.4003 (establishment and operation of a remote service unit) to add a number of additional examples of remote service units. The proposal expands this illustrative list in order to modernize the regulation to capture new technology with similar functional capability.

[48] 12 U.S.C. 1(a).

(governing review and approval of applications by the OCC) would apply to branches acquired or retained in a conversion approved under § 5.23 or a business combination approved under § 5.33, but that such branches would be subject only to the application procedures set forth in §§ 5.23 or 5.33. Section 5.31(c)(3) says that § 5.31 also implements section 5(m) of the HOLA,[49] which addresses branching by Federal and state savings associations in the District of Columbia.

In § 5.31(d), we are proposing to add a definition of ''branch office'' for Federal savings associations for purposes of § 5.31 by referring to the definition in 12 CFR 145.92(a). We are also proposing to include a definition of ''home state''—the state in which the association's home office is located.

In § 5.31(e) we are proposing the policy principles that guide the OCC's review of an application to establish or relocate a branch. These principles reflect the OCC's statutory mission as amended in section 314 of the Dodd-Frank Act, and are identical to those principles set forth in § 5.30(e) for the OCC's review of a national bank branch application or relocation.[50]

Paragraph (f)(1) of § 5.31 sets out the general requirement that each Federal savings association that wants to establish or relocate a branch must submit a separate application for each proposed branch, unless the transaction qualifies for one of the exceptions in paragraph (f)(2). Sections 145.93 and 145.95 contain a number of provisions regarding the filing of notices and applications with the OCC as well as notices to the public. These provisions will no longer be necessary once Federal savings association branch filings are subject to part 5 and part 5's corresponding procedural provisions. One of the provisions in § 145.93—paragraph (e)—does not have an analogue in § 5.30, and the OCC does not propose to include it in § 5.31. Under § 145.93(e), a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months.

Paragraph (f)(2) of § 5.31 would carry forward three of the exceptions to the requirement to file an application that are now included in § 145.93(b).[51] Paragraph (f)(2)(i) continues the exception for the establishment of a drive-in or pedestrian office that is located within 500 feet of an existing home or branch office. Paragraph (f)(2)(ii) continues the exception for a short-distance relocation of a branch. Paragraph (f)(2)(iii) continues the exception for the establishment or relocation of a branch by highly-rated Federal savings associations. Under § 145.93(b)(3), certain highly-rated Federal savings associations are not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements. Those requirements are: (1) The Federal savings association is eligible for expedited treatment, (2) it publishes notice, at a time period specified in the rule, of its intent to establish or relocate a branch, (3) in the case of a relocation, it posts notice of its intent to relocate the branch at the existing branch, and (4) no person files a comment opposing the action, or if a comment is filed, the OCC determines the comment raises issues that are not relevant to the standards for approving a branch application. The proposal continues this exception and these requirements except that, as with other sections in part 5, the condition for qualifying is that the Federal savings association is an ''eligible savings association'' rather than eligible for expedited treatment. As discussed earlier in this preamble, there are some differences in these tests.

Paragraph (d) of § 145.93 addresses maintenance of branches following a conversion or business combination and provides that such branches may be maintained after the conversion or combination unless the approval of the transaction specifies otherwise. The proposal does not retain this provision in § 5.31. In part 5, retention of branches in a conversion or business combination is addressed in the conversion and business combination regulations (in this proposal, § 5.23 for conversions to become a Federal savings association and § 5.33 for business combinations resulting in a Federal savings association).

Paragraph (g) of § 5.31 would set out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch. Specifically, the OCC would be able to waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Paragraph (h) of § 5.31 would provide that the OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current twelve month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Paragraph (i) of § 5.31 would provide that Federal savings associations must comply with the portions of 12 U.S.C. 1831r–1 that apply to Federal savings associations with respect to branch closings.

The proposal would add § 5.31(j) to implement section 5(m)(1) of the HOLA.[52] Section 5(m)(1), which applies to both Federal and state savings associations, provides that no savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Comptroller's prior written approval and that no savings association shall establish any branch in the District or move its principal office or any branch in the District without the Comptroller's prior written approval. Section 145.93(c) currently provides prior approval for any savings association branch that would be subject to section 5(m)(1), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. After reconsideration, the OCC believes requiring an application and issuing a prior written approval for each application is more consistent with the statutory language of section 5(m)(1). Accordingly, we are changing the provisions implementing section 5(m)(1) of the HOLA to require an application. The proposal provides a short paraphrase of the statutory provision and instructs savings associations requiring approval under section 5(m)(1) to follow the application procedures of 12 CFR 5.31.

Question 2: The OCC invites commenters' views on whether section 5(m) is outdated.

Finally, we are proposing to add paragraph (k) to § 5.31, which would include provisions currently in § 145.96 regarding agency offices.

Alternative approaches to harmonize licensing rules for branching. As

[49] 12 U.S.C. 1464(m).

[50] 12 U.S.C. 1(a).

[51] We are proposing to replace the fourth exception (which provides that a Federal savings association may re-designate an existing branch office as a home office at the same time that it re-designates its existing home office as a branch office) with provisions in § 5.40. Section 5.40 would govern changes in the locations of a national bank's main office or a Federal savings association's home office. Changes in the location of a home office, including to an existing branch office, are subject to § 5.40. If the Federal savings association proposes to establish a branch at its former home office location, paragraph (c)(3) of § 5.40 directs the association to follow § 5.31.

[52] 12 U.S.C. 1464(m)(1).

mentioned above, the OCC also is considering whether it would be preferable to integrate the licensing rules for establishing branches by adding Federal savings associations to § 5.30. Under this approach, both national banks and Federal savings associations would be required to file an application and obtain prior OCC approval to establish or relocate a branch. This requirement would be a change from the current rule for Federal savings associations, which provides that certain highly-rated Federal savings associations are not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements and no person files a relevant comment opposing the action.

We note, however, that under this alternative approach even though these highly-rated institutions would have to file an application, they most likely would qualify for expedited review of their applications. Moreover, the alternative approach would grandfather branches in existence as of the date the final rule would be published in the **Federal Register**.

The alternative approach also would apply the definition of ''branch'' in § 5.30(d) to both national banks and Federal savings associations.[53] As a result of this change, Federal savings associations would be subject to all the provisions in § 5.30 that interpret, explain, or apply the definition of ''branch'' or that address when various activities are or are not branching activities. In addition, because this definition of ''branch'' (an office at which deposits are received, checks paid, or money lent) is established by statute,[54] the meaning of ''branch'' has an extensive case law and regulatory history that also may apply to Federal savings associations. This alternative proposal also would describe more clearly what is not a branch, including ATMs, electronic means or facilities used in providing financial services, loan production offices, deposit production offices, administrative offices, and any other office that does not engage in any of the activities set out in § 5.30(d)(1).

Because of the application of the branch definition to Federal savings associations, a Federal savings association agency office at which loan proceeds are disbursed in the manner described in 12 CFR 7.1003(a) would be a branch,[55] but an agency office that conducts its lending related activities in such a manner as to be a loan production office would not be a branch. However, this alternative would grandfather existing agency offices that were in existence on the date the final rule would be published in the **Federal Register** and that engaged in the disbursal of loan proceeds in the manner described in 12 CFR 7.1003(a) as of that date and continue to do so, provided they do not engage in any other branching activity. (We note that such an office could alter the manner in which it conducts business so that it would be a loan production office rather than a grandfathered Federal savings association agency office or a branch.) If a Federal savings association with a grandfathered Federal savings association agency office were to convert to or merge into a national bank or be acquired by or merge into another Federal savings association, or if the grandfathered Federal savings association agency office itself were acquired by a national bank or another Federal savings association, the agency office would lose its grandfathered status. The alternative proposal also would remove § 145.96 so that Federal savings associations would not be required to obtain OCC approval for offices to conduct permitted activities that are not considered branching activities, unless approval is required under some other provision.

Finally, this alternative proposal would amend §§ 7.1003, 7.1004, 7.1005, 7.1012, 7.1014, 7.4003, 7.4004, and 7.4005, which interpret, explain, or apply the definition of ''branch,'' or that address when various activities are or are not branching activities, to apply them to Federal savings associations as well as national banks. These activities currently are permitted in Federal savings association agency offices.

The OCC notes that the additional application requirement of the alternative approach described above could strengthen the ability of the OCC to monitor Federal savings association branching activity. In particular, branch applications could allow the OCC to identify emerging issues that have not yet affected the institution's rating and allow the OCC to put into place appropriate safeguards that address those risks before they might be exacerbated by the establishment of the branch. Moreover, a branch application requirement would mean the proposed establishment of a branch would be an application listed in the OCC's *Weekly Bulletin.* This would provide those who may be interested in commenting on a proposal to establish a branch another form of notice in addition to the publication of notice by the association. A branch application requirement also would enable the OCC to maintain comprehensive supervisory and structural data for Federal savings associations, in addition to national banks. Because the current rule requires Federal savings associations to comply with a public notice process for each new branch, the OCC believes that filing an application with the OCC at the time of this notice may add only incremental time and burden to the process of opening a new branch, especially for the majority of Federal savings associations that would qualify for expedited review of the application.

However, there is no statutory requirement that Federal savings associations seek approval from the OCC to open a new branch, and the OCC is mindful that the imposition of this requirement on Federal savings associations could be perceived as unnecessary and burdensome, especially given the fact that the last EGRPRA review of savings association rules resulted in the elimination of the branch application requirement for 1- and 2-rated savings associations.[56] Furthermore, the OCC is able to obtain some branch information through other sources, such as through the examination process and from the FDIC's annual Summary of Deposits.[57] In addition, the OCC notes that CRA rules require institutions to maintain a list of their branches, their street addresses, and geographies, as well as a list of branches opened or closed during the current year and each of the prior two calendar years.[58]

Question 3: The OCC specifically requests comment on whether the alternative integrated rule approach should be adopted as the final rule.

As a second alternative approach, the OCC could require Federal savings associations to submit an after-the-fact notice, either as an amendment to § 5.31 as proposed in this rulemaking or in lieu of an application in the alternative approach of an integrated rule, described above. Under this after-the-

[53] However, under this alternative, while the OCC would adopt the same definition for both national banks and Federal savings associations, we would clarify that the locations at which each type of institution may maintain a branch are governed by the separate and different legal authorities applicable to each type of institution, as indicated in the scope paragraph.

[54] 12 U.S.C. 36(j).

[55] Under § 7.1003(a), for purposes of what constitutes a branch, '' 'money' is deemed to be 'lent' only at the place, if any, where the borrower in-person receives loan proceeds directly from bank funds.''

[56] The OTS published an interim final rule on November 24, 2004 modifying application and reporting requirements as part of its review under EGRPRA. (69 FR 68239).

[57] *See www2.fdic.gov/idasp/main.asp.*

[58] *See* 12 CFR 195.43(a)(3) and (4).

fact notice alternative, a Federal savings association would be required to provide a written notice to the OCC no later than 10 days after the opening or relocation of a branch. The written notice would identify the address of the branch, the date of opening the branch, and the type of branch. Such a notice would enable the OCC to obtain timely information on Federal savings association branching activity without requiring a 1- or 2-rated Federal savings association to obtain prior OCC approval to engage in an activity that they now may do without approval.

Question 4: The OCC specifically requests comment on whether the final rule should include in § 5.31 an after-the-fact notice for Federal savings associations, or, if the alternative integrated rule approach is adopted, whether such an after-the-fact notice should be required in lieu of an application requirement for savings associations.

Expedited Procedures for Certain Reorganizations (§ 5.32)

Twelve CFR 5.32 provides the procedures for OCC review and approval of a national bank's reorganization to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company. Section 5.32 currently does not expressly exempt such reorganizations from the general procedures in part 5 for public notice, public availability, and hearings and other meetings (§§ 5.8, 5.9, and 5.11). When originally adopted, it was not the OCC's intent to apply these procedures to these reorganizations, and, in general, the OCC has not required national banks to comply with these procedures. The proposal would amend § 5.32 to make clear in the regulation that these procedural requirements do not apply unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. This is consistent with procedural exceptions for conversions (§ 5.23), fiduciary powers (§ 5.26), operating subsidiaries (§ 5.34), bank service companies (§ 5.35), and change in asset composition (§ 5.53).

Business Combinations (§ 5.33)

Business combinations include mergers and consolidations, as well as certain purchase and assumption transactions. The OCC's regulations governing the application requirements and procedures for national banks engaging in business combinations are contained in 12 CFR 5.33. The regulations governing the application requirements and procedures for Federal savings associations engaging in business combinations are contained in 12 CFR 163.22. The statutes governing mergers and consolidations by national banks contain extensive specifications for their authority, the procedures the bank must follow, and the effect of the merger or consolidation.[59] Thus, there are few OCC regulations on these matters. By contrast, the statutes governing mergers and consolidations by Federal savings associations contain few provisions addressing these matters.[60] Accordingly, the OCC (and its predecessor regulators of Federal savings associations) has adopted extensive regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, the procedures the savings association must follow, and the effect of the merger or consolidation. These rules are contained in 12 CFR part 146 for Federal mutual savings associations and in 12 CFR 152.13, 152.14, and 152.15 for Federal stock savings associations.

While these rules address a common subject there are a number of differences between them. We are proposing to harmonize the treatment of the business combination activities of national banks and Federal savings associations where consistent with the underlying statutory authorities of each type of institution and to consolidate our regulations by amending 12 CFR 5.33 to apply to Federal savings associations and by removing 12 CFR part 146 and 12 CFR 152.13, 152.14, 152.15, and 163.22.[61] This harmonization is intended to reduce regulatory duplication and promote fairness in supervision. We also propose to include in § 5.33 some provisions from the Federal savings association application requirements and procedures, to make several other substantive changes in § 5.33, and to make a number of clarifying or technical amendments. Under this proposal, as explained below, national banks and Federal savings associations generally would be subject to the same application requirements and procedures. In addition, we propose to add to § 5.33 new paragraphs, based on 12 CFR part 146 and 12 CFR 152.13 and 152.14, to continue to provide regulations addressing the authority of Federal savings associations to engage in mergers and consolidations, the procedures the savings association must follow, and the effect of the merger or consolidation.

Specifically, we propose to modify the scope section, § 5.33(b), to remove the reference to a merger between a national bank and its nonbank affiliate, as those transactions are now covered in the revised definition of ''business combination,'' discussed below. We also propose to revise the language regarding notices to the OCC when a national bank or Federal savings association is not the resulting institution to address situations in which the merger is with an entity that is not a ''depository institution'' as defined for purposes of § 5.33.[62] We also propose to add a footnote to the licensing requirements section indicating that some of the transactions that do not require an application under § 5.33 may require an application under 12 CFR 5.53 for a substantial asset change.

Section 5.33(d) contains definitions. The OCC is proposing to revise the definition of ''business combination'' in several ways. First, we propose to include consolidations and mergers of Federal savings associations with state trust companies in the definition. A consolidation or merger of a state trust company with a national bank is included in current § 5.33(g)(1) because 5.33(g)(1) covers merger and consolidations with a state bank as defined in 12 U.S.C. 215b, and that definition includes state trust companies. Second, new § 5.33(d)(2)(ii) includes mergers and consolidations between a Federal savings association and a credit union in the definition of business combinations. Federal savings associations have this authority, but national banks do not. Third, new § 5.33(d)(2)(iii) includes mergers between a national bank and its nonbank affiliate. National banks have this authority, but Federal savings associations do not.

Fourth, new § 5.33(d)(2)(v) revises an existing provision in § 5.33(d)(2), which currently includes in the definition only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become deposits at the assuming national bank or Federal savings association. Section 163.22(c) requires an application by a Federal savings association in such cases.[63] We propose to keep the requirement and extend it to national

[59] *See* 12 U.S.C. 214–214d, 215–215b, and 215c, respectively.

[60] *See* 12 U.S.C. 1464(d)(3)(A) and 1467a(s).

[61] The removal of part 146 and § 163.22 also is discussed elsewhere in this proposal.

[62] Under § 5.3(f), ''depository institution'' means any bank or savings association.

[63] Section 163.22(c) also is discussed elsewhere in this preamble in connection with 12 CFR 5.53.

banks. This requirement will assist the OCC in monitoring acquisitions of deposit liabilities from outside the FDIC-insured system.

Fifth, new § 5.33(d)(2)(vi) includes in the definition purchase and assumption transactions which involve the acquisition by a national bank or a Federal savings association of all or substantially all, of the assets, or the assumption of all or substantially all of the liabilities, of companies in addition to depository institutions, including credit unions, nonbank affiliates, or any other company (a ''whole entity purchase and assumption''). This definition is intended to cover a whole entity purchase and assumption with an entity other than a depository institution (which is covered by proposed § 5.33(d)(2)(iv), continuing a provision in the current rule). Currently, a Federal savings association has authority to engage in such transactions only with an entity with which it could engage in a consolidation or merger (*i.e.,* a bank, savings association, or credit union), not a nonbank affiliate or other company. A Federal savings association is required to file an application for such transactions. A national bank has authority to engage in a whole entity purchase and assumption transaction without regard to whether it has authority to consolidate or merge with the counterparty. The purchase and assumption of bank-permissible assets and liabilities is an exercise of a bank's power to engage in the business of banking under 12 U.S.C. 24(Seventh), not the power to combine organically with another institution, as in a merger. The OCC proposes to adopt the same position regarding the power of a Federal savings association to engage in purchase and assumption transactions. Thus, a Federal savings association would have the authority to engage in a whole entity purchase and assumption without regard to whether it has authority to consolidate or merge with the counterparty. While national banks have had this authority, there has not been a requirement to apply to the OCC for approval of a whole entity purchase and assumption other than one with a depository institution. The OCC believes such transactions with parties other than depository institutions can have an impact on the acquiring national bank or Federal savings association if they are material, and so should have regulatory review. The OCC proposes to require an application if the whole entity purchase and assumption would result in an increase in the asset size of the bank or savings association of 25 percent or more.

Question 5: The OCC requests comment on whether an increase in asset size of 25 percent or more is the appropriate threshold for materiality for whole entity purchase and assumption transactions or whether there are there other possible measures of materiality.

We are proposing to add a new term ''other combination'' in § 5.33(d)(10). It would be used in § 5.33 to refer to those combinations that do not require application to the OCC under § 5.33 (*i.e.,* those in which a national bank or Federal savings association is not the resulting institution). The OCC also is proposing to add definitions of ''credit union,'' ''savings association'' and ''state savings association,'' and ''state trust company'' in § 5.33(d)(6), (11), and (12), respectively.

The OCC is proposing expressly to include in § 5.33(e)(1)(i) the factors the OCC uses to evaluate all business combination applications, including both those the OCC reviews under the Bank Merger Act and those the OCC does not. These factors are: The institution's capital level; the conformity of the transaction to applicable law, regulation, and supervisory policies; the purpose of the transaction; the impact of the transaction on safety and soundness; and the effect of the transaction on the institution's shareholders, depositors, other creditors, and customers. These factors all reflect current practice. Some of them are included in § 5.33(g)(4) and (5) now for a merger with a nonbank affiliate, in which the OCC does not have Bank Merger Act review. Others are included in the Federal savings association regulations at § 163.22(d). Section 163.22(d)(1)(vi) also has a factor relating to the fairness of the transaction, disclosure regarding the transaction, and equitable treatment that includes a detailed presentation of considerations involved in assessing the factor. The OCC believes it is not necessary to include this detailed material in the regulation. We believe the factor in § 5.33(e)(1)(i)(E) regarding the effect of the transaction on the institution's shareholders, depositors, other creditors, and customers is sufficient to provide a basis to review such matters in appropriate cases.

We are proposing to include three additional factors in § 5.33(e)(1)(ii) for applications in which the OCC reviews the transaction under the Bank Merger Act. First, we are moving the money laundering factor included in current § 5.33(e)(1)(iii) to the Bank Merger Act paragraph because it is a factor in the Bank Merger Act. We are adding the other two factors, financial stability and deposit concentration limit, because the Dodd-Frank Act added these factors to the Bank Merger Act.[64]

The proposal also would clarify the information the applicant must include in the application. Section 5.33(e)(2) currently requires an applicant to disclose the location of any branch it will acquire and retain in a business combination. We propose to amend this requirement to clarify that this disclosure include the location of any branches that are approved but not yet opened. Proposed § 5.33(e)(3) would add a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment. This requirement reflects the current practice of the OCC to review the legal permissibility for the resulting national bank or Federal savings association to continue to hold these other investments when evaluating a business combination application.

In the provision regarding retention of nonconforming assets for a limited period of time after consummation of a business combination, § 5.33(e)(5), we propose to add Federal savings associations to the current provision and to add a new paragraph (e)(5)(ii) applicable to Federal savings associations to address provisions in the HOLA regarding certain nonconforming assets.

In the provision regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, § 5.33(e)(6), we propose to add a new paragraph (e)(6)(ii) clarifying that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This requirement reflects current practice.

In the provision regarding the expiration of approval, § 5.33(e)(7), we propose to shorten the time within which an approval expires if the transaction has not been consummated from one year to six months and add a provision under which the OCC can extend the six month period.

Section 5.33(f) contains the exceptions to the rules of general applicability for filings under § 5.33. Paragraph (f)(1) addresses filings in which a national bank (and, as

[64] Public Law 111–203, sections 604(f) and 623(a), 124 Stat. 1376, 1602 and 1634 (2010).

proposed, a Federal savings association) is the applicant. We propose to amend paragraph (f)(1) to clarify that the requirement of public notice and comment would apply only when the application is subject to a public notice requirement under the Bank Merger Act or other applicable statute that requires notice to the public. In such cases, the statutory requirements apply. In other cases, the public notice and comment provisions in §§ 5.8, 5.10 and 5.11 would not apply unless the OCC concludes a particular application presents significant or novel policy, supervisory, or legal issues.[65] This publication requirement would not be a change for national banks or Federal savings associations.

In addition, another change for Federal savings associations would be the frequency and timing of publication for transactions that are subject to the Bank Merger Act. Section 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period. For national banks, the OCC requires an initial publication and two subsequent publications at intervals during the standard 30 day public comment period.

Paragraph (f)(1)(ii) continues the current provisions under which a merger between a national bank and its nonbank affiliate is excepted from public notice and comment. Such mergers are merely internal reorganizations of the company's existing operations.

Section 5.33(f)(3) addresses filings in which a national bank (and as revised, a Federal savings association) is the target company and will not be the resulting institution. We are clarifying this provision so that it no longer includes a Federal savings association as a resulting institution, as Federal savings associations now apply to the OCC under proposed § 5.33(g)(3). We also are adding credit unions, as a merger or consolidation of a Federal savings association into a credit union will be within the scope of § 5.33. In addition, we propose to remove § 5.2 (rules of general applicability) and § 5.5 (fees) from the list of sections excepted. They include provisions that may be useful to apply in some situations.

We are proposing to amend § 5.33(g)(1) (merger or consolidation of a national bank or a state bank into a national bank) to require that a national bank that will not be the resulting bank in a merger or consolidation with another national bank must file a notice to the OCC under § 5.33(k). This notice, which would also be required whenever a national bank or Federal savings association merges or consolidates into another institution, provides the OCC information about the target national bank's compliance with requirements to ''merge-out'' and sets in motion the steps for the disappearing national bank to end its separate existence. Section 5.33(k) is discussed further below.

We are proposing to amend § 5.33(g)(2) (merger or consolidation of a Federal savings association into a national bank) to reflect the fact that the OCC now is the regulator of Federal savings associations. First, requirements similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22 would now be required in § 5.33(g)(2)(i)(B) (referring to §§ 5.33(n) and (o)), replacing current § 5.33(g)(2)(i)(B). In addition, proposed § 5.33(g)(2)(i)(B) also would include a provision under which a whole purchase and assumption of the target Federal savings association would be treated as a consolidation for the Federal savings association, so that the procedural requirements in paragraph (o) would apply. The current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions now through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions, in addition to a consolidation and a merger.

Second, the provision in § 5.33(g)(2)(ii), under which the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, would be changed in proposed § 5.33(g)(2)(ii)(A) from a voluntary to a required process, as the OCC has regulatory authority over both the national bank and the Federal savings association. Third, proposed § 5.33(g)(2)(ii)(B) and (C) would set out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a national bank. Mergers and consolidations of Federal savings associations into national banks are authorized under 12 U.S.C. 215c, but the statute has no provisions addressing dissenters' rights. The OCC is proposing to apply the statutory provisions governing national bank dissenters' rights in 12 U.S.C. 215 and 215a to transactions in which a Federal savings association is merging or consolidating into a national bank, rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14. Applications in which there are dissenting shareholders and the appraisal process is used are rare. The basic frameworks of the national bank and Federal savings association processes are similar. In the interest of simplicity of administration and similar treatment for each type of institution, the OCC prefers to use only one dissenters' rights process. We propose to use the process for national banks because it is mandated by statutes for the transactions covered by those statutes. However, since we would be applying the dissenters' rights process based on regulation, not statute, to the transactions covered by § 5.33(g)(2), we propose to include one element from § 152.14 that is different from the national bank statutes. Under the statutes, the bank is required to bear all costs.[66] Under § 152.14(c)(9), the OCC may apportion costs. When we apply the national bank process to transactions to which it is not applicable by statute, we propose to include the authority to apportion costs for both participating Federal savings associations and participating national banks. Thus, in proposed § 5.33(g)(2)(ii)(C), we propose to do so for the type of consolidation or merger subject to § 5.33(g)(2).

In § 5.33(g)(2)(iii), we propose to include a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the OCC Licensing Manual.

We propose to add a new § 5.33(g)(3) addressing consolidations and mergers of other institutions into a Federal savings association.[67] The proposed section would require application to the OCC and, in § 5.33(g)(3)(i)(A) (referring to §§ 5.33(n) and (o)), would require the

[65] Section 5.33(f) currently includes a list of several other statutory or regulatory requirements for publication in connection with certain mergers or consolidations that also except those transactions from the one-time publication of notice requirement of § 5.8(a). However, those provisions concern publication of notice of the shareholders' meeting being called to vote on the proposed merger or consolidation. They are not notices to the public inviting comment on the merger or consolidation application. The OCC is proposing to remove them in revised § 5.33(f)(1)(i).

[66] *See* 12 U.S.C. 214a(b), 215(d), and 215a(d).

[67] The proposal would move the provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state chartered depository institution to become § 5.33(g)(6). The provisions in current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association would remain here in new § 5.33(g)(3) with modifications, as discussed in the text.

Federal savings association to comply with requirements and procedures similar to those in 12 CFR part 146 and 12 CFR 152.13 and 163.22. Proposed § 5.33(g)(3)(i)(A) also would provide that if a combination involves a whole purchase and assumption of a Federal savings association, then the combination would be treated as a consolidation for participating Federal savings associations, so that the procedural requirements in paragraph (o) would apply. As discussed above, the current regulations, at 12 CFR part 146 and 12 CFR 152.13, apply these requirements to such transactions now through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions, in addition to a consolidations and a merger.

Section 5.33(g)(3)(i)(B)(*1*) would continue the provisions in current § 5.33(g)(3)(iii)(A) requiring a target national bank to follow the procedures of 12 U.S.C. 214a and 12 U.S.C. 214c, as if the Federal savings association were a state bank. Section 5.33(g)(3)(i)(B)(*2*) would continue the provisions in current § 5.33(g)(3)(iii)(B), under which the OCC may conduct an appraisal of dissenters' shares of stock in a target national bank involved in a merger or consolidation with a Federal savings association if all the parties agree. However, the proposal would make the appraisal of dissenters' rights in proposed § 5.33(g)(3)(i)(B)(*2*) a required process, as the OCC has regulatory authority over both the national bank and the Federal savings association as a result of the Dodd-Frank Act. As above, because we are applying this process by regulation to types of transactions that do not have statutory dissenters' rights provisions, we propose to include a cost allocation provision for both national banks and Federal savings associations.

Section 5.33(g)(3)(i)(C) would set out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into another Federal savings association. In applications in which a Federal savings association is merging into another Federal savings association, the OCC is proposing to apply the statutory provisions governing national bank dissenters' rights in 12 U.S.C. 214a to Federal savings associations, as if the Federal savings association were a national bank merging into a state bank under section 214a. We are proposing to use the national bank dissenters' right process rather than continuing the regulatory dissenters' rights provision in 12 CFR 152.14 for the reasons discussed above. As above, because the process is being applied in these situations by regulation, not statute, we propose to include a cost allocation provision. We are also proposing to include the requirement from 12 U.S.C. 214a(b) that the plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders. This requirement is a change from § 152.14(c)(11), under which such shares shall have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but such status no longer would be mandatory.

In § 5.33(g)(3)(i)(D), we propose to provide that a state bank, state savings association or credit union that engages in a consolidation or merger into a Federal savings association would follow the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized. This provision is similar to the current provisions in § 5.33(g)(4) and (g)(5) for mergers between a national bank and its nonbank affiliate.

In § 5.33(g)(3)(ii), we propose to include a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the OCC Licensing Manual.

Sections 5.33(g)(4) and (g)(5) address mergers between a national bank and its nonbank subsidiary or affiliate. Section 5.33(g)(4) covers mergers into the national bank; § 5.33(g)(5) covers mergers into the nonbank subsidiary or affiliate. They implement a statute applicable only to national banks, not Federal savings associations.[68] In § 5.33(g)(4), we propose to add a clarification that the transaction is subject to review by the FDIC under the Bank Merger Act only when the national bank is insured. We also are removing the factors the OCC considers in reviewing these applications from § 5.33(g)(4)(i) and § 5.33(g)(5)(i). These factors would no longer be needed in these provisions as we have included them in proposed § 5.33(e)(1)(i) and applied them to all business combinations.

Proposed § 5.33(g)(6) addresses a consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank (as defined in 12 U.S.C. 214(a)). This new paragraph is based on the portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a state bank.[69] We also propose to add express provisions on procedures and dissenters' rights. These requirements are statutory and were implied in current § 5.33(g)(3)(i). We propose to move the provisions on termination of charter and notice to the OCC in current § 5.33(g)(3)(i) and (ii) to new § 5.33(k). In § 5.33(g)(6)(iv), we propose to include a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the OCC Licensing Manual.

We propose to add a new § 5.33(g)(7), similar to proposed § 5.33(g)(6), that would address a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union. Under proposed § 5.33(g)(7)(i), such transactions would require only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations because, under § 163.22(c), an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Proposed § 5.33(g)(7)(ii) would address the procedures Federal savings association must follow to engage in the consolidation or merger and would require the association to follow the provisions of § 5.33(n) and (o), which are based on provisions in 12 CFR part 146 and 12 CFR 152.13 and 163.22. In addition, proposed § 5.33(g)(7)(ii) would include a provision under which a whole purchase and assumption of the target Federal savings association would be treated as a consolidation for the Federal savings association, so that the procedural requirements in paragraph (o) would apply. The current regulations, at 12 CFR part 146 and 12

[68] *See* 12 U.S.C. 215a–3.

[69] The portions of current § 5.33(g)(3) that address a consolidation or merger of a national bank into a Federal savings association would remain in revised § 5.33(g)(3).

CFR 152.13, apply these requirements to such transactions now through the definition of ''combination'' in § 152.13(b)(1), which includes a whole purchase and assumption transaction between depository institutions, in addition to a consolidation and a merger.

Proposed § 5.33(g)(7)(iii) would set out the process for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a state bank, state savings bank, state savings association, state trust company, or credit union. The process is similar to the process included in § 5.33(g)(3)(C), described above, for appraisal of dissenters' shares of stock in a Federal stock savings association involved in a consolidation or merger into a another Federal savings association. In § 5.33(g)(7)(iv), we propose to include a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9). Although not currently in § 5.33, it is a requirement for national banks as discussed in the OCC Licensing Manual.

Section 5.33(i) provides for expedited review of business reorganizations (defined in § 5.33(d)(3)) and streamlined applications (described in § 5.33(j)). We propose to add Federal savings associations to § 5.33(d)(3) and § 5.33(j), so that Federal savings association applications that meet the requirements would be eligible for expedited review. Under expedited review, an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the application is not eligible for expedited review or the expedited review process is extended. Business reorganizations are (1) a business combination between eligible depository institutions owned by the same holding company or (2) a business combination between an eligible bank or savings association and an interim national bank or interim Federal savings association that is being effected to form a holding company that would own the eligible bank or savings association. For both business reorganizations and streamlined applications, the acquiring bank must be an eligible bank and the resulting institution must be well capitalized. There are several types of streamlined applications. The different types of streamlined applications vary depending on the other institutions' status as eligible institutions, the amount by which the resulting institution would grow in size, and, in some cases, a pre-filing approval from the OCC to use a streamlined application.

Under the proposal, expedited review under § 5.33(j) would replace the automatic approval provision in § 163.22(f) for Federal savings associations. Under § 163.22(f), an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete. An application would fall out of the automatic approval process in a number of specified circumstances. Many of these circumstances are the same as those that would cause an application not to be eligible for expedited review under § 5.33(j). However, the size-based limit included in § 163.22(f) is more restrictive than eligibility for expedited review as a business reorganization or streamlined application in § 5.33. Specifically, under § 163.22(f)(10), an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. Business reorganizations have no size limit. Streamlined applications under § 5.33(j) have limits based on the relative size of the acquiring institution and the assets to be acquired but do not have a fixed maximum dollar amount limit on the size. In addition, under § 163.22(f) a number of the other disqualifying conditions are based on the competitive impact of the proposed combination, creating safe harbors that the proposal must meet in order qualify for the automatic approval process. The OCC believes it is not necessary to include competitive impact thresholds in the regulation. When a streamlined application is filed, the OCC would review it, and if it raised potential competitive concerns, the OCC would notify the applicant that the application is not eligible for expedited review. Accordingly, the OCC proposes not to include the automatic approval process of § 163.22(f), but to add one of the disqualifying factors set forth in § 163.22(f) to the streamlined application provision. Specifically, under proposed § 5.33(j)(2), an applicant would not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.

We are proposing to add a new § 5.33(k) regarding notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. It also includes provisions regarding the steps to be taken to terminate the institution's status as a national bank or Federal savings association. This new provision gathers in one place material from current §§ 5.33(g)(3), 163.22(b) and 163.22(h)(1)(i) on filing the notice and the timing of the filing, material from § 163.22(h)(1)(i) and (ii) on the content of the notice, and material from §§ 5.33(g)(3), 146.2(g) and 152.13(k) on termination of the institution's status as a national bank or Federal savings association. There would be no change for Federal savings associations. However, national banks would be required to include more information in the notice than currently required in § 5.33. This additional information would include a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (*e.g.,* board and shareholder approval). The OCC is adding the requirement to include the information in order to monitor the transaction to ensure the national bank or Federal savings association complies with applicable law. The information involved is information the institution already would have compiled. Finally, under proposed § 5.33(k)(5), if the business combination contemplated by the notice has not occurred within six months after receipt of the notice, a new notice must be submitted, unless the OCC grants an extension of time. This requirement is in § 163.22(h)(1)(ii), except that the time period is shortened from one year to be consistent with the expiration period for OCC approvals under § 5.33(e)(7). This expiration provision would be new for national banks. After six months the information in the original notice could be out of date. Moreover, such a delay in consummation of the transaction may indicate changes in the condition or circumstances of the parties. Treating the notice as having expired and requiring a new one is similar to the requirement in various sections of part 5 that an approval expires after the passage of a specified amount of time.

The OCC is proposing to add new § 5.33(l) addressing the transfer of assets, liabilities, rights, franchises,

interests, and fiduciary appointments to the resulting national bank or Federal savings association and its status as the continuation of each participating institution, sometimes referred to as corporate succession. It reflects the corporate succession provisions in national bank statutes [70] and continues the substance of current regulations providing succession for a Federal savings associations when it is the resulting institution in a consolidation or merger.[71]

The OCC is proposing to add new § 5.33(m) addressing certification of a consolidation or merger and documentation of its effective date. Specifically, proposed § 5.33(m) would require the applicant to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC would then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This new section reflects current OCC practice for national banks. The new section accomplishes through an applicant notification letter and issuance of an OCC certification letter what § 152.13(j) does in requiring the applicant to submit two sets of ''Articles of Combination'' that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date. The difference in forms and terminology would not represent a change in substance for Federal savings associations.

The OCC is proposing to add a new § 5.33(n). It would include provisions in § 146.2 and § 152.13 that set out the authority for Federal savings associations to engage in various types of business combinations and limitations on that authority. Section 5.33(n)(1) is based on § 152.13(a). Section 5.33(n)(2) is based on § 146.2(a) and § 152.13(c). However, we propose to add authority to engage in other business combinations listed in current § 5.33(d)(2), including the authority to enter whole entity purchase and assumptions with any entity (by the cross-reference to 5.33(d)(2)(vi)) and the other combinations listed in § 5.33(d)(10). We also propose to omit the requirement to meet the requirements for Federal Home Loan Bank membership, since membership in a Federal Home Loan Bank is no longer mandatory. Section 5.33(n)(3) is based on § 146.2(d). Section 5.33(n)(4) is based on § 163.22(e)(2).

The OCC is proposing to add a new § 5.33(o). It would include various provisions in § 146.2 and § 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association. As noted earlier, § 146.2 and § 152.13 use the term ''combination'' to include a whole purchase and assumption transaction, as well as a consolidation or merger, and therefore apply these procedural requirements to those transactions. Section 5.33 uses the term business combination more broadly. In order to avoid applying the requirements to a broader set of transactions and achieve the same result as § 146.2 and § 152.13, we propose to use ''consolidation or merger'' instead of ''combination'' in § 5.33(o), and require in § 5.33(g)(2), (g)(3), and (g)(7) that a whole purchase and assumption transaction be treated as a consolidation by a Federal savings association for purposes of applying the requirements of § 5.33(o).

Section 5.33(o)(1) is based on § 146.2(b) and 152.13(e), except that we propose to reduce the required majority for the board of directors approval for Federal stock savings associations from two-thirds to a majority. We are not proposing to reduce the requirement for Federal mutual savings associations, since the board of directors vote is the principal vote; there typically is not a vote of the voting members, unless the OCC requires it as provided in proposed § 5.33(o)(4). Section 5.33(o)(2) is based on § 146.2(g). Section 5.33(o)(3) is based on § 152.13(h). Section 5.33(o)(4) is based on § 146.2(e). We are not proposing to include in § 5.33 the requirements in § 146.2(b)(1) and 152.13(f) that require the savings association to include all terms regarding the combination in a combination agreement and set out in some detail provisions that the agreement must contain. OCC practice with respect to national banks has not been to include these requirements in detailed regulations, as the drafting of a merger agreement is a business matter for the participating parties. However, we note that the OCC Licensing Manual includes sample agreements.

Operating Subsidiaries of a National Bank (§ 5.34)

The proposal would make a number of changes to the provisions governing operating subsidiaries of national banks set forth at 12 CFR 5.34. Some of these changes would incorporate elements of the Federal savings association operating subsidiary regulations currently contained in 12 CFR 159 in order to promote consistency between the regulations for operating subsidiaries for both charters.[72] We also are proposing a number of other changes to clarify existing provisions in § 5.34.

Specifically, the OCC is proposing to amend the scope section in § 5.34(c) by including language from § 159.1(a) that provides that the OCC may, at any time, limit a national bank's investment in an operating subsidiary, or may limit or refuse to permit any activities in an operating subsidiary, for supervisory, legal, or safety and soundness reasons. While the OCC currently has this authority, we are proposing to clarify the regulation by explicitly including this language.

The proposal would add a new § 5.34(e)(1)(ii), which would provide that before beginning business, an operating subsidiary must comply with other laws applicable to it, including applicable licensing or registration requirements. This is not a new requirement for national banks. We are adding the language to clarify that compliance with § 5.34 and approval of an operating subsidiary by the OCC are not the only requirements that must be met.

Section 5.34(e)(2) provides the criteria for a subsidiary to qualify as a national bank operating subsidiary. Section 5.34(e)(2)(i)(A) currently states that the national bank must have the ability to control the management and operations of the subsidiary. The proposal would clarify this provision by adding that no other person or entity has the ability to control the management or operations of the subsidiary. This reflects OCC practice regarding national bank operating subsidiaries. The language is based on a provision in § 159.3(c)(1) and we have added it to be consistent with that provision and the new Federal savings association operating subsidiary regulation. Section 5.34(e)(5)(ii)(A)(*3*), as redesignated in the proposal, would also include this language. The redesignation is discussed below. The OCC also is proposing to revise § 5.34(e)(2)(i)(B) to clarify that, in

[70] 12 U.S.C. 214b, 215(e) and 215a(e).

[71] 12 CFR 146.3 (Federal mutual savings associations); 12 CFR 152.13(l) (stock Federal savings associations).

[72] Elsewhere in this proposal we are proposing to add a new § 5.38 to part 5 of our regulations to address Federal savings association operating subsidiaries. The proposed new § 5.38 is based on § 5.34, and many of its provisions are nearly identical or very similar. However, there are differences that reflect some differences between national bank operating subsidiaries and Federal savings association operating subsidiaries based on certain statutory provisions. The similarities and differences are discussed in the § 5.38 portion of the preamble.

instances where the bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party can own a greater percentage than the bank. This reflects current OCC practice, as set out in the Comptroller's Licensing Manual. We also are proposing a new § 5.34(e)(2)(iii) to clarify that the national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. This provision has been adapted from § 159.10 and would be consistent with the new operating subsidiary rule for Federal savings associations. It clarifies that the requirement that the bank must control the operating subsidiary does not mean they should be treated as a single entity.

The OCC also is proposing to revise § 5.34(e)(3) to clarify that there are other instances where different treatment of the operating subsidiary and the parent national bank may occur in addition to those regarding the application of state law addressed by the Dodd-Frank Act.

Section 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Section 5.34(e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing. We are proposing to reverse the order of the application and notice provisions so that the application provision is first. The change in order simplifies and clarifies the opening language of each paragraph. It also will make the order of these provisions the same as that of the similar provisions in the regulation for operating subsidiaries of Federal savings associations. The proposal would make technical revisions in § 5.34(e)(5)(ii)(A)(*3*), as redesignated in the proposal (current § 5.34(e)(5)(i)(A)(*3*)), to account for instances in which the operating subsidiary is a limited liability company. We also propose other clarifying and technical changes in redesignated § 5.34(e)(5)(i) through (v).

Section 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. We are proposing to change the requirement from adequately capitalized to well capitalized. This is consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

The proposal also would amend § 5.34(e)(5)(vii) by codifying the OCC's position that when a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the national bank's fiduciary powers. Further, this provision also would explicitly provide that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a registered investment adviser, it is not necessary for its national bank parent to have fiduciary powers. These provisions reflect OCC practice as set out in the Comptroller's Licensing Manual.

Finally, a new § 5.34(e)(5)(viii) would be added, providing that OCC approvals granted under § 5.34 expire within 12 months if a national bank has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period. This is similar to provisions in other sections of part 5 regarding the expiration of an OCC approval.

National Bank and Federal Savings Association Investments in Service Companies (§ 5.35)

Twelve CFR 5.35 addresses national bank investments in bank service companies pursuant to the Bank Service Company Act, 12 U.S.C. 1861–1867. The Bank Service Company Act was amended in 2006 to permit Federal savings associations to invest in bank service companies.[73] The OTS did not adopt implementing regulations. The OCC is proposing to amend § 5.35 to make it applicable to Federal savings associations, to state explicitly certain authority of the OCC, to conform definitions to Dodd-Frank Act changes, and to make a number of technical changes. The changes for Federal savings associations are not likely to be very significant because Federal savings associations are already subject to the statute and the filing procedures in § 5.35 follow the statute.

The authority of Federal savings associations to invest in bank service companies under the Bank Service Company Act is separate from the authority to invest in service corporations under section 5(c)(4)(B) of the HOLA.[74] Accordingly, a Federal savings association's investments in bank service companies are not included in the investment limits for service corporations in section 5(c)(4)(B). They instead are subject to the separate limits of the Bank Service Company Act, codified at 12 U.S.C. 1862.

The OCC is proposing to amend the scope section in § 5.35(c) by including language, based on 12 CFR 159.1(a), that provides that the OCC may, for supervisory, legal, or safety and soundness reasons, limit at any time a national bank's or Federal savings association's investment in a bank service company or limit or refuse to permit any activities of any bank service company for which a national bank or Federal savings association is the principal investor.

In addition, the OCC is proposing a technical amendment to the definition of the term ''depository institution'' in § 5.35(d)(3) to conform it to 12 U.S.C. 1861(b)(4) as amended by section 357 of the Dodd-Frank Act. Section 357 of the Dodd-Frank Act also amended 12 U.S.C. 1861(b)(5) by striking the definition of ''insured depository institution'' and adding in its place a second definition of ''depository institution'' that refers to section 3 of the FDI Act. The OCC believes that the deletion of the term ''insured depository institution'' was inadvertent and not intended to effect a change because the statute continues to use this term throughout. Therefore, we have not changed the definition of ''insured depository institution'' in § 5.35(d)(4).

The OCC is also proposing to change the filing and review process of § 5.35(f)(2). It provides for an after-the-fact notice with no requirement for OCC approval before the bank makes the investment if specified eligibility conditions are met. We are proposing to change it to a prior notice with OCC approval through an expedited review process, under which the notice is deemed approved on the 30th day after filing unless the OCC notifies the filer otherwise. We believe this process follows the statutory provisions more directly. Along with this change we are adding some of the provisions in § 5.35(f)(2) regarding what must be

[73] Public Law 109–351, section 602, 120 Stat. 1965 (2006).

[74] 12 U.S.C. 1464(c)(4)(B).

included in the notice to the general provision covering the required information in paragraph (g) of § 5.35, since paragraph (g) will now apply to all filings, and eliminating duplication between current § 5.35(f)(2) and (g).

Finally, we are proposing to make a number of technical changes in §§ 5.35(c), (d)(3), (d)(4), (d)(6), (e), (f)(1), (f)(2), (f)(3), (f)(5) and (i).

Investment in National Bank or Federal Savings Association Premises (§§ 5.37, 7.1000, 7.3001)

Under 12 U.S.C. 29, a national bank can purchase and hold real property necessary to transact business and may hold real estate in exchange for debts previously contracted subject to certain divestiture requirements. Under 12 U.S.C. 371d, a national bank is required to obtain prior OCC approval to invest in bank premises, unless its aggregate investment and related indebtedness is less than or equal to either the bank's capital stock or 150 percent of the bank's capital and surplus (and the bank meets certain other criteria, as described below).

National banks are subject to several regulations that further delineate the parameters of their investment in and use of real property. Specifically, 12 CFR 7.1000 details the types of real estate that are necessary, pursuant to 12 U.S.C. 29, for a national bank's transaction of business, including premises owned and occupied by the bank, its branches, and its subsidiaries; property intended to be used for future bank expansion; and other property to be used by bank customers and employees. Section 7.1000 cross-references 12 CFR 5.37, which contains the quantitative limitations based on a national bank's capital that are specified in 12 U.S.C. 371d. Section 5.37 also prescribes the OCC premises approval process. Twelve CFR 7.3001 sets forth the rules that apply when a national bank shares its space and employees with other entities. Finally, 12 CFR 34.84 sets forth specific requirements for property held for future bank expansion.

No statute specifically addresses a Federal savings association's investment in banking premises.[75] However, regulatory provisions governing banking premises are issued pursuant to the OCC's general supervisory and rulemaking authority under the HOLA. Specifically, 12 CFR 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs for office and related facilities and the outstanding book value of these investments does not exceed the association's total capital. In addition, OCC regulations at 12 CFR part 159 recognize certain real estate-related activities as permissible for a Federal savings association service corporation, including real estate development and the acquisition of real estate for use by a stockholder of the service corporation. OCC guidance provides that a Federal savings association ordinarily must obtain prior OCC approval if such investments would exceed the amount of its total capital.[76] Currently, a Federal savings association seeking to exceed the total capital limitation would request a waiver under 12 CFR 100.2.

The OCC proposes numerous changes to these regulations, including applying the national bank regulations to Federal savings associations, rescinding 12 CFR 160.37, and making clarifying amendments. The details of these proposed changes are set forth below.

National bank ownership of property (12 CFR 7.1000). The OCC proposes to amend 12 CFR 7.1000 to make it applicable to Federal savings associations and to make other changes described below. While we do not believe that there are significant substantive differences between § 7.1000 and § 160.37 and related OTS guidance, § 7.1000 provides additional detailed regulatory guidance that we believe, as a supervisory matter, is appropriate to apply to both national banks and Federal savings associations.

Under proposed § 7.1000(a), a Federal savings association would be permitted to invest in real estate necessary to transact its business. Proposed § 7.1000(a)(2) would provide a non-exclusive list of permissible real estate investments for Federal savings associations. These investments are generally permitted for Federal savings associations under § 160.37, with the addition of lodging for customers, officers, or employees of the Federal savings association, its branches or consolidated subsidiaries in areas where suitable commercial lodging is not readily available, which is currently permissible for national banks.

Under § 7.1000(a)(3), a national bank is permitted to hold premises through any reasonable and prudent means, including fee ownership, leasehold estate, and interest in a cooperative. It also is permitted to hold such premises directly or through one or more subsidiaries and to organize a premises subsidiary as a corporation, partnership, or similar entity, such as a limited liability company. Section 160.37 permits a Federal savings association to invest in real estate, whether improved or unimproved, to be used for office and related facilities of the association under certain conditions, though it does not address how a Federal savings association may hold such premises. By adding Federal savings associations to proposed § 7.1000(a)(3), the OCC is making clear that a Federal savings association may hold its premises in any of the means set forth in that section. In addition, the proposal adds a new paragraph to recognize a Federal savings association's separate authority under part 159, as proposed to be amended and redesignated as 12 CFR 5.59 in this rulemaking, to acquire and hold banking premises in a service corporation.

In paragraph (c)(1) of § 7.1000, we propose to delete the reference to 12 U.S.C. 371d and replace it with language to clarify that the quantitative limitations in § 5.37(d)(1)(i) and (d)(3)(i) govern when OCC approval is required to invest in banking premises, in order to encompass Federal savings associations. We propose to amend § 7.1000(c)(2) by dividing it into two separate paragraphs. Proposed paragraph (c)(2)(i) would clarify that a national bank or Federal savings association must seek approval to invest in banking premises in accordance with § 5.37(d). New paragraph (c)(2)(ii) would clarify that a Federal savings association that invests in banking premises through a service corporation must comply with the quantitative limitations in § 5.37(d), and, to the extent applicable, § 5.59. As described below, proposed amendments to § 5.37(d) would clarify which requirements in § 5.37(d) would apply to service corporations.

Under redesignated § 7.1000(c)(3), a national bank must receive OCC approval to exercise an option to purchase banking premises or stock in a corporation holding banking premises if the price of the option and the bank's other investments in banking premises exceed the amount of the bank's capital stock. We propose to simplify paragraph (c)(3) by removing the unnecessary language explaining when approval is required and replacing it with a statement that the national bank or Federal savings association must comply with the requirements in

[75] The OCC is using the term ''banking premises'' instead of ''bank premises'' in revised *§§ 5.37, 7.1000, and 7.3001* to alleviate any confusion with respect to Federal savings associations.

[76] OTS Handbook, Section 252, Fixed Assets, April 1999.

§ 5.37(d). The procedures in § 5.37(d) are discussed below. In addition, we propose to make other nonsubstantive, clarifying changes. Section 160.37 does not address an option to purchase banking premises or stock in a corporation holding banking premises; therefore, this would be a new requirement for a Federal savings association.

We propose to delete § 7.1000(d), Other real property, because the two examples provided are based on well-established precedent and we believe it is unnecessary to include them in § 7.1000. Section 7.1000(d) was not intended to be a limitation on ownership of real property, and deleting it would eliminate the need to add clarifying language stating that national banks and Federal savings associations may have other sources of authority. Furthermore, deleting § 7.1000(d) would simplify § 7.1000 by limiting it to real estate necessary for the transaction of business.

Section 34.84 provides rules for a national bank's investment in future banking premises and is contained in the OCC's rules on ''other real estate owned'' (OREO). Specifically, this section provides that a national bank normally should use real estate acquired for future expansion within five years and, after holding such real estate for one year, must state, by resolution of the board of directors or an appropriate authorized bank official or a subcommittee of the board of directors, definite plans for use of such real estate.[77] This resolution or other official action must be available for inspection by bank examiners. We propose to move § 34.84 from part 34, subpart E, Other real estate owned, to § 7.1000 as paragraph (d) because it relates to banking premises, not other real estate owned, and amend it to include Federal savings associations. The revised ''Other Real Estate Owned'' booklet of the *Comptroller's Handbook* applies this 5-year timeframe for the use of real estate acquired for future premises to Federal savings associations. Thus, the regulatory requirements regarding future banking premises under proposed § 7.1000(d) would codify existing OCC policy for Federal savings associations.

To minimize practical difficulties that may arise as a result of these changes, we propose to add a transition provision, § 7.1000(e), that would grandfather Federal savings associations' existing premises investments, provided the investment complies with the legal requirements in effect prior to the publication date of this proposal and continues to comply with those requirements. However, modifying, expanding, or improving such investments, with the exception of routine maintenance, would require prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in such circumstances to ensure safety and soundness concerns are satisfied and to apply consistent standards to national banks and Federal savings associations.

Sharing space and employees (§ 7.3001). The OCC proposes to amend 12 CFR 7.3001 to make it applicable to Federal savings associations. While § 7.3001 is more detailed than OTS guidance, as described below, we do not believe that there are substantive differences in the way in which savings associations share offices and employees. Section 7.3001 provides additional guidance on how to share offices and employees in a manner that protects customers and is consistent with safe and sound banking practices. The OCC believes that, as a supervisory matter, it is appropriate to apply similar specific safety and soundness restrictions to both national banks and Federal savings associations.

Specifically, section 7.3001 provides for the sharing of office space and employees. Section 160.37 does not specifically provide for such sharing arrangements; however, through guidance a Federal savings association is authorized to share space in a manner similar to that provided in § 7.3001, and the safety and soundness requirements imposed are substantially similar, though not identical, to those imposed by § 7.3001(c). For example, both the guidance and § 7.3001(c) prohibit joint ventures but the methods to determine what constitutes a joint venture are different. Under § 7.3001(c)(3), what constitutes a joint venture or partnership is determined by applicable state law. In addition, under proposed § 7.3001(a), a Federal savings association would be permitted to: (1) Lease excess space on banking premises to one or more other businesses (including other banks, Federal or state savings institutions, or financial institutions); (2) share space jointly held with one or more other businesses; or (3) offer its services in space owned or leased to other businesses. Under proposed § 7.3001(b), as part of such a sharing arrangement, a Federal savings association may, pursuant to a written agreement, agree that its employee may act as an agent for the other business, or an employee of the other business may act as an agent for the savings association. Under proposed § 7.3001(c), a Federal savings association sharing office space would be required to satisfy eight requirements intended to ensure that the practice of sharing space was conducted in a safe and sound manner and also provides customer protections. This treatment is substantially similar to that in OCC guidance for Federal savings associations.[78]

To minimize practical difficulties that may arise as a result of these changes, we propose to add a transition provision, § 7.3001(e), that would grandfather existing sharing arrangements, provided such sharing arrangements comply with the legal requirements in effect prior to the publication date of this proposal and continue to comply with those requirements. However, the association may not amend or renew the agreement, or extend the agreement beyond its current term, without the prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in such circumstances to ensure customers are protected and safety and soundness concerns are satisfied and to apply consistent standards to national banks and Federal savings associations.

Investment in banking premises (§ 5.37). The OCC proposes to amend § 5.37 to make it applicable to Federal savings associations and to make other changes as described below. The OCC believes that, for safety and soundness purposes, it would be prudent to apply the procedures and quantitative investment limitations in § 5.37 to both national banks and Federal savings associations. In addition, we believe that consistent standards should be applied to national banks and Federal savings associations.

Specifically, § 5.37(d)(1)(i) requires a national bank to submit an application to the appropriate supervisory office to make an investment in banking premises, or to make loans to or upon the security of the stock of such a corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank, will exceed the amount of its capital stock. Section 5.37(c) defines ''bank premises'' as including (but not limited to): (1) Premises that are owned and occupied (or to be occupied,

[77] National banks and Federal savings associations should be aware that if they decide not to use real estate acquired for future banking premises, the investment would be considered other real estate owned and subject to applicable OREO requirements. For savings associations, *see* Comptroller's Handbook, ''Other Real Estate Owned'' (Sept. 2013) (''OREO Handbook''), and for national banks, *see* 12 CFR part 34, subpart E and the OREO Handbook.

[78] OTS Handbook, Section 252, Fixed Assets, p. 3.

if under construction) by the bank, its branches, or its consolidated subsidiaries; (2) capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment; (3) remodeling costs to existing premises; (4) real estate acquired and intended, in good faith, for use in future expansion, or (5) parking facilities that are used by customers or employees of the bank, its branches, and its consolidated subsidiaries. In contrast, § 160.37 does not contain such a detailed definition and states, in general, that real estate may be used for office and related facilities for the association's current and future use.

Section 5.37(d)(1)(ii) requires the application to include a description of the bank's present investment in banking premises, the investment in such premises that the bank intends to make, the business reason for the investment, and the amount by which the national bank's aggregate investment will exceed the amount of its capital stock. Section 5.37(d)(2) provides information regarding the approval process, including that an application is deemed approved on the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. We propose to make these provisions applicable to a Federal savings association and to make other nonsubstantive, clarifying changes.

Section 5.37(d)(3) provides an alternative, after-the-fact notice process if a national bank satisfies certain requirements. Specifically, a national bank may make an aggregate investment in banking premises up to 150 percent of its capital and surplus without the OCC's prior approval and instead may provide the OCC with after-the-fact notice, provided the national bank has a 1 or 2 CAMELS rating, is well capitalized as defined in 12 CFR part 6, and will continue to be well capitalized after the investment or loan is made. The proposal makes these provisions applicable to Federal savings associations. However, a Federal savings association may not be eligible for after-the-fact notice if 12 U.S.C. 1828(m)(1) applies to the transaction. Twelve U.S.C. 1828(m)(1) requires a Federal savings association to file a 30-day prior notice when it establishes or acquires a subsidiary or when it conducts a new activity in a subsidiary. Thus, a Federal savings association would not be eligible for the after-the-fact notice process described in 5.37(d)(3)(i) if it proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary. In those circumstances, the Federal savings association would be required to comply with the provisions of § 5.38 in the case of an operating subsidiary or § 5.59 in the case of a service corporation. Accordingly, we propose to reorganize current § 5.37(d)(3) by redesignating it § 5.37(d)(3)(i), General rule, and adding a new paragraph (d)(3)(ii), Exception, to describe the circumstances under which a Federal savings association would not be eligible for the after-the-fact notice process and to identify what requirements would apply.

Furthermore, a Federal savings association's investments in banking premises through a service corporation would not be subject to the premises application and notice requirements of § 5.37(d); instead, a Federal savings association wound need to comply with the requirements in proposed § 5.59. However, the amount of such an investment must be included when calculating the quantitative limitations in paragraph (d). Therefore, we propose to redesignate current § 5.37(d)(4), Exceptions to rules of general applicability, as proposed paragraph (d)(5), and add a new paragraph (d)(4) to clarify the treatment of an investment in banking premises through a service corporation.

As indicated above, pursuant to 12 U.S.C. 29 and 371d, § 5.37 provides that the quantitative limitations on a national bank's investment in banking premises are expressed as a percentage of ''capital stock'' or ''capital and surplus.'' Under § 160.37, the sole quantitative limit on a Federal savings association's investment in banking premises is based on ''total capital.'' [79] We propose to apply the quantitative investment limitations currently applicable to national banks to Federal savings associations, with the exception of Federal mutual savings associations, as discussed more fully below. To avoid confusion, we also propose to add definitions for the terms ''capital stock'' and ''capital and surplus'' in paragraph (c). Because the vast majority of national banks and Federal savings associations have a CAMELS rating of 1 or 2,[80] we believe the relevant limit for a Federal savings association generally would be ''capital and surplus,'' which is not materially different from ''total capital.'' In addition, for a Federal savings association that satisfies the criteria in proposed § 5.37(d)(3)(i), the quantitative limitation would be 150 percent of capital and surplus, which would be a greater amount than 100 percent of ''total capital.'' Thus, we expect that under the proposal, the amount that a Federal savings association could invest in banking premises without OCC approval would be increased, thereby reducing burden on those Federal savings associations. For Federal savings associations that do not have a CAMELS rating of 1 or 2 and are not well capitalized, the relevant limitation would be ''capital stock,'' which is a significantly lower threshold than ''total capital'' in § 160.37. While we are aware that this new lower threshold likely would increase the burden on low-rated Federal savings associations, we believe that additional scrutiny of investments in banking premises by such Federal savings associations is warranted for safety and soundness purposes.

In the case of a Federal mutual savings association, which by definition does not issue stock, a limit based on capital stock cannot apply to such associations. However, we believe it is important, wherever possible, to apply consistent standards to national banks

[79] As mentioned previously in this preamble, the OCC issued a final rule on October 11, 2013 that, among other things, amends the OCC's risk-based and leverage capital rules and integrates the OCC's national bank and Federal savings association capital rules. 78 FR 62018 (Oct. 11, 2013). This final rule has a two-tier effective date, however, with the rule applicable for all banks and savings associations on January 1, 2015. Until that time, for a savings association that is not subject to the advanced approaches rule, the OCC's capital rule at 12 CFR part 167 will apply. This rules defines the term ''total capital'' to mean the sum of a savings association's core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital), minus assets required to be deducted from core capital, reciprocal holdings of depository institution capital instruments, and all equity investments. The rule for national banks that are not subject to the advanced approaches rule defines the term ''capital stock'' to mean the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired, and the term ''capital and surplus'' to mean a bank's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards set forth in appendix A to 12 CFR part 3, as reported in the bank's Call Reports, plus the balance of a bank's allowance for loan and lease losses (ALLL) not included in the bank's Tier 2 capital. These definitions of ''total capital and ''capital and surplus'' are substantially similar, except that ''capital and surplus'' includes the ALLL excluded from Tier 2 capital and ''total capital'' includes certain deductions described above. However, the definition of ''capital stock'' is significantly more stringent than ''total capital'' because capital stock does not include undivided profits. As of January 1, 2015, all national banks and savings associations will be subject to a new definition of capital.

[80] According to the OCC's 2013 Annual Report, in the fiscal year 2013, 80 percent of national banks and Federal savings associations had a CAMELS rating of 1 or 2. Office of the Comptroller of the Currency, Annual Report, Fiscal Year 2013, at 72, available at *www.occ.gov/publications/publications-by-type/annual-reports/index-annual-reports.html*.

and Federal savings associations, both from a safety and soundness perspective and an administrative perspective. Accordingly, because a Federal mutual savings association's equity capital consists primarily of retained earnings, we propose to use retained earnings as a proxy for capital stock for purposes of the quantitative limitations on investments in banking premises by Federal mutual savings associations. Such a limitation based on retained earnings would not be a significant change for a Federal mutual savings association since generally ''total capital'' of a Federal mutual savings association mostly consists of retained earnings. Moreover, under the proposal, a Federal mutual savings association that is CAMELS 1- or 2-rated would have a higher limit of 150 percent of retained earnings.

Question 6: We request comments on whether a limit based on the amount of retained earnings for a Federal mutual savings association's investment in bank premises provides a basis of measurement that is most comparable to capital stock for Federal stock savings associations.

Finally, we propose to amend § 5.37 by adding a new paragraph (e) to provide an appropriate transition provision that would grandfather existing banking premises investments, provided the investment complies with the legal requirements in effect prior to the publication date of this proposal, and continues to comply with those requirements. However, modifying, expanding, or improving such an investment, with the exception of routine maintenance, would require prior approval of the appropriate OCC supervisory office. We believe it is appropriate to require prior approval in such circumstances to ensure safety and soundness concerns are satisfied and to apply consistent standards to national banks and Federal savings associations.

Question 7: Because of the differences in corporate organization between a Federal stock savings association and a Federal mutual savings association, we request comments on whether it would be more appropriate and less burdensome to both types of savings associations to retain separate banking premises rules for national banks and Federal savings associations.

Operating Subsidiaries of Federal Savings Associations (New § 5.38)

Twelve CFR part 159 addresses subordinate organizations of Federal savings associations. This part covers both operating subsidiaries and other subsidiaries of Federal savings associations such as service corporations. The OCC is proposing to create a new § 5.38 to address only operating subsidiaries of Federal savings associations[81] and to remove those provisions of part 159 that address Federal savings association operating subsidiaries.[82] In order to harmonize the regulations applicable to Federal savings associations with those that apply to national banks, § 5.38 is based on current OCC regulations at 12 CFR 5.34. Many of the provisions in proposed § 5.38 and § 5.34 are nearly identical. Many of the requirements in proposed § 5.38 are similar to those in part 159. There are some differences between the proposal and provisions in part 159, as well as differences between § 5.38 and § 5.34. These differences are described below.

Paragraph (b) of § 5.38 mirrors paragraph (b) of § 5.34 and would require a Federal savings association to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Under §§ 159.1(a) and 159.11, Federal savings associations must give 30 days' notice[83] to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary. Section 159.11 requires a filing when it is required under 12 U.S.C. 1828(m), and section 1828(m) does not require a filing if the subsidiary is an insured depository institution.[84] Proposed § 5.38(b) would require an application to acquire an insured depository institution as an operating subsidiary,[85] in order to provide the OCC with an appropriate opportunity to review the proposed transaction.

Section 159.3(a)(1) also provides that any finance subsidiary that existed on January 1, 1997 is deemed to be an operating subsidiary without further action by the savings association. The OCC is proposing to omit this provision from § 5.38 as not needed and without intent to make any change in substance.

Question 8: The OCC requests comment on whether the provision should be retained from any Federal savings associations that may still have a finance subsidiary that existed on January 1, 1997.

Paragraph (c) of § 5.38 addresses the scope of this section. This paragraph mirrors proposed paragraph (c) of § 5.34, including the additional language currently contained in § 159.1(a) that would permit the OCC to limit a Federal savings association's investment in an operating subsidiary or limit or refuse to permit any activities of an operating subsidiary for supervisory, legal, or safety and soundness reasons. While the OCC currently has this authority, we are proposing to clarify the regulation by explicitly including this language.

Paragraph (d) of § 5.38 sets out definitions for ''well capitalized'' and ''well managed,'' which will be used as part of the determination of which applications are eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are used similarly in proposed § 5.38 to determine if an application by a Federal savings association is eligible for expedited review.

Like §§ 159.3(e)(1) and 5.34(e)(1)(i), paragraph (e)(1)(i) of § 5.38 provides that a Federal savings association may conduct in an operating subsidiary activities that are permissible for the savings association to engage in directly. The proposal also would add a new § 5.34(e)(1)(ii), which would provide that before beginning business, an operating subsidiary must comply with other laws applicable to it, including applicable licensing or registration requirements. This requirement is not new for Federal savings associations. The language is being added to clarify that compliance with § 5.38 and approval of an operating subsidiary by the OCC are not the only requirements that must be met. The proposal would add a similar provision to § 5.34 for national banks.

Pursuant to § 159.3(c)(1), a Federal savings association must own, directly or indirectly, more than 50 percent of the voting shares of an operating subsidiary and no one else may exercise effective operating control. Proposed § 5.38(e)(2) describes what entities are ''qualifying subsidiaries'' for purposes of § 5.38. This provision mirrors

[81] In addition, as described elsewhere in this issuance, the OCC is proposing to create a new separate section for service corporations of Federal savings associations. The OCC is proposing to separate the regulations for Federal savings association operating subsidiaries and service corporations in order to better organize our rules and to have consistent parallel provisions for operating subsidiaries of national banks and Federal savings associations.

[82] As stated elsewhere in this rulemaking, the OCC proposes to create a new § 5.59 that would address Federal savings association service corporations. As a result, all of part 159 would be removed.

[83] Under these provisions in part 159, the OCC treats the notice as an application that is eligible for expedited treatment.

[84] *See* 12 U.S.C. 1828(m)(1) and (4).

[85] Section 159.3(e)(1) explicitly provides that a Federal savings association may have an insured depository institution as an operating subsidiary. While this proposition would remain the case under the proposal, it is not explicitly set out in the proposal.

§ 5.34(e)(2). Unlike § 159.3(c)(1), the proposal includes as a qualifying subsidiary one in which the savings association owns less than 50 percent of the voting shares. Specifically, under the proposal, a qualifying subsidiary is one in which: (1) The savings association has the ability to control the management and operations of the subsidiary and no other person or entity has the ability to do so, and (2) the savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a greater percentage of the voting (or similar type of controlling) interest of the operating subsidiary than the Federal savings association. In addition, as is currently the case under part 159, the operating subsidiary would need to be consolidated with the savings association under Generally Accepted Accounting Principles (GAAP). Proposed § 5.38(e)(2)(iii), adapted from § 159.10, would expressly require the savings association to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. Furthermore, it clarifies that the requirement that the savings association must control the operating subsidiary does not mean they should be treated as a single entity.

Proposed paragraph (e)(3) of § 5.38 mirrors proposed § 5.34(e)(3). Similar to § 159.3(h)(1), paragraph (e)(3) generally provides that an operating subsidiary of a Federal savings association conducts activities pursuant to the same authorization, terms, and conditions that apply to the parent savings association, unless otherwise specifically provided by statute, regulation or published OCC policy. It also includes reference to the provisions in the Dodd-Frank Act regarding the application of state law, the subject of which is currently addressed in § 159.3(n)(1), and language to clarify that there are other instances in which different treatment of the operating subsidiary and the parent Federal savings association may occur, in addition to those regarding the application of state law addressed by the Dodd-Frank Act. In addition, this paragraph provides that, subject to certain statutory limitations, if the OCC determines that an operating subsidiary is in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. This is similar to provisions in § 159.3(q)(1).

Proposed § 5.38(e)(4) addresses consolidation of figures and provides that the savings association and its operating subsidiaries shall be combined for purposes of applying statutory or regulatory limitations when the combination is needed to effect the intent of the statute or regulation. Twelve U.S.C. 1467a(m)(5) governs consolidation for purposes of calculating portfolio assets and the qualified thrift lender test. These provisions are consistent with §§ 159.3(i)(1), (j)(1), (k)(1), and (m)(1).

Section § 159.11 provides that when required by 12 U.S.C. 1828(m), Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. The OCC processes this notice in a manner similar to the OCC's expedited review for applications and notices of national banks.[86] Proposed paragraph (e)(5) of § 5.38 sets out the detailed procedures a Federal savings association must follow when filing applications required under § 5.38.[87] Paragraph (e)(5)(i)(B) of § 5.38 describes the contents of the application and mirrors § 5.34(e)(5)(i)(B), as redesignated in this proposal, currently at § 5.34(e)(5)(ii)(B). Paragraph (e)(5)(ii)(A) of § 5.38 also mirrors § 5.34 and provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. These applications would be deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the savings association otherwise during the 30-day period.[88] In order to be eligible for expedited review, proposed § 5.38(e)(5)(ii)(B) provides that the savings association must be ''well capitalized'' and ''well managed,'' the activities to be performed by the operating subsidiary must be listed in § 5.38(e)(5)(v), and the operating subsidiary must be a corporation, limited liability company, or limited partnership. In addition, the savings association must clearly demonstrate control over the operating subsidiary, *i.e.,* the savings association: (1) Must have the ability to control the management and operations of the operating subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management; (2) must hold more than 50 percent of the voting, or equivalent, interests in the operating subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating subsidiary thereof must be the sole general partner of the limited partnership or the sole managing member of the limited liability company; and (3) must be required to consolidate its financial statements with those of the operating subsidiary under GAAP.

The proposed expedited review process would operate much like the process in § 159.11. As indicated above, under § 159.11 all Federal savings associations that wish to establish or obtain an interest in an operating subsidiary file a notice with the OCC when required under 12 U.S.C. 1828(m). Then, unless the OCC notifies the savings association within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, in which case the savings association must apply for approval under standard treatment processing procedures under part 116, the savings association may proceed with the operating subsidiary. Under § 159.11, all filings begin and are processed in this manner. Under the proposed § 5.38 expedited review process, only filings that meet the eligibility requirements can begin as an expedited review application. However, we do not believe this change will make a large difference for savings associations in practice. A filing that would not meet the eligibility requirements (clear showing of control, clearly permissible activity, a Federal savings association that is well managed and well capitalized) under the proposal would have a high likelihood of presenting supervisory concerns or raising significant issues of law or policy that would require an application under part 159.

Proposed paragraph (e)(5)(iii) of § 5.38 provides that the rules of general applicability at 12 CFR 5.8 (requiring public notice), 5.10 (addressing public

[86] If the OCC determines that the notice presents supervisory concerns or raises significant issues of law or policy, a Federal savings association must apply for approval under standard treatment processing procedures in part 116.

[87] Applications filed pursuant to § 5.38 also serve to satisfy the requirement for notice under 12 U.S.C. 1828(m).

[88] This differs from the national bank regulation. Under § 5.34(e)(5)(ii), as redesignated in this proposal, national banks may provide after-the-fact notice in certain circumstances. After-the-fact notice is not available to Federal savings associations due to a statutory requirement for prior notice. *See* 12 U.S.C. 1828(m).

comments received), and 5.11 (addressing requests for hearings or other meetings) do not apply to § 5.38, but the OCC may determine that any of these rules apply if the OCC concludes that the application presents significant or novel policy, supervisory, or legal issues.

Proposed paragraph (e)(5)(v) of § 5.38 sets out a list of activities that are eligible for expedited review. This list is based on the list of activities eligible for notice for national banks in § 5.34(e)(5)(v), but has been adapted for Federal savings associations, removing activities that are not permissible for Federal savings associations to conduct directly and listing only those activities that have been approved for operating subsidiaries of Federal savings associations in the past.

Question 9: The OCC requests comments and suggestions for other activities that should be added to the list of activities that are eligible for expedited review, and on other changes to the list. Commenters proposing an activity should include reference to the precedent approving the activity to be conducted directly by a Federal savings association or in an operating subsidiary. An approval to conduct an activity in a service corporation is not sufficient unless the precedent's analysis states the activity is one that could be conducted directly in a Federal savings association.

Section 159.3(p)(1) provides that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary. It also requires the Federal savings association to make available for examination adequate internal records demonstrating that the redesignated office meets all of the requirements for an operating subsidiary and that the board of directors has approved of the redesignation. Proposed paragraph (e)(5)(vi) of § 5.38 would require a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary.

Proposed paragraph (e)(5)(vii) of § 5.38 mirrors proposed § 5.34(e)(5)(vii) and provides that when a Federal savings association operating subsidiary wishes to act as a fiduciary, its savings association parent must have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary may not rely on the savings association's fiduciary powers. Further, this provision also would explicitly provide that when an operating subsidiary that exercises investment discretion on behalf of customers or provides investment advice for a fee is a registered investment adviser, it is not necessary for its savings association parent to have fiduciary powers. These provisions reflect OCC practice for national banks as set out in the Comptroller's Licensing Manual.

Proposed paragraph (e)(5)(viii) of § 5.38 would provide that an OCC approval granted under § 5.38 expires within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens, or extends the time period. We also are adding this provision to § 5.34 for national banks. As previously indicated, this provision is similar to others in part 5 regarding the expiration of an OCC approval.

Proposed paragraph (e)(6) of § 5.38 contains provisions regarding grandfathered Federal savings association operating subsidiaries. It is modeled on § 5.34(e)(6) and provides that, notwithstanding the requirements for a qualifying operating subsidiary in § 5.38(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an operating subsidiary that a Federal savings association lawfully acquired or established before June 10, 2014 may continue to operate as a Federal savings association operating subsidiary, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the operating subsidiary was established or acquired.

Proposed paragraph (e)(7) addresses the issuance of securities by an operating subsidiary. It is based on portions of § 159.12(a) and (c).

Proposed paragraph (e)(8) of § 5.38 requires Federal savings associations to file an annual report on operating subsidiaries that do business directly with consumers in the United States and are not functionally regulated subsidiaries, which the OCC will make available to the public at www.OCC.gov. This provision mirrors § 5.34(e)(7) as well as the proposed provision in § 5.59 with respect to service corporations. There is no similar provision in part 159. This report enables the public to be aware of when they are dealing with an operating subsidiary of a Federal savings association. This report also provides information to the OCC on which Federal savings association operating subsidiaries are currently active.

Finally, a chart in § 159.3 provides a detailed side-by-side comparison of operating subsidiaries and service corporations. The proposal includes some of this information from this chart in various provisions of § 5.38, such as the specific items that are necessary to set out qualifying requirements and licensing requirements. Furthermore, proposed § 5.38(e)(4), consolidation of figures, covers provisions included in the chart at §§ 159.3(i)(1), (k)(1), (l)(1), and (m)(1).[89] Other provisions of the chart are not necessary to include in a regulation as they merely repeat applicable law and are in the chart for purposes of the comparison with service corporations. These provisions include §§ 159.3(b)(1), (d)(1), (f)(1), (g)(1), and (j)(1). While the OCC is proposing to remove the chart from its regulations, we are considering including a similar chart in the Comptroller's Licensing Manual as a reference.

Change in Location of Main Office/ Home Office (§ 5.40)

Twelve CFR 5.40 addresses changes in location of a national bank's main office. Twelve CFR 145.91, 145.93 and 145.95 address changes in location of a Federal savings association's home office.[90] While these rules address a common subject there are a number of differences between them. We are proposing to harmonize the procedures for national banks and Federal savings associations and to consolidate our regulations by amending 12 CFR 5.40 to apply to Federal savings associations and to remove 12 CFR 145.91, 145.93 and 145.95.[91] As described below, as a result of this proposal, Federal savings associations would be subject to certain additional notices and applications to assist the OCC in monitoring these institutions' activities. Although these procedures are different from those that savings associations currently follow when taking certain actions with respect to their home offices, we expect those institutions that would qualify for treatment as highly-rated savings associations under the current regulation will also qualify for expedited treatment under the proposed

[89] Part 32, lending limits, currently provides the information that had been included in § 159.3(k)(1). *See* 78 FR 37930 (June 25, 2013).

[90] The terms ''main office'' and ''home office'' are functionally the same. However, both terms are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

[91] Sections 145.93 and 145.95 also address branch offices. The preamble discusses these provisions with respect to branch offices, above.

regulation, resulting in only minimal additional requirements.

Pursuant to § 145.93(a), a Federal savings association must file an application or notice with the OCC and receive approval or non-objection prior to changing the permanent location of its home office or prior to establishing a new home office. However, § 145.93(b) provides that an application or notice is not required for a Federal savings association to: (i) Establish a drive-in or pedestrian office within 500 feet of a public entrance to its existing home office; (ii) make a short-distance relocation of its home office; or (iii) redesignate an existing branch office as a home office when redesignating the existing home office as a branch office. In addition, § 145.93(b) permits certain highly-rated Federal savings associations to change the permanent location of their home office or establish a new home office if the associations meet certain requirements without filing a notice or application. Section 145.95 contains processing procedures that apply to the aforementioned transactions.

The proposal would reorganize § 5.40 slightly and apply it to Federal savings associations, discontinuing the exceptions to filing applications or notices under § 145.93(b) and replacing the applicable processing procedures contained in § 145.95 with those contained in part 5 of our regulations.

Currently, § 5.40(b) generally sets out the licensing requirements for national banks to relocate their main office and § 5.40(c) sets out the scope of the rule. Section 5.40(d)(1) provides that national banks may relocate their main office to an authorized branch location within the same city, town, or village limits by giving prior notice to the OCC and § 5.40(d)(2) provides that a national bank may relocate its main office to any other location, by filing an application with the OCC. Section 5.40(d)(3) requires national banks to obtain OCC approval pursuant to the standards in § 5.30 in order to establish a branch at the site of a former main office. Section 5.40(d)(4) provides that an application submitted by an eligible national bank to move its main office to a location other than an authorized branch location will be approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended under § 5.13(a)(2). Section 5.40(d)(5) provides for exceptions to rules of general applicability in part 5 for relocations to an authorized branch location within the same city, town, or village limits. Finally, § 5.40(e) provides that an OCC approval of a main office relocation shall expire if the national bank has not opened its main office at the relocated site within 18 months of the date of the approval.

The proposal would redesignate the scope section as § 5.40(b) and would combine former paragraphs (b) and (d), which address licensing requirements and procedures, into a redesignated § 5.40(c). The proposal also generally would amend these newly redesignated provisions to apply to Federal savings associations. Proposed § 5.40(c)(1) would require national banks and Federal savings associations to give prior notice to the OCC when relocating a main office or home office, as applicable, to an authorized branch location within city, town, or village limits. Propose § 5.40(c)(2)(i) would require national banks to submit an application to the appropriate OCC licensing office in order to relocate a main office to any location other than an authorized branch location in the city, town, or village in which the main office of the bank is located or to any other location within 30 miles of the limits of such city, town, or village. As in the current rule, if a national bank is relocating its main office outside the limits of its city, town, or village, the national bank also would be required to obtain the approval of shareholders owning two-thirds of the voting stock of the bank and to amend its articles of association. Proposed § 5.40(c)(2)(ii) would require a Federal savings association to submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. As with a national bank, a Federal savings association relocating the home office outside the limits of its city, town, or village would be required to amend its charter. Proposed § 5.40(c)(3) would require a national bank or Federal savings association to follow the provisions of § 5.30 or § 5.31, respectively, in order to establish a branch at the site of a former main office or home office. Proposed § 5.40(c)(4) would provide expedited review for applications submitted under paragraph (c)(2) (relocations of a main office or home office to any location other than an authorized branch location) for eligible Federal savings associations as well as eligible national banks. The proposal also would revise the expedited review time for short-distance relocations of a main office or home office so that they would be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. This change would reflect the shorter 15-day comment period for short-distance relocations.

Proposed § 5.40(c)(5) would provide exceptions to the OCC's rules of general applicability in part 5 of the OCC's regulations for relocations of a main office or home office to an authorized branch location within city, town, or village limits under paragraph (c)(1) and applies these exceptions to Federal savings associations. Redesignated § 5.40(d) of the proposal would require Federal savings associations, like national banks, to open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under § 145.95(c), Federal savings associations currently must open or relocate a home office for which they have received approval or non-objection from the OCC within 12 months.

Corporate Title (§ 5.42)

Sections 5.42 and 143.1 of Title 12 set forth applicable standards and procedures for when a national bank or Federal savings association, respectively, seeks to change its corporate title. Under § 5.42(c), a national bank may change its corporate title without prior notice to the OCC if the new title includes the word ''national'' and complies with other OCC guidance and Federal laws, including laws regarding false advertising and misuse of names. In addition, if the national bank's articles of association specify the corporate title, § 5.42(d)(2) requires the bank to amend the articles in accordance with 12 U.S.C. 21a, which specifically addresses amendments to national bank articles of association.

Pursuant to § 143.1(b), a Federal savings association must provide the OCC with prior notice of a change in corporate title. If the OCC does not object within 30 days, the Federal savings association may change its title by amending its charter in accordance with the Federal mutual savings association or Federal stock association charter amendment regulatory procedures in §§ 5.21 or 5.22, respectively. There is no specific statute addressing Federal savings association charter amendments. In addition, § 143.1(a) prohibits a Federal savings association from adopting a title that

misrepresents the nature of the institution or the services it offers.

The OCC proposes to amend § 5.42 to include Federal savings associations. The primary substantive effect of this proposal is to eliminate the advance notice requirement currently applicable to Federal savings association corporate title changes. Instead, Federal savings associations would be required promptly to provide a notice to the appropriate OCC licensing office subsequent to any change in its corporate title. The OCC believes that the advance notice of a change in corporate title is not necessary and that an after-the-fact notice will provide the OCC with adequate information for regulatory purposes and will reduce burden on Federal savings associations without affecting safety and soundness.

The proposal does not incorporate the provision in § 143.1(a) that prohibits a Federal savings association from adopting a title that misrepresents the nature of the institution or the services it offers. This statement is implicit in the current national bank rule and would be implicit under the revised rule for both national banks and Federal savings associations. Furthermore, the issue addressed by the savings association provision is not an area of concern in the current banking environment, and, if necessary, can be addressed through the supervisory process. For these reasons, we find it unnecessary to include a similar prohibition in § 5.42.

The OCC also proposes a number of conforming edits. Specifically, the proposal would add to § 5.42 a cross-reference to §§ 5.21(g) or 5.22(g), the regulatory charter amendment procedures that a Federal mutual savings association or Federal stock association must follow when amending its charter to reflect a corporate title change. This cross-reference simply transfers these requirements from the current Federal savings association rule to the proposed integrated rule. In addition, the OCC proposes to remove the word ''Federal'' in § 5.42(c)(1) to clarify that the new title must comply with all applicable laws, whether Federal or state.

Increases in Permanent Capital by a Federal Stock Savings Association (New § 5.45)

Twelve CFR 5.46 sets out the OCC's rules addressing changes in permanent capital by national banks. These rules implement statutory provisions that establish the processes and requirements for a national bank to increase or decrease its permanent capital (*i.e.,* capital stock and capital surplus), including 12 U.S.C. 51a, 51b, 51b–1, 52, 56, 57, 59, and 60. The statutes require OCC approval for all increases and decreases in permanent capital at a national bank.

The OCC has established a streamlined approval process for most increases in permanent capital by national banks. However, in certain specified instances, the OCC requires a full application and prior approval. These instances, listed below, involve situations in which there are supervisory concerns with the institution or the capital contribution is not in cash, raising issues of proper valuation of the capital increase.

These statutes do not apply to Federal savings association, and there are not comparable provisions in the HOLA requiring a savings association to receive prior approval for any increase in permanent capital. Accordingly, the OCC is not proposing to add Federal savings associations to § 5.46. However, we are proposing to add a new § 5.45 to require a Federal stock savings association to apply to the OCC and obtain prior approval in the same circumstances in which a national bank would be required to file a full application under § 5.46. Those circumstances are: (1) When the savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is receiving a material noncash contribution to capital surplus.

We propose to base this new section on the provisions in § 5.46 that address increases in permanent capital, except that provisions that are required by statute for national banks, but are not needed for the OCC's supervisory objectives regarding Federal savings associations, are not included.

We are limiting the requirement to Federal stock savings associations. Federal mutual savings associations generally do not raise additional capital, other than through retained earnings, by methods comparable to Federal stock savings associations and national banks. The OCC will review any proposed capital increases at Federal mutual savings associations on a case-by-case basis.

Changes in Permanent Capital by a National Bank (§ 5.46)

Twelve CFR 5.46 sets out the OCC's rules addressing changes in permanent capital by national banks. These rules implement statutory provisions that establish the processes and requirements for a national bank to increase or decrease its permanent capital (*i.e.,* capital stock and capital surplus), including 12 U.S.C. 51a, 51b, 51b–1, 52, 56, 57, 59, and 60. The statutes require OCC approval for increases and decreases in permanent capital. These statutes do not apply to Federal savings association, and there are not comparable provisions in the HOLA. Accordingly, the OCC is not proposing to add Federal savings associations to § 5.46.[92]

We propose to clarify existing provisions in § 5.46 regarding increases in capital. Specifically, we propose to revise paragraph (g)(1) to describe more fully those increases for which an application and prior approval are not required and when such increases are considered approved by the OCC. Portions of this provision are currently in paragraph (i)(3) which principally deals with the bank's notification to the OCC that the increase has occurred and the certification of the increase by the OCC. In the proposed revision, all of the discussion of the approval process would be in paragraph (g)(1), and paragraph (i)(3) would cover only the bank's notice of increase and OCC certification We also propose to revise paragraph (i)(3) to divide it into separate provisions, one about the bank's notice of increase, and the other about OCC certification. This layout makes the paragraph easier to follow. We also propose to describe more fully the certification process and clarify that the effective date of a capital increase is the date the increase occurred, not the date on which the OCC issues its certification. No changes in substance are intended in these clarifications.

We also propose to make a small number of technical changes, including revising the section's title to indicate it applies only to national banks.

Voluntary Liquidation (§ 5.48)

Twelve U.S.C. 181 and 182 establish liquidation standards and procedures for national banks, including requirements for public notice of liquidation plans.[93] Twelve CFR 5.48

[92] Reductions in capital are included in the regulations governing capital distributions by Federal savings associations, 12 CFR part 163, subpart E (which is proposed to become new § 5.55 in this rulemaking), discussed elsewhere in this preamble. Those regulations treat a reduction in capital by a Federal savings association that is comparable to a reduction in capital that would be subject to § 5.46 for a national bank (*i.e.,* a reduction other than a dividend from undivided profits) in a similar manner, requiring an application to the OCC.

[93] Twelve U.S.C. 181 sets forth the liquidation standards and procedures with respect to shareholder approval, liquidating agents, progress reports, and OCC examination of a liquidating bank.

implements these statutes, setting forth the standards and procedures for voluntary liquidation by a national bank. Specifically, § 5.48 provides that a national bank: (1) May liquidate in accordance with 12 U.S.C. 181; (2) must notify the OCC when it is considering voluntary liquidation; (3) must provide the public notice required by 12 U.S.C. 182, as well as notice to the OCC, after its shareholders have voted to voluntarily liquidate; and (4) must file reports of both condition and progress with the OCC. In addition, § 5.48(f) contains provisions for expedited voluntary liquidations in connection with certain acquisitions and § 5.48(g) addresses a national bank as the acquirer of a liquidating national bank.

There are no statutory requirements similar to 12 U.S.C. 181 and 182 that apply to Federal savings associations. However, § 146.4 contains standards and procedures for a Federal savings association to dissolve voluntarily. Under these rules, a Federal savings association's board of directors may propose a dissolution plan, which must be submitted to the OCC for approval. The OCC may approve the plan, make recommendations concerning the plan, or disapprove the plan. Once approved by both the board of directors and the OCC, the Federal savings association must submit the plan to the savings association's members for a vote. If approved by a majority of the members, the plan becomes effective. After dissolution, the savings association must provide a certificate evidencing such dissolution to the OCC, after which the OCC will cancel the savings association's charter.[94]

The OCC proposes to amend § 5.48 to incorporate certain provisions from § 146.4, to make § 5.48 applicable to both Federal savings associations and national banks, and to rescind § 146.4. These changes would provide the OCC with additional methods by which to ensure the safety and soundness of national banks and Federal savings associations. These changes also would streamline and improve the process by which an OCC-regulated institution may liquidate, thereby reducing regulatory burden for the institution. The proposal would result in changes to the liquidation procedures for both types of institutions.

Specifically, under proposed § 5.48(b), a Federal savings association would be required to provide preliminary notice to the OCC when it is considering voluntary liquidation and again when its liquidation plan is definite. These requirements currently apply only to national banks. The OCC has found that these advance notices are helpful to the agency in ensuring the liquidations are planned and executed in a safe and sound manner and in anticipating any issues that may arise as liquidation commences. Also under proposed § 5.48(b), neither a national bank nor a Federal savings association may commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan. Although this requirement is included only in the current Federal savings association regulation, it is consistent with the OCC's current supervisory practice for national banks. The OCC has found that it can identify and communicate supervisory concerns in a timely manner if it reviews liquidation plans prior to the commencement of liquidation and believes that it is appropriate to include this requirement in the proposal.

Proposed § 5.48(d) specifies the factors the OCC will consider when reviewing a proposed liquidation plan. Neither § 5.48 nor § 146.4 currently sets out these factors; however, the OCC believes that the additional specificity provided by the proposed amendment will aid filers in the efficient preparation of liquidation plans and, accordingly, finds that it is appropriate to provide notice of what the OCC will consider in reviewing a proposed plan.

Specifically, proposed § 5.48(d)(1) states that in reviewing a liquidation plan, the OCC will consider the purpose of the liquidation, its impact on the liquidating institution's safety and soundness, and its impact on the institution's depositors, other creditors, and customers. These factors are similar to those that the OCC currently considers when reviewing the merger of a national bank with a nonbank affiliate and substantial changes in the composition of a national bank's assets.[95] Furthermore, the OCC currently uses similar considerations in reviewing voluntary dissolutions of Federal savings associations and bulk transfers by Federal savings associations.[96] These factors provide the OCC with a clear understanding of a plan's potential effect and help to ensure that liquidations are carried out in a safe and sound manner.

Proposed § 5.48(d)(2) states that the OCC also will review a national bank's liquidation plan for compliance with 12 U.S.C. 181 and 182. These statutory requirements do not apply to Federal savings associations and the OCC does not believe it is necessary to extend them to these institutions by regulation. Finally, because of the unique structure of mutual savings associations, proposed § 5.48(d)(3) states that the OCC will assess the advisability and effect of liquidation, as well as any alternatives to such action, when a mutual savings association plans to liquidate. As stated above, the OCC believes it must consider these factors in assessing a plan and that it is appropriate to provide affected parties with notice that these factors will be considered.

Proposed §§ 5.48(e)(1) and (e)(2) describe the procedures that apply to the proposed requirements to provide notice of consideration of a plan, to submit a plan, and to receive OCC non-objection before proceeding with a plan. Proposed § 5.48(e)(3) provides that a national bank or Federal savings association's board of directors and its shareholders (or, in the case of a Federal mutual savings association, directors and members) must vote to approve a voluntary liquidation plan. While this requirement is included in § 146.4, only shareholders are required to vote on a liquidation plan under § 5.48(e). The OCC believes that it is prudent and appropriate for a national bank's board of directors also to vote to liquidate because of its direct role in governing the operation of the institution and its role in liquidation, and that the addition of this requirement reflects existing practices of boards of directors in voluntary liquidations.

Currently, only a national bank is required to notify the OCC of a vote to liquidate. The OCC believes that each institution that it regulates should inform the OCC of such a vote so that the OCC knows the status of the liquidation process. Therefore, proposed § 5.48 (e)(3)(A) states that a national bank or Federal savings association must file a notice with the OCC once the specified parties vote to liquidate. In addition, proposed § 5.48(e)(3)(A) requires the bank or savings association to provide notice to depositors, other known creditors, and known claimants. Currently, § 146.4 has no specific notice requirement and, as noted above, § 5.48(e)(1) simply directs a bank to publish notice in accordance with 12 U.S.C. 182. The OCC believes that the

It requires, *inter alia,* that two-thirds of a national bank's shareholders vote to liquidate in order for a liquidation to proceed. Twelve U.S.C. 182 requires, *inter alia,* that a liquidating national bank's board of directors publish for two months a notice of liquidation in every newspaper published where the bank is located (or nearby, if no paper is published in that city or town). The notice must state that the bank is closing up its affairs and notify creditors to present their claims for payment.

[94] These rules do not apply to transactions such as mergers or consolidations, which are governed by 12 CFR 163.22.

[95] *See* 12 CFR 5.33(g) and 5.53.

[96] *See* 12 CFR 146.4(b) and 163.22(c).

public will be best served when notice to depositors, creditors, and claimants is provided and, therefore, the OCC has drafted the proposal to require this notice. Proposed § 5.48(e)(3)(B) makes clear, however, that the statutory vote and notice requirements of 12 U.S.C. 181 and 182 are applicable only to national banks.

The OCC also proposes to extend to Federal savings associations the § 5.48(e)(4) and (e)(5) requirements to submit reports of condition and progress to the OCC. The OCC has found these reports useful in determining whether a national bank is following its plan of liquidation and conducting the liquidation in a safe and sound manner. The OCC believes that it would be useful to have this same information for a liquidating Federal savings association. In addition, the proposal would require the bank's or savings association's liquidating agent or committee to submit to the OCC a report at the start of liquidation showing the bank's current balance sheet.

Proposed § 5.48(e)(6) would require a national bank and Federal savings association to submit a final report of the liquidation to the OCC. This requirement currently exists only for Federal savings associations. However, the OCC believes that this report allows the agency to confirm that the liquidation was accomplished in accordance with the liquidation plan. Furthermore, this requirement is consistent with the OCC's current supervisory practice. Both national banks and Federal savings associations also would be specifically required to return the charter certificate to the OCC.

Both §§ 5.48(f) and 146.4(b) contain substantively similar provisions for expedited liquidations, and the OCC proposes to consolidate the two provisions by applying § 5.48(f) to Federal stock savings associations. The § 146.4(b) provision excepting from the voluntary liquidation requirements the transfer of a Federal savings association's assets to a national bank remains in effect under proposed § 5.48(f). Consistent with § 146.4(b), however, the proposal does not extend paragraph (f) to Federal mutual savings associations because of the unique ownership structure of those savings associations. The OCC also proposes to eliminate § 5.48(g), concerning a national bank as an acquirer of a liquidating national bank, because it does not impose requirements beyond those stated in current law. Finally, the OCC proposes other technical changes to clarify the rule where necessary.

Change in Control (§ 5.50)

Twelve CFR 5.50, Change in bank control; Reporting of stock loans, and 12 CFR part 174, Acquisition of control of Federal savings associations, set forth the policy and establish the process for acquisitions of control of national banks and Federal savings associations, respectively. These rules provide the framework with which prospective acquirers are required to comply when they seek to acquire control of a national bank or Federal savings association. Specifically, § 5.50 and part 174 describe the application process and the factors the OCC considers in reviewing the qualifications of the prospective acquirer, and address the factors that prospective acquirers should consider when exploring possible acquisitions.

While both § 5.50 and part 174 implement the Change in Bank Control Act[97] and many of the substantive requirements are the same, part 174 includes certain substantive requirements that are not included in § 5.50. For example, the rules for Federal savings associations contain many of the same thresholds and control concepts included in § 5.50, but part 174 includes rebuttable control presumptions and rebuttable presumptions of concerted action that are absent in § 5.50.

We propose to amend 12 CFR 5.50 by making it applicable to both national banks and Federal savings associations and to rescind 12 CFR part 174. The amendments to § 5.50 would make uniform the treatment of ownership interests held in all Federally chartered depository institutions and provide the market and its participants with clarity as to what the OCC considers important when the agency reviews an application for change in control, whether for a national bank or a Federal savings association. The proposal also would give additional guidance to investors contemplating purchasing shares in a national bank or Federal savings association by providing information about what transactions would be covered by the requirements and when a notice would be necessary. The proposed amendments would clarify the OCC's supervisory expectations for these transactions.

Specifically, we propose to amend § 5.50 to include a number of the definitions and substantive provisions found in part 174. In some instances, these amendments would be codifying substantive differences, as described below. Therefore, national banks, Federal savings associations and prospective acquirers of national banks and Federal savings associations should be aware of the following proposed changes to the rule.

We are proposing to amend the definition section in § 5.50 and to add a number of definitions from part 174. The proposed additional definitions would provide clarity since the terms are used in the proposed substantive provisions. They include ''controlling shareholder,'' ''management official,'' ''company,'' and several definitions that are necessary because the proposed rule would be applicable to Federal savings associations. We also propose to replace the definition of ''acquisition'' with that of ''acquire'' from part 174, which contains a more detailed description of transactions that would be covered by the proposed rule. ''Acquire'' is defined as obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock, and includes specific examples. The proposed definition is more detailed than the current definition of ''acquisition'' included in § 5.50, and thereby provides a clearer description of what would be covered by the proposal. Finally, the proposal retains and applies to Federal savings associations the current definition of ''voting securities,'' which would replace the part 174 definition of ''voting stock.'' The use of this definition would affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder. The OCC believes the immediately convertible standard is simpler and easier to apply than the preponderant economic risk standard, and provides an appropriate standard for the treatment of securities that are convertible into, or exchangeable for, voting securities.

The proposed amendments to § 5.50 would add several presumptions of concerted action. These additional presumptions of concerted action would provide clarity and guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50, and help ensure compliance with the regulation. Currently, pursuant to § 5.50,

[97] 12 U.S.C. 1817(j).

an acquirer that proposes to rebut control of a national bank cannot have a representative on the board. The proposed regulation would allow acquirers to rebut a presumption of control in cases where the acquirer will have a representative on the board of directors of the national bank or Federal savings association to be acquired. The proposal to allow a rebutting party to have a board seat provides greater flexibility for acquirers; in addition, these changes help harmonize the OCC's proposed change in control regulations with the Federal Reserve System's regulations addressing acquisitions of control of bank holding companies and savings association holding companies. Additionally, the proposal would establish specific limitations, in the rebuttal of control context, on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's or Federal savings association's voting stock. The proposed regulatory changes have the effect of eliminating most of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in § 174.4(b) and (c). The proposed regulatory changes also remove certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).

The proposal does not include the detailed part 174 procedures for rebuttal of control and concerted action, retaining instead the provisions from § 5.50(f)(2)(vi) and applying them to Federal savings associations. The OCC believes that rebuttals are processed in a timely manner under § 5.50, and that the processing procedures established in part 174 are unnecessarily detailed. The amended § 5.50 will also exclude certain other provisions from part 174, resulting in changes for Federal savings associations. For instance, the proposed § 5.50 will retain the current prior notice exemption provisions for acquisition of control as a result of testate or intestate succession. Thus, both national banks and Federal savings associations would need to file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Previously, persons who acquired control of a Federal savings association as a result of testate or intestate succession needed only to file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC. The OCC believes this change is appropriate, because it enables the OCC to review acquisitions of control through testate or intestate succession under the standards set forth in § 5.50.

Likewise, the proposed § 5.50 does not include the presumptive disqualifiers from part 174—a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction. While the OCC believes that the presumptive disqualifiers provide helpful guidance regarding circumstances in which the OCC might consider a change of control notice to be objectionable under the standards for disapproval, the OCC does not consider it necessary to include these detailed provisions in the regulation. The OCC intends to amend the Change in Bank Control Act booklet of the Comptroller's Licensing Manual to address the situations described in the presumptive disqualifiers to the extent it considers appropriate. The proposed regulation retains the standards for disapproval set forth in the §§ 5.50(e)(5) and (6).

Proposed § 5.50 also excludes the requirement at § 174.5(a) that acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that does not file a control notice or control rebuttal file a certification of ownership. The OCC believes that the regulatory burden of these filings exceeds the benefits derived from them. These acquirers would no longer need to file a certification of ownership with the OCC.

Finally, the proposal would eliminate Appendix A to 174—Rebuttal of Control Agreement.

Question 10: Both the current and proposed rule provide that a person and the members of the person's immediate family will be presumed to be acting in concert for purposes of § 5.50. It has been the practice of the OCC, as well as the former OTS, to apply this presumption only to immediate family members who own stock in the institution or are institution-affiliated parties, as defined in sections 3(u)(1), (2), or (3) of the FDI Act.[98] We request comment on whether § 5.50 should be amended to provide this clarification.

Change in Directors & Senior Executive Officers (§ 5.51)

Twelve CFR 5.51, Changes in directors and senior executive officers, and 12 CFR part 163, subpart H, Notice of change of director or senior executive officer (§§ 163.550 through 163.590), implement 12 U.S.C. 1831i, which requires certain national banks and Federal savings associations to notify the OCC of a change in a director or senior executive officer. In order to harmonize the treatment of national banks and Federal savings associations, we propose to amend § 5.51 by adding language to make it applicable to both national banks and Federal savings associations and to rescind 12 CFR part 163, subpart H. In so doing, we also propose to amend § 5.51 by including certain requirements currently applicable only to Federal savings associations and by making various clarifying changes. As a result of this consolidation, Federal savings associations should be aware of the differences between § 5.51 and part 163, subpart H, and national banks should be aware of the proposed changes to § 5.51, as described below.

Definitions. The definition in § 5.51(c)(1) of a ''director'' for a national bank is not as broad as the definition of the same term in § 163.555 for a Federal savings association. Specifically, the definition in the bank rule includes an advisory director who is authorized to vote on any matters before, or provides more than general advice to, the board of directors. The savings association rule includes an advisory director who votes or provides such advice to a committee of the board in addition to the board of directors. We propose to amend § 5.51(c)(1)(ii) to include this broader definition. As a result, an advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors would now be subject to the requirements of § 5.51.

Section 5.51(c)(2) defines the term ''national bank.'' To provide parallel treatment, we propose to redesignate § 5.51(c)(2) as § 5.51(c)(3) and add a definition for the term ''Federal savings association'' at § 5.51(c)(2).

''Senior executive officer'' is defined in § 5.51(c)(3) for a national bank and in § 163.555 for a Federal savings association. In addition to minor differences in wording, the definitions have two primary differences. First, the definition in § 163.555 includes an individual serving as president of the institution, while § 5.51(c)(3) does not. To eliminate any ambiguity, this final rule adds ''president'' to the definition of senior executive officer and redesignates § 5.51(c)(3) as § 5.51(c)(4). Second, the definition in § 163.555 specifies that a ''senior executive officer'' also includes any other person identified by the OCC or the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee, while § 5.51(c)(3) does not specify that the notification by the OCC be in writing. We propose to amend

[98] 12 U.S.C. 1813(u)(1), (2), or (3).

redesignated § 5.51(c)(4) to clarify that the notification must be in writing.

Section 5.51(c)(4) defines the term ''technically complete notice'' for a national bank to mean a notice that includes all information required by § 5.51(e)(2), and includes information that may be requested by the OCC after the original submission of the notice. While § 163.555 does not include a specific definition of this term for a Federal savings association, the term ''technically complete notice'' as defined in the bank rule is generally consistent with the content requirements in § 163.570 and the procedures in § 163.575 governing review of a notice for completeness. We are proposing to amend this definition to delete the phrase ''original submission of the notice'' and replace it with ''notice'' to allow for subsequent OCC requests for additional information.

Redesignated § 5.51(c)(6) defines the term ''technically complete notice date'' to mean the date on which the OCC has received a technically complete notice for a national bank or Federal savings association. A Federal savings association should be aware of this definition because it triggers the 90-day time period for OCC review and decision discussed below.

''Troubled condition'' is defined in § 5.51(c)(6) for a national bank and in § 163.555 for a Federal savings association. The definitions are substantially similar, and we believe the definition of troubled condition for a national bank encompasses all of the actions included in the definition for a Federal savings association. However, § 5.51(c)(6) provides that a national bank may be designated in troubled condition based on information obtained as a result of an examination, while § 163.555 provides that a Federal savings association may be designated in troubled condition based on information available to the OCC. The language in § 163.555 is broader and thus provides the OCC with greater ability to ensure the safety and soundness of the institutions we supervise. Accordingly, we propose to amend § 5.51(c)(6) by redesignating it § 5.51(c)(7) and by deleting the phrase ''as a result of an examination'' and replacing it with the phrase ''based on information pertaining to such national bank or Federal savings association.''

Prior Notice. Sections 5.51(d) and (e)(6)(ii) prescribe when a national bank must provide prior notice to the OCC, and §§ 163.560, 163.585(a)(2), and 163.590(b) are the corresponding provisions for a Federal savings association. The description of circumstances requiring prior notice are similar in most respects, but there are differences in the timeframe for prior notice and the treatment of an individual seeking election to the board of directors who has not been nominated by management. Under § 5.51(d), a national bank must provide 90 days prior notice before adding or replacing any director or senior executive officer, or changing the position of a current senior executive officer, if the bank is not in compliance with minimum capital requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act,[99] that prior notice is appropriate. Section 163.560 requires 30 days prior notice for a Federal savings association if similar prerequisites are met. The OCC may extend this review period under § 163.585(a)(2) for an additional period not to exceed 60 days. Furthermore, in lieu of following the procedures under § 163.590(b), this 30-day notice requirement applies to an individual seeking election to the board of directors who has not been nominated by management.

As a result of our proposed integration of savings associations into § 5.51, Federal savings associations would be required to provide 90 days prior notice of a new director or senior executive officer, instead of 30 days prior notice. We believe this longer prior notice is appropriate for both banks and savings associations and conforms with the review of these notices under current OCC practice pursuant to the notice period extension. In addition, under the revised rule, only a Federal savings association may file the notice with the OCC; an individual seeking election to the board of directors of a Federal savings association who has not been nominated by management would no longer be allowed to do so. We believe it would be a more judicious use of the agency's resources to conduct the necessary review only after an individual has been elected to the board of directors.

We also propose to require that if the OCC determines that prior notice is required based on review of an agency plan under section 38 of the FDI Act, such determination must be in writing.

Exceptions to rules of general procedure. For a national bank, under § 5.51(e)(8), notices are not subject to public notice and comment, are not publicly available, and are excepted from certain other generally applicable application processing provisions of part 5. Under part 163, subpart H and the application processing regulations applicable to Federal savings associations, notices pertaining to Federal savings associations are treated similarly. We propose to apply § 5.51(e)(8) to Federal savings associations. In addition, we propose to amend § 5.51(e)(8) to clarify that the procedures in § 5.13(c) regarding required information and abandonment of a filing apply to the extent provided for in proposed §§ 5.51(e)(3)(iii) and (e)(7).

Content of Notice. Sections 5.51(e)(2) and 163.570 provide, respectively, the requirements governing the content of a notice for a national bank and a Federal savings association. Although § 5.51(e)(2) lists the specific items required and § 163.570 refers to 12 U.S.C. 1817(j)(6)(A) and the Interagency Biographical and Financial Report (IBFR), these requirements are essentially the same, except that § 5.51(e)(2) currently does not require the financial portion of the IBFR for a national bank. Because the financial section of the IBFR provides information that is useful and relevant to the disapproval standards and may not be available to the OCC in the information currently required to be provided, we propose to revise § 5.51(e)(2) to require the submission of the financial portion of the IBFR, except when the OCC determines in writing that such information is not required.

We also propose to add language to § 5.51(e)(2) that would permit the OCC to require additional information and to require or accept other information in place of the information required by this paragraph. This language, which provides valuable flexibility to the OCC, is currently included in §§ 163.570(a)(3) and 163.570(b). In addition, we propose to add language to § 5.51(e)(2) to clarify how to calculate the three-year exception for providing fingerprints.

Request for additional information. We propose to amend § 5.51(e)(3), redesignated as § 5.51(e)(3)(i), to remove the qualification that the OCC's request for information be in writing ''where feasible'' and instead require that the OCC's request must always be in writing and that the OCC provide an explanation of why the information is needed. In addition, we propose adding new § 5.51(e)(3)(ii) to provide that a national bank or Federal savings association that cannot provide the requested information within the time specified by the OCC may request that the OCC suspend processing of the notice and that the OCC, in its discretion, may either grant or deny such request in writing, and if granted, specify the time period during which the information must be provided. This

[99] 12 U.S.C. 1831o.

provision is similar to what is included in § 163.575(b). We also propose to add new § 5.51(e)(3)(iii), which would provide that if a national bank or Federal savings association fails to provide the requested information within the time specified in § 5.51(e)(3)(i) or in the OCC's grant of the suspension request pursuant to § 5.51(e)(3)(ii), the OCC may either deem the filing abandoned under § 5.13(c), or review the notice based on the information provided. This provision is included in § 163.575(b). Based on our supervisory experience, it is appropriate to apply these specific consequence for failing to provide such additional information to national banks in addition to Federal savings associations.

Notice of disapproval/notice of intent not to disapprove. Sections 5.51(e)(4) and (5) describe the requirements governing a notice of disapproval and a notice of intent not to disapprove for a national bank, and §§ 163.580 and 163.585 are the equivalent provisions for a Federal savings association. Although there are minor differences in wording, they are substantively the same. Accordingly, we propose to amend §§ 5.51(e)(4) and (5) to include Federal savings associations. In addition, in §§ 5.51(e)(4) and (5), we propose to clarify that the notice of disapproval and the notice of intent not to disapprove must be in writing. We also propose to clarify in § 5.51(e)(5) that the OCC provide the notice of intent not to disapprove to the individual in addition to the institution. This change clarifies an ambiguity and makes this provision consistent with other provisions in § 5.51. Finally, we propose to revise § 5.51(e)(5) to require that all applicable legal requirements must be satisfied in order for the individual to begin service as a director or senior executive officer after receiving a notice of intent not to disapprove.

Waiver. Section 5.51(e)(6) prescribes the waiver procedure that allows an individual to serve as a director or senior executive officer of a national bank prior to filing a notice, and § 163.590 prescribes corresponding procedures for a Federal savings association. Although these provisions are similar in terms of standards for granting a waiver and requiring that a notice be filed within a specified time period after the waiver has been granted, the savings association rule does not detail the length of service of such an interim position. We propose to apply § 5.51(e)(6) to savings associations, reorganize and renumber § 5.51(e)(6), and make the changes described below.

First, under redesignated § 5.51(e)(6)(i)(B), we propose to clarify that the OCC's finding in support of the waiver must be in writing, which is our current practice and which is included in the savings association rule.

Second, § 5.51(e)(6) provides that the OCC may waive the prior notice requirement if delay could harm the national bank or the public interest, or if other extraordinary circumstances justify waiving the requirement. Under § 163.590(a), the OCC may grant a waiver if delay would threaten the safety and soundness of the savings association, would not be in the public interest, or if there are other extraordinary circumstances. We propose revising § 5.51(e)(6) to incorporate the safety and soundness standard, modified slightly from what is included in the savings association rule. Specifically, as proposed, the OCC could grant a waiver if delay could adversely affect the safety and soundness of the national bank or Federal savings association, would not be in the public interest, or other extraordinary circumstances justify the waiver.

Third, both § 5.51(e)(6) and § 163.590 provide that if the OCC grants a waiver, the national bank must file the required notice within the time period specified in the waiver. We propose to amend redesignated § 5.51(e)(6)(i)(C) to clarify that such notices must be technically complete within this specified time period.

Fourth, we propose to amend redesignated § 5.51(e)(6)(i)(D) by amending the alternative outcomes that may occur after a waiver is granted and the proposed individual has assumed the position on an interim basis. Section 163.590 does not include similar provisions. Under the current rule, if a proposed director or senior executive officer who is serving under a waiver receives notice of disapproval, that person could continue to serve pending resolution of an appeal. We believe it is not in the best interest of the national bank or Federal savings association, and would be contrary to safe or sound practices, to allow an individual to continue to serve pending an appeal. Therefore, proposed § 5.51(e)(6)(i)(D)(*2*) would require an individual who is serving on an interim basis and receives a notice of disapproval to resign immediately from the board. This person may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied.

Section 5.51(e)(6) also provides that if the required notice is not filed within the time period specified in the waiver, the proposed individual must resign his or her position. Thereafter, the individual may assume the position on a permanent basis only after the national bank receives a notice of intent not to disapprove, after the review period elapses, or after a notice of disapproval has been overturned on appeal. Section 163.590 does not include a similar provision. The rule also provides that a waiver does not affect the OCC's authority to issue a notice of disapproval within 30 days of the expiration of such waiver. We propose in § 5.51(e)(6)(i)(E) to clarify that the individual may assume the position under these circumstances only after a technically complete notice has been filed and all other applicable requirements are satisfied. Furthermore, we also propose in § 5.51(e)(6)(i)(D)(*3*) to specify that the ''elapse'' of the review period occurs when the OCC fails to act within 90 calendar days after submission of a technically complete notice and the individual satisfies all other legal requirements. As a matter of practice, the OCC has taken the position that waiver of prior notice does not affect the general 90-day review period and this amendment codifies this position in our rule.

We also propose in § 5.51(e)(6)(i)(D)(*1*) to clarify that following receipt of a notice of intent not to disapprove, the individual may assume the position on a permanent basis, provided all other applicable legal requirements are satisfied.

Section 5.51(e)(6)(ii) prescribes the requirements for an automatic waiver for a national bank, and § 163.590(b) is the corresponding provision for a Federal savings association. Specifically, § 5.51(e)(6)(ii) provides that if a new director not proposed by management is elected at a shareholder meeting, a waiver of the prior notice requirement is granted automatically and the elected individual may begin service as a director. However, the national bank must file the required notice as soon as practical, and not later than seven days from the date the individual is notified of the election. This provision differs from § 163.590(b), which requires the individual, and not the institution, to file the notice. Federal savings associations should note this change.

Commencement of Service. For a national bank, § 5.51(e)(7) prescribes when a proposed individual may assume the office. Section 163.585 is the corresponding provision for a Federal savings association. Under § 5.51(e)(7),

an individual may begin service at the end of the OCC's review period unless the OCC issues a notice of disapproval or the OCC deems the notice to be abandoned because the bank does not provide additional requested information. Under § 163.585, an individual may begin service at the end of the 30-day review period (or, if extended, the 90-day review period) unless the OCC issues a notice of disapproval, or when the OCC notifies the bank in writing of its intent not to disapprove.

We propose to add new § 5.51(e)(7)(i) to clarify that an individual may assume the office on a permanent basis prior to expiration of the review period only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer. As indicated above, this provision is included in § 163.585(b). We also propose to add conforming language in § 5.51(e)(7)(i), redesignated as § 5.51(e)(7)(ii)(A), to provide that the OCC's notice of disapproval must be in writing. We note that redesignated § 5.51(e)(7)(ii)(B) would specifically prohibit individuals from beginning service at a Federal savings association, in addition to national banks, if the OCC deems the application abandoned. While § 163.575 applies the concept of abandonment to a Federal savings association when a notice is not complete, § 163.585 does not specify this consequence.

Appeal. Section 5.51(f) prescribes the applicable procedures for a national bank or a proposed individual to appeal a notice of disapproval. There is no equivalent rule in § 163, subpart H for a Federal savings association. Accordingly, under § 5.51(f) as amended by this final rule, this appeal process would be available to both a Federal savings association and the proposed individual.

Technical changes. We propose to make minor technical changes throughout § 5.51. For example, § 5.51 uses the terms ''individual'' and ''person'' interchangeably and uses the terms ''lapse,'' ''end,'' and ''expire'' interchangeably. To promote consistency and conform to the language in 12 U.S.C. 1831i, we propose to replace the word ''person'' with ''individual'' and to use the word ''expire'' or ''expiration.'' To promote consistency and avoid confusion, we propose to add the word ''calendar'' before the word ''days.'' Finally, in the definition of ''national bank'' in § 5.51(c)(2), we propose to delete the reference to § 5.3(j) because it is obsolete.

Change in Address (§ 5.52)

Twelve CFR 5.52 requires a national bank to submit a written notice to the OCC if its main office or post office box address changes. Twelve CFR 145.91(b) requires a Federal savings association to notify the appropriate OCC licensing office if it changes the permanent address of its home office, with certain exceptions. The rules are substantially similar. In order to consolidate and harmonize these rules, the OCC proposes to amend § 5.52 by making it applicable to both national banks and Federal savings associations and to rescind § 145.91(b). As previously discussed in this preamble with respect to proposed § 5.40, the OCC's proposal uses the term ''main office'' when discussing a national bank and ''home office'' when discussing a Federal savings association.

As noted above, the current national bank and Federal savings association notice requirements are subject to certain exceptions. Specifically, § 5.52(b) currently provides that a national bank is not required to provide notice of a main office or post office box address change if the change results from a transaction approved under part 5. Section 145.91(b) provides that a Federal savings association is not required to provide a change of address notice if the association submitted an application or notice to relocate or establish a new home or branch office pursuant to §§ 145.93 and 145.95. The proposal seeks to harmonize these provisions by providing that neither a national bank nor a Federal savings association would be required to file a notice if it submitted a notice under § 5.40(b), which, as proposed, addresses a relocation of a main office or home office. In addition, a Federal savings association would not be required to file a notice for a transaction approved under part 5, consistent with the current treatment for national banks.

We note that under current Federal savings association rules, highly-rated savings associations are exempt from the §§ 145.93 and 145.95 provisions requiring an application or notice for the relocation or establishment of a new home or branch office, and therefore must file a change in address notice under 145.91. As a result of this proposal's integration of §§ 145.93 and § 145.95 into § 5.40 and the concurrent removal of the exemption for highly-rated savings associations, all savings associations that file an application or notice for the relocation or establishment of a new home or branch office pursuant to proposed § 5.40 would be exempt from the change in address notice under proposed § 5.52.

Finally, § 145.91(a) provides that all operations of a Federal savings association are subject to direction from the home office. There is no equivalent provision for national banks. The OCC believes this provision to be unnecessary and proposes to delete it.

Change in Asset Composition (§ 5.53)

Twelve CFR 5.53 sets out the OCC's rules addressing changes in asset composition for national banks. It requires a national bank to apply to the OCC and obtain prior written approval before changing the composition of all, or substantially all, of its assets (1) through sales or other dispositions, or, (2) having sold or disposed of all or substantially all of its assets, through subsequent purchases or other acquisitions or other expansions of its operations. It contains exceptions for changes in asset composition that occur in connection with an enforcement action, a liquidation under 12 CFR 5.48, or a bank's ordinary and ongoing business of originating and securitizing loans.

Twelve CFR 163.22(c) and (h)(2) set out the OCC's rules addressing changes in asset composition, as well as several other types of changes in business, for Federal savings associations. Section 163.22(c) requires a Federal savings association to file either an expedited treatment notice (which is a form of application) or a standard treatment application, as specified in § 163.22(h)(2), for transactions described in § 163.22(c). Section 163.22(c) includes: (1) Purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, (2) assumptions or sales or other transfers of savings account liabilities, deposit accounts, or other liabilities in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act, and (3) combinations with a depository institution other than an insured depository institution.[100]

The OCC is proposing to combine these rules in an expanded § 5.53 by including some additional requirements for approval of asset transfers based on

[100] Transfers and combinations with insured depository institutions that are subject to the Bank Merger Act are covered by other parts of § 163.22.

§ 163.22(c).[101] We also propose to make clarifications in some of the existing provisions of § 5.53. In addition, we are revising the rule's layout to make it easier to follow. Finally, as a result of these changes and others in this proposal, we propose to remove 12 CFR 163.22(c) and (h)(2).[102]

Specifically, we propose to revise § 5.53(b), the scope section, making it a single sentence and moving the extended description of covered transactions and exceptions into a new definition section. In § 5.53(c)(1)(i) of the definition section, we propose to amend an existing provision to clarify that a sale of all or substantially all assets in a series of transactions is covered, not only the sale of assets in a single transaction to one purchaser.

We propose to add two provisions in the definition that will bring some of the asset transfers that are covered by § 163.22(c) within the scope of § 5.53. Section 163.22(c) includes all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is a combination with, or the assumption of deposits from, another insured depository institution and is subject to the Bank Merger Act. We are proposing to add some, but not all, such transfers to § 5.53. The existing national bank rule at §§ 5.53(b)(second half of first sentence) and (c)(1)(ii) (which the proposal includes at § 5.53(c)(1)(ii)) includes asset purchases only after a prior asset sale. The first proposed addition, in § 5.53(c)(1)(iii), would include any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank or savings association by more than 25 percent in one year. The second proposed addition, in § 5.53(c)(1)(iv), would include any other material increase or decrease in the size of the national bank or Federal savings association or a material alteration in the composition of the types of assets or liabilities of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC. The proposed rule advises banks and savings associations that are contemplating transactions that may constitute a material change to consult the appropriate OCC supervisory office and sets out factors the OCC would use in determining whether an application is required. The intent of this provision is to establish a mechanism for requiring prior approval of significant changes when the OCC considers it necessary for supervisory reasons without establishing specific application criteria in the rule that would require banks and savings associations to file applications in all other cases.

Question 11: The OCC invites comment on other methods of accomplishing the OCC's review of significant changes.

The net effect of these proposed changes on national banks would be to require applications for approval in more situations than under current § 5.53, but these additional situations likely already would involve discussions between the bank and its supervisory office. The net effect of these changes on Federal savings associations would be fewer situations in which applications for approval are required than now required under current § 163.22(c).

Section 5.53 has three exceptions to the requirement to file an application. An application under § 5.53 is not required if the bank is making the asset change in response to direction from the OCC (*e.g.,* in an enforcement action), if the asset change is part of a voluntary liquidation under 12 U.S.C. 181 and 182 and 12 CFR 5.48 that will be completed within one year, or if the asset change occurs as a result of a bank's ordinary and ongoing business of originating and securitizing loans. In the exception for asset changes that are part of a voluntary liquidation, we propose to add that the bank or savings association has received OCC approval of its plan of liquidation. Elsewhere in this rulemaking, we are proposing to add a requirement of OCC approval of the plan of liquidation to § 5.48 and to add liquidation of Federal savings associations to § 5.48. We also propose to add an exception for changes in assets that are subject to OCC approval under another application to the OCC. In such cases, an additional application under § 5.53 is not required. This exception is now only implied.

Section 5.53 currently does not have a provision granting expedited review of applications by eligible banks. The OCC believes the transactions covered under the current rule and under the proposed rule would always be significant enough that expedited review is not appropriate. Section 163.22(c) covered a broader range of transactions than § 5.53, and §§ 163.22(c) and (h)(2) provided for expedited treatment of bulk transfer filings if all the participating Federal savings associations meet the conditions for expedited treatment. We are not proposing to include expedited review in § 5.53.

Finally, we propose to revise the approval requirement provision in § 5.53(d)(1) to eliminate language that is now covered by the use of the defined term ''substantial asset change'' and to revise the manner in which the review factors are set out in § 5.53(d)(2)(i) to be the same as the similar factors in 12 CFR 5.33.

Capital Distributions by Federal Savings Associations (New § 5.55)

Subpart E of part 163, Capital distributions, sets forth the procedures and standards for all capital distributions made by a Federal savings associations. Section 5.46, Changes in permanent capital, and part 5 of subpart E, Payment of dividends, describes the procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital and declaration and payment of national bank dividends, respectively. Although part 163, subpart E and § 5.46 and subpart E of part 5 cover similar transactions, they are structured differently and apply in different ways to Federal savings associations and national banks. Therefore, the OCC is not proposing to integrate these rules at this time. However, in order to include all OCC licensing-related rules in the same part of Chapter 12, we propose to move the provisions contained in subpart E of part 163 to part 5 as new 12 CFR 5.55; update the cross-references in §§ 192.510(c)(1) and 192.520(c) to reflect the new § 5.55; and make other conforming changes.

In addition, we propose to include in new § 5.55 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review. Because the proposal would move this rule into part 5 and in part 5 a Federal savings association must be an ''eligible savings association'' in order to qualify for expedited review of applications and notices generally, the OCC believes it is appropriate to apply the eligibility criterion to Federal savings associations seeking expedited review of filings for capital distributions even though the regulation is not being integrated with its national bank counterpart. These part 5 procedures would result in filing requirements similar to those in subpart E of part 163. However, as described in the discussion of the part 5, subpart A, definition of ''eligible bank or eligible savings association'' elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for

[101] We are proposing to address the provisions in § 163.22(c) regarding combinations and transfers of deposits and other liabilities in proposed revised 12 CFR 5.33 on business combinations, discussed elsewhere in the preamble.

[102] Other provision of this proposal would remove the remaining provisions § 163.22.

expedited review could affect which savings associations qualify for the expedited process.

We also have clarified the provisions regarding filing a notice with the OCC and Federal Reserve Board in proposed §§ 5.55(e)(2)(iii), (e)(2)(iv) and (4) to more precisely describe the requirements.

We do not propose any other substantive changes to this rule.

Subordinated Debt (New § 5.56)

The OCC currently has separate rules for subordinated debt issued by national banks and Federal savings associations (12 CFR 5.47 and 12 CFR 163.81, respectively). Because of the differences and complexity of these rules, we are not proposing to integrate them in this rulemaking, although we may propose to do so at a later date. However, in order to include all OCC licensing-related rules in the same part of Chapter 12, we propose to move § 163.81 to part 5 as new 12 CFR 5.56 and update the cross-reference in § 193.101(c) to reflect the new § 5.56.

In addition, we propose to include in new § 5.56 filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review that would result in filing requirements similar to those in § 163.81. However, as described in the discussion of the part 5, subpart A, definition of ''eligible bank or eligible savings association'' elsewhere in this preamble, because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review could affect which savings associations qualify for the expedited process.

We do not propose any other substantive changes to this rule.

Pass-Through Investments by Federal Savings Associations (New § 5.58)

National banks and Federal savings associations may make, directly or through an operating subsidiary, non-controlling investments (the national bank term) or pass-through investments (the Federal savings association term) in entities pursuant to their respective authority under 12 U.S.C. 24(Seventh) (national banks) and 12 U.S.C. 1464(c) (Federal savings associations) and other statutes. Twelve CFR 5.36 describes the procedures for making these non-controlling investments for national banks. Twelve CFR 160.32(a) addresses the authority of Federal savings associations to make pass-through investments, while § 160.32(b) and (c) describe the procedures for making pass-through investments for Federal savings associations.

With respect to Federal savings associations, § 160.32(a) codifies the authority of Federal savings associations to make pass-through investments in certain entities that hold only assets and engage only in activities permissible for Federal savings associations. When making the pass-through investment, a Federal savings association must comply with all the statutes and regulations that would apply if it were engaging in the activity directly. For example, a Federal savings association must aggregate a proportionate share of its pass-through investment in an entity with the assets the Federal savings association holds directly in calculating its investment limits.[103]

Section 160.32(b) provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC (a ''no-notice procedure'') in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. To qualify for this no-notice procedure the investment must satisfy the conditions set forth in § 160.32(b): (1) The investment is not more than 15 percent of the association's total capital, (2) the book value of the association's aggregate pass-through investments does not exceed 50 percent of the association's total capital, (3) the investment does not give the association direct or indirect control of the company, and (4) the association's liability is limited to the amount of the investment. Section 160.32(c) requires a Federal savings association to provide the OCC with 30 days advance written notice prior to making any pass-through investment that does not meet these no-notice standards. The notice is a form of application and may become a standard application if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. Section 160.32 does not specify the content of the notice or application, as does § 5.36.

The OCC proposes to harmonize its filing requirements for non-controlling and pass-through investments in order to have consistent review and oversight of such investments for national banks and Federal savings associations. The proposal would accomplish this by adding a new § 5.58 to part 5. Section 5.58 is based on § 5.36 and would subject Federal savings association pass-through investments to filing requirements very similar to those applicable to national banks. We are not proposing to add Federal savings associations to § 5.36 at this time because of differences in the respective statutory authorities, the regulations implementing them, and their interpretation. We plan to consider further harmonization of these filing rules, particularly in conjunction with any combination of the substantive regulations implementing the statutory authorities. The proposal also would amend § 160.32(b) to become a cross-reference referring Federal savings associations to § 5.36, and remove § 160.32(c). We would retain § 160.32(a) without change.

The scope section at proposed § 5.58(b) would refer to the authority of Federal savings associations to make equity investments, including pass-through investments, under 12 U.S.C. 1464 and other statutes. It also would reflect that the authority to make a pass-through investment subject to §§ 5.58(b) and 160.32(a) is in addition to authorities to make investments subject to §§ 5.35 and 5.37, as amended by this proposal to include Federal savings associations, and proposed new §§ 5.38 and 5.59.

Proposed paragraph (c) of § 5.58 would require a Federal savings association to file a notice or application for a pass-through investment when required by § 5.58. Proposed § 5.58(d) contains definitions used in the section. The definitions are like those in § 5.36(c).

Proposed paragraph (e) of § 5.58 mirrors § 5.36(e) and would provide that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or through its operating subsidiary, in certain entities [104] by filing a written notice with the OCC no later than 10 days after making the investment. This after-the-fact notice procedure is available if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries under proposed § 5.38, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary) in published OCC precedent, including published former OTS precedent, and is conducted on the

[103] *See* 12 CFR 160.32(a) (noting, as an example, aggregation for purposes of the non-residential real estate loan limits under section 5(c) of the HOLA).

[104] Under proposed § 5.58(d)(1), a Federal savings association may invest in an ''enterprise'' that is a corporation, limited liability company, partnership, trust, or similar business entity.

same terms and conditions that apply to the activity approved in that precedent. This notice must contain the information enumerated in § 5.58(e), including: (1) A description of the structure of the investment and the types of activities conducted by the enterprise in which the bank is investing, (2) how the activity comports with the activities listed in § 5.38 or OCC precedent, (3) a certification that the savings association is well managed and well capitalized at the time of the investment, (4) how the savings association will prevent the enterprise from engaging in impermissible activities, (5) a description of how the investment is convenient and useful to the savings association and not a passive investment, (6) a certification that the savings association's loss exposure is limited and that it does not have unlimited liability for the obligations of the enterprise, and (7) a certification that the enterprise agrees to be subject to OCC supervision and examination as permitted under certain Federal statutes.

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association would be required to apply to the OCC and receive prior approval for the non-controlling investment under § 5.58(f), which mirrors § 5.36(f). The application must satisfy the other conditions enumerated in proposed § 5.58(e).

Proposed § 5.58(g)(1), based on § 5.36(g)(1), would provide for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. Under § 5.58(g)(2), based on § 5.36(g)(2), a Federal savings association would not be required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

The proposal to require Federal savings associations to follow filing requirement for pass-through investments similar to the filing requirements for national bank non-controlling investments, to amend § 160.32(b), and to remove § 160.32(c) would not affect the authority of Federal savings associations to make pass-through investments in entities that engage only in activities permissible for Federal savings associations. In addition, § 5.36 permits national banks to make non-controlling investments greater than 25 percent of the company's equity. Under § 5.58, Federal savings associations would be permitted to do the same. Such an investment, however, would constitute ''control'' under the definition used in 12 U.S.C. 1828(m) and applicable to Federal savings associations, making the enterprise a subsidiary of the association for purposes of section 1828(m) and triggering a filing with the OCC pursuant to section 1828(m).[105] Accordingly, proposed § 5.58(f)(2) provides that, in all cases in which a Federal savings association proposes to invest in an enterprise that would be a subsidiary of the Federal savings association for purposes of section 1828(m) and would not be an operating subsidiary or service corporation, the Federal savings association must submit an application for approval to the OCC, similar to the application required under § 5.58(f)(1) for investments that do not qualify for the notice procedure.

The application of § 5.58 to Federal savings associations also would change the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments could meet the requirements for the after-the-fact notice procedure, and the Federal savings association would need to file only the after-the-fact notice, not an application as under § 160.32(c). However, some non-controlling investments that currently may qualify for the no-notice procedure under § 160.32(b) would require a filing under § 5.58. In this regard, we understand the no-notice procedure under § 160.32(b) was primarily used for investments in investment companies that held assets permissible for a Federal savings association to hold directly. Proposed § 5.58(h) would continue the no-notice procedure for such investments by Federal savings associations.[106] In addition, some investments that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e). Thus, the OCC believes there should not be a substantial impact of this change on Federal savings associations, since the proposal would continue the most common exception to the application requirement in § 160.32, and other pass-through investments may qualify for after-the-fact filing.

Service Corporations of Federal Savings Associations (New § 5.59)

Section 5(c)(4)(B) of the HOLA [107] authorizes savings associations to invest in service corporations. There is no similar authority for national banks. OCC rules addressing service corporations of Federal savings associations (as well as operating subsidiaries of Federal savings associations) are currently set forth at 12 CFR part 159 (Subordinate organizations). The OCC is proposing to remove these provisions of part 159 and create a new § 5.59 based on part 159 that would address only Federal savings association service corporations.[108] This part would set forth the characteristics of Federal savings association service corporations, the requirements applicable to such service corporations, and the filing requirements that apply to a Federal savings association's establishment or acquisition of a service corporation or its commencement of new activities in an existing service corporation.

The current service corporation regulation provides that, when required by section 18(m) of the FDI Act, a Federal savings association must file a notice under 12 CFR part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary.[109] The regulation defines a ''subsidiary'' as a subordinate organization directly or indirectly controlled by a Federal savings association.[110] Accordingly, under the current regulation, a Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation.

The OCC proposes to amend the service corporation regulation to require that a Federal savings association file with the OCC before acquiring or

[105] A ''non-controlling'' investment is not defined in § 5.36. It is generally understood to mean an investment other than one that would constitute ''control'' under the OCC's operating subsidiary regulation, § 5.34, which is a different standard than the one applicable for section 1828(m). Because of this general understanding, national banks' non-controlling investments have not, in general, exceeded 50 percent of an enterprise's equity.

[106] Currently, national banks similarly are not required to file under § 5.36 for such investments. The rule contains exceptions to the § 5.36 filing requirements when the bank is required to make the investment under another regulation implementing a specific statutory authority. One of those exceptions is for investments made under 12 CFR part 1. Investments by national banks in pooled investment vehicles are covered by 12 CFR 1.3(h). Thus, a national bank would not be required to file under § 5.36 for such investments. Proposed § 5.58(h) will provide the same exception to the filing requirement for Federal savings associations.

[107] 12 U.S.C. 1464(c)(4)(B).

[108] As stated elsewhere in this rulemaking, the OCC proposes to create a new § 5.38 that would address Federal savings association operating subsidiaries. As a result, all of part 159 would be removed.

[109] 12 CFR 159.11.

[110] 12 CFR 159.2.

establishing any service corporation, including one that it would not control. The OCC believes that this requirement is more consistent with the underlying statute, 12 U.S.C. 1828(m), and also is more prudent from a regulatory standpoint, because it enables the OCC to review the proposed establishment or acquisition of all service corporations, not merely ones the Federal savings association controls.[111] This ability to review is particularly important because service corporations may engage in a broader range of activities than Federal savings associations, and because Federal savings associations may make sizable investments in service corporations (the aggregate statutory limit for all service corporation investments is three percent of assets). The OCC believes that the proposed amendment will not materially increase the regulatory burden on Federal savings associations, because, in most cases, the notice process is not lengthy, and information requirements are not extensive.

The current service corporation regulation uses the definition of ''control'' in 12 CFR part 174. Section 5.59(d)(1), as proposed, states that ''control'' has the meaning set forth in the Bank Holding Company Act (BHC Act) and the Federal Reserve Board's regulations thereunder. The term ''control'' as it relates to the filing requirement, is set forth in section 18(m)(1) of the FDI Act. The FDI Act defines control by cross-referencing the definition of the term in the BHC Act, at 12 U.S.C. 1841.[112] Accordingly, the OCC believes that the appropriate definition of control is the BHC Act definition. The OCC does not believe that this definitional change will have a significant impact on Federal savings associations.[113]

Proposed § 5.59(e)(5) explicitly states that service corporations may be organized in any organizational form that provides the same protections as the corporate form of organization, including limited liability. This provision is consistent with the OTS's intent in promulgating 12 CFR part 559, the predecessor to part 159,[114] and is consistent with OTS precedent. In amending the service corporation regulation to provide explicitly that service corporations were not required to be in the corporate form, the OTS stated that it was following its standard practice of interpreting the HOLA in a manner that does not elevate form over substance, and that the HOLA authorization to invest in service corporations should be read ''to permit any organizational form that provides the same basic protections as the corporate form of organization.'' [115]

The current service corporation regulation provides that state law applies to a service corporation regardless of whether state law applies to the parent Federal savings association.[116] The OCC previously has amended its regulations to reflect the preemption provisions of the Dodd-Frank Act.[117] Accordingly, the proposal does not include this statement in proposed § 5.59. This result does not effect a substantive change from the current regulations.

Twelve CFR 163.161 includes a requirement that service corporations must be well managed and operate safely and soundly. That section also provides that service corporations must pursue financial policies that are safe and consistent with the purposes of savings associations, and that service corporations must maintain sufficient liquidity to ensure their safe and sound operation. These requirements addressing service corporations are more appropriately included in the service corporation regulations, and are set forth in proposed § 5.59(e)(7).

The proposed regulation would retain the provisions regarding separate corporate identity, with one exception. Proposed § 5.59(e)(8) does not include the provision in § 159.10(a)(3) that requires adequate financing as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character because the OCC believes that this provision may be unnecessarily burdensome. For a service corporation that the Federal savings association does not control, the savings association may not have the power to ensure that it is adequately financed at all times; and such lack of control may help demonstrate the service corporation's separate corporate identity. Where the savings association controls the service corporation, the savings association may find it an ineffective use of resources to finance the entity far in advance; the proposed change helps provide a savings association with flexibility as to when it provides financing to the service corporation and reduces uncertainty regarding what the agency may consider adequate financing.

Proposed § 5.59(f) would retain the list of preapproved activities currently in § 159.4, with minor changes. Section 159.4(h) addresses both community development and charitable activities. The proposal would divide this paragraph into two separate provisions, one addressing community development (paragraph (f)(8)), and the other addressing charitable activities (paragraph (f)(9)). In addition, the community development provision would be simplified by deleting the current list of examples of preapproved community development activities (which generally fall within the scope of the 12 CFR 24.3 description of public welfare investments), and revising the provision to include a reference to community development investments that are permissible under part 24.

As a related matter, § 159.5(a) specifies several types of investments as serving primarily community, inner city, or community development purposes.[118] Proposed § 5.59(g) would delete these examples, all of which are within the scope of § 24.6, and provide that such investments must be consistent with § 24.6.

Proposed § 5.59(h)(1)(ii) includes an information requirement for service corporations with respect to insurance activities that is similar to the requirement for operating subsidiaries. This provision, which is intended to help the OCC carry out its statutory responsibilities,[119] would require a Federal savings association to list for

[111] The OCC proposes to retain the requirement that, with respect to a service corporation that proposes to engage in new activities, a Federal savings association files with the OCC only if the association controls the service corporation. This requirement is also consistent with 12 U.S.C. 1828(m).

[112] 12 U.S.C. 1813(w)(5).

[113] The primary differences between the definition of control in part 174 and the definition of control in the BHC Act at 12 U.S.C. 1841(a)(2) and the Federal Reserve Board's implementing regulations (BHC definition) are: (i) Part 174 includes certain rebuttable control presumptions that are not in the BHC definition; and (ii) the BHC definition provides that control exists if a company controls in any manner the election of a majority of directors or trustees of a bank or holding company.

[114] *See* 61 FR 66561, at 66564 (Dec. 18, 1996). The OTS noted that it would review any proposal to organize an LLC or limited partnership as a first-tier service corporation in the notice process to ascertain whether liability will in fact be limited and whether any other safety and soundness concerns are present.

[115] *Id.*

[116] 12 CFR 159.3(n)(2).

[117] 76 FR 43549 at 43552, 43558, and 43565–66 (July 21, 2011).

[118] *See* 12 CFR 159.5(a)(1) through (4). Any investment that would cause a savings association's investment in service corporations to exceed two percent of assets must serve one of these purposes. 12 CFR 159.5(a).

[119] Section 307(c) of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1416, codified at 15 U.S.C. 6716, requires the OCC to consult with the appropriate state insurance regulator, and take such regulator's views into account, before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution with a company engaged in insurance activities.

each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each state in which the service corporation holds a resident license or charter.

Proposed § 5.59(h)(2) would revise the circumstances under which a Federal savings association would receive expedited review for a service corporation filing. Currently, the criteria for expedited review are set forth in 12 CFR part 116. Pursuant to the proposal, a service corporation filing would be eligible for expedited review if the savings association is ''well capitalized'' and ''well managed,'' and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

Proposed § 5.59(k) would require each Federal savings association to file an annual report listing, for each service corporation subsidiary that is not functionally regulated and does business with consumers in the United States, certain information including the name and principal place of business of the service corporation, the lines of business in which the service corporation subsidiary engages directly with consumers, and the nature of the parent savings association's interest in the service corporation subsidiary. This would be a new requirement. The OCC currently requires similar information to be filed regarding bank operating subsidiaries and is also proposing in this rulemaking to require this information with respect to operating subsidiaries of Federal savings associations. The OCC makes publicly available a list of national bank operating subsidiaries that do business with the public, so that the public is aware when they are dealing with an operating subsidiary of a national bank. Adding Federal savings association operating subsidiaries and service corporation subsidiaries to this list will help ensure that the public is aware when they are dealing with an operating subsidiary or service corporation that is controlled by a Federal savings association.

C. Conforming Amendments

As indicated above, the proposal would make conforming and technical changes to both the rules in parts 5, 7, and 34 and in various provisions of parts 100 through 199 to reflect the movement of the licensing rules for savings association rules to part 5, to adjust section titles, and to conform cross-references. Specifically, the proposal would amend § 162.4 (audit of savings associations) to replace the cross-reference to the part 116 definition of composite ratings with a reference to the Uniform Financial Institutions Rating System, as referred to in other OCC rules. The proposal also would amend part 192 (conversions from mutual to stock form) to replace references to part 116, part 152 (Federal savings associations incorporation, organization and conversion), subpart E (capital distributions) and subpart H (notice of change in directors or senior executive officers) of part 163, and part 174 (change in control) with the appropriate cross-references in proposed part 5. In addition, the proposal would replace the reference to the standard treatment processing procedures of part 116 in § 160.35 (adjustments to home loans) with a statement that Federal savings associations must apply for and receive the OCC's prior written approval.

Part 32 (lending limits) also references the expedited and standard application processing procedures of part 116 at § 32.3(d) (loans by savings associations to develop domestic residential housing units). The proposal would replace this reference with a new paragraph that sets forth the application procedures for Federal savings associations for this activity. These procedures are based on those in § 32.7(b) with the addition of an expedited review process. With respect to state savings associations, the proposal would replace the citation to the FDIC application processing rule with a more general reference to the rules and procedures established by the appropriate Federal banking agency.

In addition, the proposal would conform the cross-references to part 159 (service corporations) and § 163.81 (subordinated debt) to proposed §§ 5.59 and 5.56, respectively.

Furthermore, the proposal would amend §§ 5.39, 5.47, and 5.64, which are not proposed to be integrated in this rulemaking, to clarify and make consistent the OCC office to which a national bank or Federal savings association must file a notice or application. Specifically, the proposal would direct such filings to the institution's appropriate OCC licensing office or appropriate OCC supervisory office, as noted, instead of the appropriate district office.

Finally, the proposal would amend §§ 100.1 (certain regulations superseded) and 100.2 (waiver authority) so that these provisions would continue to apply to rules pertaining to savings associations that would be included in parts other than parts 100 through 199 of Chapter 12 of the Code of Federal Regulations as a result of this rulemaking.

V. Summary of Substantive Changes for National Banks and Federal Savings Associations

A. Proposed Substantive Changes for National Banks

The following is a summary of the substantive changes, listed by rule, proposed in this rulemaking for national banks.

Rules of General Applicability (Proposed 12 CFR part 5, subpart A)

- To qualify for expedited review as an ''eligible bank,'' a national bank would be required to have an OCC compliance rating of 1 or 2. Currently, a bank's compliance rating is not a factor in the requirements for eligibility; however, § 5.13(a)(2) currently permits the OCC to remove a filing from expedited review if it raises certain issues, including compliance concerns.
- A national bank would be required to publish its public notice of a filing in English and, if the OCC determines necessary, also in other languages. Currently, the rules do not specify the language in which the notice must be published.
- In addition to what is currently required, a public notice related to a national bank filing would be required to state (1) the name of the institution that is the subject of the filing, (2) that the public portion of the filing is available on request, and (3) the address of the applicant.
- The OCC, at its discretion, could require an applicant to publish a new public notice if (1) the applicant submits either a revised filing or new or additional information related to a filing, (2) there is a major issue of law or a change in circumstances arises after a filing, or (3) the agency determines that a new public notice is appropriate. (Although this is not specifically permitted under current rules, this has been the practice of the OCC.)
- When computing time for national bank filings, the day of the filing would no longer be included and the time period would no longer end on a Saturday, Sunday, or Federal holiday but would end on the next day that is not a Saturday, Sunday or Federal holiday.

Articles of Association, Bylaws, Charters and Chartering Procedures (proposed 12 CFR 5.20, 5.21, 5.22)

- National banks would be prohibited by regulation from adopting a title that misrepresents the nature of the institution or the services it offers. This reflects current practice.

• National banks would be required to sell all securities of a particular class in an initial offering at the same price.

• In the event the organization of a national bank is not completed, the organizers would be required to return all cash collected on subscriptions.

• The OCC charter approval could include a condition that OCC would review proposed directors and officers for more than two years after the bank commences business. The regulation currently says two years, but a longer time is sometimes imposed in practice.

• Expedited OCC review would be available for an application to establish a full-service national bank filed by a bank holding company or savings and loan holding company only when the lead depository institution is an eligible national bank or eligible Federal savings and loan associations. Currently, the lead depository institution can be an eligible state institution.

Conversions (Proposed 12 CFR 5.24, 5.25)

• *Conversion to a National Bank Charter:*

○ An institution seeking to convert to a national bank charter would be required by regulation to obtain all necessary regulatory and shareholder approvals. (OCC policy currently requires these approvals.)

○ The application would be required to:

■ Identify bank service company investments and other equity investments, in addition to subsidiaries. (This requirement reflects current practice.)

■ Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC. (The OCC currently requests this information on a case-by-case basis.)

■ Include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.

○ The OCC could permit a converted national bank to retain nonconforming activities of a state bank or stock state savings association and nonconforming assets or activities of a Federal stock savings association for a transition period after conversion. (This regulatory change reflects current OCC practice.) The regulation now provides that the OCC may only permit the retention of nonconforming assets of a converting state bank, subject to requirements in 12 U.S.C. 35.

○ Expedited OCC review would be available only for conversion applications by Federal savings associations, because they are institutions the OCC already regulates. It would no longer be available for state-chartered institutions. The time for expedited review is extended from 30 to 60 days.

• *Conversions from a national bank to a state-chartered institution:*

○ As required by section 612 of the Dodd-Frank Act, a national bank must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC to convert, and it must send a copy of the application to the Federal banking agency that would become its appropriate Federal banking agency after the conversion.

○ It must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (Proposed 12 CFR 5.26)

• When reviewing an application to exercise fiduciary powers, the OCC would by regulation consider the bank's financial condition and capital adequacy, the character and ability of proposed trust management, the adequacy of any proposed business plan, and the needs of the community served. (Some of these factors are statutory and all reflect current OCC practice.)

• A national bank that has not conducted previously approved fiduciary powers for 18 consecutive months would be required to provide a notice to the OCC 60 days in advance of commencing the activities.

• A national bank that has received approval from the OCC to offer limited fiduciary services and desires to offer full fiduciary services would be required to apply to the OCC. (This requirement reflects current OCC practice.)

Branching (Proposed 12 CFR 5.30 and Branching-Related Sections in Part 7)

• A drive-in or pedestrian facility located within 500 feet of a branch always would be an extension of the branch, not a separate branch. Currently, this result depends on a case-by-case analysis.

• Under the expedited approval process, short-distance relocations of branches would be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Expedited Procedures For Certain Reorganizations (Proposed 12 CFR 5.32).

• A national bank would not be required to comply with the public notice, public availability, and hearing requirements of part 5, subpart A (12 CFR 5.8, 5.9, and 5.11) for an application to reorganize to become a subsidiary of a bank holding company or a company that will, upon consummation of such reorganization, become a bank holding company unless the OCC concludes that an application presents significant and novel policy, supervisory, or other legal issues. Currently, such applications are subject to these subpart A requirements.

Business Combinations (Proposed 12 CFR 5.33)

• An application to the OCC would be required for the assumption of deposit liabilities or other liabilities from a credit union or any other institution that is not FDIC-insured that will become deposits at the assuming national bank.

• An application to the OCC would be required for the acquisition by a national bank of all or substantially all of the assets, or the assumption of all or substantially all of the liabilities, of companies in addition to depository institutions, including credit unions, nonbank affiliates, or any other company (a ''whole entity purchase and assumption'') if the whole entity purchase and assumption would result in an increase in the asset size of the bank of 25 percent or more.

• In the application for a business combination, national banks would be required to identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank to hold the subsidiary or investment. This regulatory change reflects current practice.

• If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant would be required to include in the business combination application the information required in § 5.26 for a request for fiduciary powers. This regulatory change reflects current practice.

• Filings in which a national bank is the target company and will not be the resulting institution will no longer be exempt from §§ 5.2 and 5.5. Section 5.2 (rules of general applicability) provides that the OCC may adopt different procedures for particular filings, in exceptional circumstances or for unusual transactions, and that the OCC permits electronic filing. Section 5.5 provides that an applicant must pay the applicable filing fee, if any.

• If there are dissenting shareholders in a merger or consolidation between a national bank and Federal savings association, the OCC will conduct an appraisal of dissenters' shares of stock according to the statutory dissenters' appraisal processes that apply to mergers between national banks and state banks. Under the current rule, the OCC may conduct such an appraisal if all the parties agree. Now that the OCC regulates both the national bank and the Federal savings association, the processes can be required.

• The OCC would have the authority to apportion costs for the dissenters' rights process for transactions to which 12 U.S.C. 214a or 215 and 215a are not applicable. (These statutes require the bank to bear all costs.) Under the current rule, in transactions that are not subject to those statutes, the parties must agree how costs are to be divided. Under the proposal, if the OCC regulates the institutions and the transaction is not subject to the statutes, then the OCC would have authority to apportion costs as the OCC determines.

• A national bank's consolidation or merger agreement would be required to address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution. Although not currently in § 5.33, a resulting national bank in such transactions is required to establish and maintain a liquidation account, as discussed in the OCC Licensing Manual.

• The national bank applicant in a consolidation or merger would be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. The OCC would then issue a certification letter documenting that the consolidation or merger occurred and specifying the effective date. This process reflects current OCC practice for national banks.

• The OCC's approval of a transaction under § 5.33 would expire in six months instead of 12 months; the OCC could extend this six month period.

• A national bank that will not be the resulting bank in a merger or consolidation with another national bank would be required to file a notice to the OCC under § 5.33(k). This notice is discussed in the next item.

• When a national bank is consolidating or merging with a Federal savings association or a state chartered institution or credit union and the national bank is not the resulting institution, it would be required to include more information in the notice than currently required in § 5.33. This additional information would include a short description of the transaction or a copy of the filing made by the acquiring institution to its regulators for approval of the transaction and information showing the target national bank or Federal savings association has complied with the requirements to engage in the transaction (*e.g.,* board and shareholder approval). (The bank should already have compiled this information.)

• If a consolidation or merger of a national bank in which the national bank is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the bank must submit a new notice with the OCC.

Operating Subsidiaries (Proposed 12 CFR 5.34)

• Before beginning business, an operating subsidiary would be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change would codify current OCC policy.

• The proposal would make the following changes regarding a national bank's control of an operating subsidiary:

• Where a national bank has the ability to control the management and operations of an operating subsidiary, no other person or entity could have the ability to control the management or operations of the subsidiary. This change would codify current OCC policy.

• Where a bank owns less than 50 percent of an operating subsidiary (but still controls it), no other party could own a greater percentage than the bank. This change would codify current OCC policy.

• A national bank would be required to have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries.

• Adequately capitalized banks would no longer be exempt from the application or notice requirements when acquiring or establishing an operating subsidiary or performing a new activity in an existing operating subsidiary when the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met.

• If a national bank operating subsidiary wishes to act as a fiduciary, its national bank parent would be required to have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer would be able to rely on the national bank's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change would codify longstanding OCC practice.

• OCC approvals granted under § 5.34 would expire within 12 months if a national bank has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends the time period.

Investment in Bank Service Companies (Proposed 12 CFR 5.35)

• To invest in a bank service company, a national bank would be required to file a prior notice for OCC approval through an expedited review process, under which the notice would be deemed approved on the 30th day after filing unless the OCC notifies otherwise. Under the current rule, a national bank files an after-the-fact notice with no requirement for OCC approval before the bank makes the investment, if specified eligibility conditions are met.

Other Equity Investments (Proposed 12 CFR 5.36)

• No substantive changes.

Banking Premises (Proposed 12 CFR 5.37, 7.1000, 7.3001)

• No substantive changes.

Main Office and Home Office Relocations (Proposed 12 CFR 5.40)

• Under the expedited approval process, short-distance relocations of main offices would be deemed approved 15 days after the close of the comment period or 30 days after the date the notice is filed, whichever is later. Currently, short-distance relocations are deemed approved 15 days after the close of the comment period or 45 days after the date the notice is filed, whichever is later.

Change in Corporate Title (Proposed 12 CFR 5.42)

- No substantive changes.

Changes in Permanent Capital (Proposed 12 CFR 5.46)

- No substantive changes.

Subordinated Debt as Capital (Proposed 12 CFR 5.47)

- No substantive changes.

Voluntary Liquidation (Proposed 12 CFR 5.48)

- The following provisions in the proposal would codify existing OCC or national bank practice:
  - A national bank may not commence liquidation until the OCC has notified it that the agency does not object to the liquidation plan.
  - A national bank's board of directors, in addition to its shareholders, must vote to approve a voluntary liquidation plan.
  - A national bank would be required to provide notice of the liquidation to depositors, other known creditors, and known claimants in addition to the current requirement to publish notice in accordance with 12 U.S.C. 182.
  - The national bank's liquidating agent or committee would be required to submit to the OCC a report at the start of liquidation showing the bank's current balance sheet and a final report of the liquidation.

Change in Control (Proposed 12 CFR 5.50)

- The proposal would add several presumptions of concerted action. These additional presumptions would provide clarity and guidance about how and when parties are presumed to be acting in concert for purposes of § 5.50.
- Acquirers would be permitted to rebut a presumption of control in cases where the acquirer will have a representative on the board of directors of the national bank to be acquired. Currently, an acquirer that proposes to rebut control of a national bank cannot have a representative on the board.
- The proposal would establish specific limitations, in the rebuttal of control context, on the total equity invested, where an acquirer proposes to acquire more than fifteen percent of the national bank's voting stock.

Changes in Directors and Senior Executive Officers (Proposed 12 CFR 5.51)

- An advisory director of a national bank who may vote on matters before, or provides more than general advice to, any committee of the board of directors, in addition to the board itself, would be subject to the requirements of § 5.51.
- The notice of a change in directors or senior executive officers for a national bank would need to include financial information on the individual, except when the OCC determines in writing that such information is not required.
- If the OCC requests additional information regarding the notice, a national bank that cannot provide the requested information within the time specified by the OCC may request additional time to provide the information.
- An individual who is serving on an interim basis pursuant to an OCC-granted waiver and receives a notice of disapproval would be required to resign immediately from the board, and would be able to assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied. Currently, the individual may continue on the board pending resolution of an appeal.

Change in Address (Proposed 12 CFR 5.52)

- A national bank would not be required to file a notice of a change in the permanent address of its home office if it submitted a notice under § 5.40(b) (relocation of a main office to a branch location in the same city, town or village).

Change in Asset Composition (Proposed 12 CFR 5.53)

- With regard to a change in asset composition, the national bank rule requires approval of only the sale of all or substantially all of a bank's assets, and the subsequent purchase of assets or expansion of operations after such a sale. Under the proposal, the following additional transactions would require approval under § 5.53:
  - Any other asset purchases or other expansions of business that are part of a plan to increase the size of the bank by more than 25 percent in one year.
  - As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the bank or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC would consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC would require an application likely already would involve discussions between the bank and its appropriate supervisory office.
- The OCC would need to approve a bank's plan of voluntary liquidation in order for asset changes that are part of such liquidation to be exempt from the approval requirements of § 5.53. (The proposal also would amend the regulation governing liquidations, § 5.48, to require OCC approval of the plan of liquidation.)
- Asset changes that are subject to OCC approval under another application to the OCC would specifically be exempt from the approval requirements of § 5.53. This exception is now only implied.

B. Proposed Substantive Changes for Federal Savings Associations

The following is a summary of the substantive changes proposed by this rulemaking, listed by revised rule, for Federal savings associations.

Rules of General Applicability (Proposed 12 CFR Part 5, Subpart A)

- As a result of removing 12 CFR part 116 and applying 12 CFR part 5, subpart A, Federal savings associations would need to follow different procedural and processing provisions. While many of the underlying processes are similar, minor variations and different terminology is sometimes used. Federal savings associations would need to adjust to these variations and differences.
- Adequately capitalized Federal savings associations would no longer qualify for expedited treatment; only well capitalized institutions would be eligible.
- A Federal savings association would no longer have to publish a public notice within the seven days before a filing date but may publish as soon as practicable before or after filing, unless otherwise required.
- In addition to what is currently required, a public notice related to a Federal savings association filing also would have to state that a filing is being made and the date of the filing.
- A Federal savings association could publish a single public notice for multiple transactions or a single notice that would comply with the notice requirement of both the OCC and another Federal agency, if accepted by the OCC. (Although this is not specifically permitted under current rules, this has been an accepted practice for Federal savings association filings.)
- Federal savings associations would obtain from the OCC the public comments made in response to a filing's public notice. Currently, the commenter

is required to send comments directly to the institution.

Articles of Association, Bylaws, Charters and Chartering Procedures (Proposed 12 CFR 5.20, 5.21, 5.22)

- All Federal savings associations:
  - An application to charter a Federal savings association would be subject to the same two-part approval process used for *de novo* national bank charters, whereby the OCC first issues a preliminary approval, followed by a final approval and charter issuance if the applicant completes all of the steps required by the preliminary approval and the Comptroller's Licensing Manual. Under the current Federal savings association rule, there is one approval before the OCC issues the charter but the approval is subject to the institution completing various post-approval organizational steps and other requirements before it can commence business, as specified in 12 CFR 143.4, 143.5, 143.6, and 152.1(c) through 152.1(i).
  - Expedited OCC review would be available for an application to establish a full-service Federal savings association filed by a bank holding company or savings and loan holding company when the lead depository institution is an eligible national bank or eligible Federal savings and loan association. The current regulations for chartering a *de novo* Federal savings association do not have a comparable expedited review process.
  - The OCC's preliminary approval of an application for a new Federal savings association would expire if the savings association has not raised the required capital within twelve months or has not commenced business within eighteen months. Under current rules, a Federal savings association's charter becomes void if organization is not completed within six months after approval.
  - The proposal rescinds *de novo* chartering approval criteria in §§ 143.2(g)(1) and 152.1(b)(1) that require the OCC to consider whether the Federal savings association will provide credit for housing in a safe and sound manner and approval considerations set forth in § 143.3 regarding the composition of board or directors.
- Federal stock savings associations:
  - A Federal stock savings associations no longer would be required to cause a true copy of its charter and bylaws to be available to accountholders at all times in each office of the savings association, or to deliver to any accountholders a copy of such charter and bylaws or amendments upon request.
  - The requirements for adopting and filing Federal stock savings association bylaws would no longer include the requirements that the adoption of bylaws be by the board of directors at its first organizational meeting.
  - Shareholder meetings no longer would be required to be held in the state in which the association has its principal place of business.
  - Staggered terms for certain directors would no longer be specified.
  - Stock certificates of a Federal savings association would no longer be required to be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. Furthermore, each certificate for shares of capital would not be required to be consecutively numbered or otherwise identified.
- Federal mutual savings associations:
  - Federal mutual savings association bylaws no longer would be required to provide some of the language or requirements specified in current § 144.5(b) regarding aspects of: The location of and notices for the annual meeting of members; reporting requirements at the annual meeting; record dates; proxy voting; annual meeting governance; duties of officers and agents of the association; director election and resignation; executive committees; director, officer and employee compensation and removal; and age limits for directors.

Conversions (Proposed 12 CFR 5.23, 5.25)

- *Conversions to a Federal savings association charter:*
  - The applicant would no longer be required to publish a public notice of the application, and the application would no longer be available for public inspection, unless specifically required by the OCC.
  - An applicant that does not meet the qualified thrift lender test would be required to include in its application a plan for achieving compliance and a request for an exception. This is agency practice but is not expressly mentioned in the regulation.
  - Many details of the application process would no longer be included in the regulations. Instead, this information would be found in the Comptroller's Licensing Manual and other OCC guidance.
  - The applicant would be required to include in its conversion application information about enforcement actions and other supervisory criticisms and its analysis of whether conversion is permissible under 12 U.S.C. 35, especially the provisions added to section 35 by section 612 of the Dodd-Frank Act.
- *Conversions from a Federal savings association to any another charter*
  - Any Federal savings association converting from its charter would be required to file a notice with the OCC. Under current rules, Federal savings associations that are not eligible for expedited treatment must file an application to convert out.
- *Conversions from a Federal savings association to a state chartered institution*
  - As required by section 612 of the Dodd-Frank Act, a Federal savings association must include a copy of its conversion application filed with the state regulator to which it is applying for approval to convert in its notice to the OCC, and it must file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion.
  - It must also include a showing of its compliance with applicable requirements for converting.

Fiduciary Powers Applications (Proposed 12 CFR 5.26 and Part 150, Subpart A)

- The time period that triggers the need to re-notify the agency before beginning to exercise previously approved fiduciary powers that have not been exercised is shortened from 5 years to 18 months.
- The trigger for requiring a new application for a Federal savings association would be whether the original approval for fiduciary activities is for limited or full fiduciary powers. Under the current rule, the trigger for a new application is whether the activity is ''materially different'' from what had been approved.
- Eligible Federal savings associations would receive expedited review of applications for fiduciary powers.

Branching (Proposed 12 CFR 5.31)

- Only well capitalized Federal savings associations could be ''eligible savings associations'' as defined in part 5, and therefore exempt from the branch application requirement. Currently both well and adequately capitalized Federal savings associations are eligible for expedited treatment and therefore can be exempt from this requirement.
- A Federal savings association would be required to obtain OCC approval in order to establish a branch at the site of a former home office unless

the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.

- The OCC's approval of a branch expires after 18 months, unless the OCC grants an extension. Under the current rule, OCC approval expires after 12 months.
- A state and Federal savings association would be required to file an application with the OCC to establish a branch in the District of Columbia.

Business Combinations (Proposed 12 CFR 5.33)

- A Federal savings association would be permitted to acquire all or substantially all of the assets, or to assume all or substantially all of the liabilities, of nonbank affiliates, or any other company that is not a depository institution, in addition to credit unions. Currently, such acquisitions are limited to banks, savings associations, and credit unions.
- In the factors the OCC considers in reviewing a business combination, the factor covering the fairness of the transaction, equitable treatment, and disclosure would be replaced by a factor assessing the effect of the transaction on the association's shareholders, depositors, other creditors, and customers.
- In the application for a business combination, Federal savings associations would be required to identify a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment in addition to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the Federal savings association to hold the subsidiary or investment. This requirement reflects current practice.
- If the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant would be required to include in the business combination application the information required in proposed § 5.26 for a request for fiduciary powers. This requirement reflects current practice.
- The OCC's approval of a transaction under the proposal would expire in six months; the OCC could extend this six-month period. Under current OCC practice, transactions not involving an interim association must be consummated in 120 days.
- A Federal savings association would be required to publish an initial public notice and two other public notices during the standard 30-day public comment period. Currently, § 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period.
- The statutory provisions governing national bank dissenters' rights in 12 U.S.C. 215 and 215a would be applied to transactions in which a Federal savings association is merging or consolidating into a national bank, rather than the regulatory dissenters' rights provision in 12 CFR 152.14, with one exception—the proposal includes authority for the OCC to apportion costs for the dissenters' rights process.
- In consolidation or merger of a state bank, state savings association, state trust company or a credit union into a Federal savings association, the institution would follow the procedures and dissenters' rights process set out for such transactions in the law of the state or other jurisdiction under which it is organized.
- For consolidations or mergers of a Federal stock savings association into a another Federal savings association, the plan of merger or consolidation would be required to provide the manner of disposing of the shares of the resulting Federal savings association not taken by dissenting shareholders. Under § 152.14(c)(11), such shares have the status of authorized and unissued shares of the resulting association. The plan of merger or consolidation could still provide such status for these shares, but under the proposal such status no longer would be mandatory.
- A consolidation or merger of a Federal savings association into an uninsured bank, savings association, or trust company, or into a credit union would require only a notice to the OCC, not application and approval as required under § 163.22(c).
- Federal savings association applications for business reorganizations (defined in § 5.33(d)(3)) and streamlined applications (described in § 5.33(j)) that meet the requirements would be eligible for expedited review, under which an application is deemed approved as of the later of the 45th day after the application was filed or the 15th day after the close of the comment period, unless the OCC notifies the applicant that the application is not eligible for expedited review or the expedited review process is extended. This process would replace the automatic approval provision in § 163.22(f), under which an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.
  - The size-based limit for expedited review of a business reorganization or streamlined application included in the proposal is less restrictive than the criteria for automatic approval under the current savings association rule, 12 CFR 163.22(f), which provides that an application does not qualify for the automatic approval process if the acquiring institution has assets of $1 billion or more and proposes to acquire assets of $1 billion or more. To qualify for expedited review under the proposal, business reorganizations would have no size limit and streamlined applications would have limits based on the relative size of the acquiring institution and the assets to be acquired but would not have a fixed maximum dollar amount limit on the size.
  - The expedited procedure in the proposal would not include competitive impact thresholds as a disqualifier, as in the current savings association rule.
  - However, as in the current savings association rule, an applicant would not qualify for a streamlined business combination application if the transaction is part of a mutual to stock conversion under 12 CFR part 192.
- Federal savings associations would no longer be required by regulation to meet the requirements for Federal Home Loan Bank membership, as membership in a Federal Home Loan Bank is no longer mandatory.
- The approval of a board of directors of a business combination involving a Federal stock savings association would be reduced from two-thirds to a majority of the directors.
- For a Federal stock savings association, the execution and filing of Articles of Combination as the method of documenting shareholder approval of the combination, consummation of the combination, and its effective date would be replaced by a letter to the OCC followed by a certification issued by the OCC.
- A Federal savings association would not be required to include all terms regarding the combination in a combination agreement nor include the specific provisions in the agreement that are required by the current savings association rule.
- If a consolidation or merger of a Federal savings association in which the savings association is not the resulting institution has not occurred within six months after the OCC's receipt of the notice of the transaction, the savings association must submit a new notice to the OCC. The current rule requires a new notice after 12 months.

Investment in Bank Service Companies (Proposed 12 CFR 5.35)

- No substantive changes. There are no regulations addressing Federal savings association investment in bank service companies, and the proposed rule closely implements the statute.

Banking Premises (Proposed 12 CFR 5.37, 7.1000, 7.3001)

- For Federal stock savings associations, the quantitative limitations on investment in banking premises would be based on the association's capital stock or, if a 1 or 2 CAMELS rated, well capitalized association, 150 percent of capital and surplus. Currently, the sole quantitative limit on a Federal savings association's investment in banking premises is total capital. Because 150 percent of capital and surplus would be a greater amount than 100 percent of total capital, we expect that under the proposal, the amount that a savings association could invest in banking premises without OCC approval would be increased. For Federal savings associations that do not have a CAMELS rating of 1 or 2 and are not well capitalized, the relevant limitation would be capital stock, which is a significantly lower threshold than total capital.
- For Federal mutual savings associations, the quantitative investment limit in banking premises would be based on the amount of retained earnings, instead of total capital.
- A Federal savings association would be required to follow the specific application requirements contained in proposed § 5.37.
- The proposal would grandfather Federal savings associations' existing premises investments and arrangements for sharing office space and employees, provided the investment complies with the legal requirements in effect prior to the effective date of the final rule, and continues to comply with those requirements.
- The rule would specifically permit Federal savings associations to invest in lodging for customers, officers, or employees of the savings association, its branches, or consolidated subsidiaries in areas where suitable commercial lodging is not readily available.
- A Federal savings association would need to obtain OCC approval or provide after-the-fact notice to exercise an option to purchase banking premises or stock in a corporation that holds banking premises.
- A Federal savings association would be permitted by regulation to hold banking premises through an operating subsidiary and to hold premises by any reasonable and prudent means.
- A Federal savings association normally would need to use real estate acquired for future expansion within five years and, after holding such real estate for one year; would be required to state, by resolution of the board of directors or an appropriate authorized association official or a subcommittee of the board of directors, definite plans for use of such real estate. Currently, OCC guidance provides a Federal savings association with a one to three year timeframe for the use of real estate acquired for future premises.

Operating Subsidiaries (Proposed New 12 CFR 5.38)

- Before beginning business, an operating subsidiary of a Federal savings association would be required to comply with other laws applicable to it, including applicable licensing or registration requirements. This change would codify current OCC policy.
- Under this proposal, a Federal savings association could control an entity in which it owns less than 50 percent of the voting shares of the entity, provided no other party owns a greater percentage than the savings association, the savings association otherwise controls the subsidiary, and no one else exercises effective operating control. Currently, for control to exist, a savings association must own, directly or indirectly, more than 50 percent of the voting shares of an operating subsidiary.
- A Federal savings association would be required to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries. The detailed requirements for separate corporate identities for subsidiaries in 12 CFR 159.10 are removed.
- A Federal savings association would need to file an application to acquire or establish an insured depository institution as an operating subsidiary.
- A Federal savings association would need to file an application, and receive prior OCC approval, to acquire or establish an operating subsidiary or to commence a new activity in an existing operating subsidiary. The current rule in § 159.11 requires filing a notice at least 30 days prior to establishing or acquiring a subsidiary or engaging in new activities in a subsidiary; this notice is treated like an application under § 159.1(b).
- Some applications would qualify for the proposal's expedited review of applications process. This expedited review is similar to the current rule's notice process: applications would be deemed approved by the OCC as of the 30th day after the filing is received, unless the OCC notifies the Federal savings association otherwise during the 30-day period.
  - For the application to qualify, the Federal savings association must be ''well capitalized'' and ''well managed,'' the activities to be performed by the operating subsidiary must be listed in proposed § 5.38(e)(5)(v) (activities that have been approved for operating subsidiaries of Federal savings associations in the past), the operating subsidiary must be a corporation, limited liability company, or limited partnership, and the savings association must clearly demonstrate control over the operating subsidiary (it must meet a standard for control that is more stringent than the general standard for operating subsidiaries).
  - Under the current rule, all filings start as 30-day prior notices. They become standard treatment applications if the OCC notifies the applicant that the notice presents supervisory concerns or raises significant issues of law or policy.
  - While there is overlap between an application failing to meet the criteria to qualify for expedited review (and so requiring standard processing) and raising issues that would cause a filing to present supervisory concerns, or raises significant issues of law or policy (and so requiring standard processing), there may be instances in which a filing would have had to be processed under standard procedures under one test but not the other.
- For a Federal savings association operating subsidiary to act as a fiduciary, its savings association parent would be required to have fiduciary powers and the operating subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary. The operating subsidiary no longer would be able to rely on the savings association's fiduciary powers, except when the subsidiary exercises investment discretion on behalf of customers or provides investment advice for a fee as a registered investment adviser. This change would codify OCC and OTS practice.
- The regulation would no longer expressly state that any finance subsidiary of a Federal savings association that existed on January 1, 1997, is deemed to be an operating subsidiary without further action by the savings association. The pertinent provision is removed because it is thought no longer necessary. No change

in substance is intended. The proposal asks if it needs to be retained.

- OCC approvals granted under proposed § 5.38 would expire within 12 months if a Federal savings association has not established or acquired the operating subsidiary or commenced the new activity in an existing operating subsidiary, unless the OCC shortens or extends this time period.
- Federal savings associations would be required to file an annual report on operating subsidiaries that do business directly with consumers in the United States and are not functionally regulated subsidiaries.

Main Office and Home Office Relocations (Proposed 12 CFR 5.40)

- Under the current rule, no notice or application is required if the relocation is a short-distance relocation, if the Federal savings association redesignates an existing branch office as a home office when redesignating the existing home office as a branch office, or if the savings association is highly-rated and certain other requirements are met. If the relocation does not meet the above exceptions, a notice is required for savings associations that qualify for expedited treatment and OCC approval is required for all other savings associations. Under the proposal, all Federal savings associations would be required to:
  - Submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office; and
  - Obtain prior OCC approval for home office relocations to a branch location other than a branch site in the same city, town, or village of the current home office. An application submitted by an eligible Federal savings association would be deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation, the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended.
- A Federal savings association would be required to obtain OCC approval pursuant to § 5.31 (branching) in order to establish a branch at the site of a former home office unless the branch establishment meets one of the exceptions in § 5.31. Under the current rule, no notice or application is required in all cases of home office and branch office re-designations.
- A Federal savings association would be required to open a relocated home office within 18 months from the date of OCC approval, unless the OCC grants an extension. Under the current rule, this office must be opened within 12 months of OCC approval or non-objection.

Change in Corporate Title (Proposed 12 CFR 5.42)

- Federal savings associations would be required to submit an after-the-fact notice to the OCC instead of a 30-day prior notice for a change in corporate title.

Increases in Permanent Capital (Proposed New 12 CFR 5.45)

- Federal stock savings associations would be required to apply to the OCC and obtain prior approval for increases in capital in the following circumstances: (1) When the savings association is required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise, (2) when the savings association is selling common or preferred stock for consideration other than cash, or (3) when the savings association is receiving a material noncash contribution to capital surplus. Currently, savings associations are not required to apply for increases in capital.

Voluntary Liquidation (Proposed 12 CFR 5.48)

- The Federal savings association's liquidating agent or committee would be required to submit to the OCC:
  - At the start of liquidation, a report showing the association's current balance sheet;
  - Quarterly Consolidated Reports of Condition and Income (Call Reports); and
  - Annual reports on the progress of the liquidation.
- The following provisions in the proposal would codify existing OCC practice:
  - A Federal savings association would be required to provide notice of the liquidation to depositors, other known creditors, and known claimants.
  - A Federal savings association would be required to publish public notice of its plan to liquidate if so directed by the OCC.

Change in Control (Proposed 12 CFR 5.50)

- The current definition of ''voting securities'' in § 5.50 would replace the part 174 definition of ''voting stock.'' This would affect the standard for convertible securities. Currently, part 174 includes as voting stock any security that, upon transfer or otherwise, is convertible into voting stock or exercisable to acquire voting stock where the holder of the convertible security has the preponderant economic risk in the underlying voting stock. Section 5.50, by contrast, defines voting securities to include securities that are immediately convertible into voting securities at the option of the owner or holder.
- The proposal excludes part 174 procedures for rebuttal of control and concerted action, applying instead the provisions in § 5.50(f)(2)(vi).
- Persons who acquire control of a Federal savings association as a result of testate or intestate succession would need to file a notice and pay the appropriate filing fee within 90 calendar days after the transaction occurs. Currently, such persons need only file a notification of acquisition to the OCC within 60 days of the acquisition and provide information requested by the OCC.
- The proposal excludes the presumptive disqualifiers from part 174—a list of factors, which, if present, may show a lack of integrity or lack of financial capability to proceed with a proposed transaction.
- The proposed regulatory changes have the effect of eliminating most of the rebuttable presumptions of control with respect to Federal savings associations that are currently set forth in 12 CFR 174.4(b) and (c). The proposed regulatory changes also remove certain of the rebuttable presumptions of concerted action currently set forth in § 174.4(d).
- Acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that do not file a control notice or control rebuttal would not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers (Proposed 12 CFR 5.51)

- A Federal savings association would be required to provide 90 days prior notice of a new director or senior executive officer if the association is not in compliance with minimum capital requirements, is otherwise in a troubled condition, or the OCC determines, under section 38 of the FDI Act (12 U.S.C. 1831o), that prior notice is appropriate. Currently, such an association is required to provide 30 days prior notice, which the OCC may extend for an additional 60 days.
- Only a Federal savings association would be permitted to file the notice with the OCC; an individual seeking

election to the board of directors who has not been nominated by management would no longer be allowed to do so.

• A Federal savings association or a proposed individual would be able to appeal an OCC notice of disapproval. The current rule does not provide an appeal process, although the OCC has permitted appeals by Federal savings associations in practice.

Change in Address (Proposed 12 CFR 5.52)

• A Federal savings association no longer would be required to provide notice of a home office or post office box address change if the change results from any transaction approved under 12 CFR part 5. The current rule provides this exception only in cases of an application to relocate or establish a new home or branch office.

• All Federal savings associations no longer would be required to provide notice of a home office or post office box address change if they have filed a notice for the relocation or establishment of a new home or branch office pursuant to proposed § 5.40 (main office and home office relocations). Under current rules, highly-rated savings associations are required to file a change in address notice because they are exempt from the relocation notice requirement.

• Federal savings associations no longer would be subject to the requirement that all operations be directed from the home office.

Change in Asset Composition (Proposed 12 CFR 5.53)

• The Federal savings association rule now requires approval of all purchases or sales or other transfers of assets in bulk not made in the ordinary course of business, unless the transaction is subject to the Bank Merger Act (in which case other parts of the rule apply). Under the proposal, Federal savings associations would be required to obtain OCC approval only for the following (unless one of the exceptions applies).

○ The sale or other disposition of all, or substantially all, of the savings association's assets in a transaction or a series of transactions.

○ After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the savings association's operations.

○ Any other asset purchases or other expansions of business that are part of a plan to increase the size of the savings association by more than 25 percent in one year.

○ As determined by the OCC on a case-by-case basis, any other material increase or decrease in the size of the savings association or a material alteration in the composition of the types of its assets or liabilities (including the entry or exit of business lines). The OCC would consider the size and nature of the transaction and the condition of the institutions in determining whether to require an application and believes the additional situations in which the OCC would require an application likely already would involve discussions with the bank's appropriate supervisory office.

• When an application is required, it would have standard processing. Currently, an application can qualify for expedited treatment if all participating Federal savings associations meet the conditions for expedited treatment.

Capital Distributions (Proposed New 12 CFR 5.55)

• The expedited review process in part 5 would apply to Federal savings associations seeking expedited review of filings for capital distributions instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process.

○ Under the current savings association rule, both well and adequately capitalized institutions are eligible for expedited treatment. Under the proposal, only savings associations that are well capitalized would qualify for expedited review.

○ Under the current savings association rule, the institution must not have been notified it is in troubled condition, while under the proposal an eligible savings association must not be subject to an enforcement action. (Although different, these supervisory condition tests generally should overlap.)

○ Under the current rule, a savings association that has not been assigned a CAMELS rating, a CRA rating and a compliance rating is not eligible for expedited treatment. This requirement is not a factor in the requirements for eligible bank or eligible savings association status in part 5.

Subordinated Debt (Proposed New 12 CFR 5.56)

• The expedited review process in part 5 would apply to Federal savings associations seeking expedited review of filings to issue subordinated debt instead of the expedited treatment process in part 116. Because the eligibility requirements for expedited review differ from the requirements for expedited treatment, this change could affect which savings associations qualify for the expedited process, as described above for the capital distributions rule.

Pass-Through Investments (Proposed New 12 CFR 5.58)

• Federal savings associations would be allowed to make pass-through investments greater than 25 percent of the company's equity, but because this investment would make the company a subsidiary under law applicable to the Federal savings associations, the association would be required to submit an application for approval as a subsidiary.

• Federal savings associations may be subject to different filing requirements:

○ Some pass-through investments that currently may qualify for the no-notice procedure under § 160.32(b) would require a filing under § 5.58. (However, pass-through investments in investment companies that hold assets permissible for a Federal savings association to hold directly would continue not to require a filing.)

○ For pass-through investments that meet the requirements for the after-the-fact notice procedure, the Federal savings association would need to file only the after-the-fact notice. This treatment would apply both to both investments that would have required a prior application under § 160.32(c) and investments that would have qualified for the no-notice procedure under § 160.32(b).

• Federal savings associations would be subject to the notice content requirements of § 5.58. Section 160.32 does not specify the content of the notice or application.

Service Corporations (Proposed New 12 CFR 5.59)

• The corporate separateness requirements would be amended to eliminate the requirement that a Federal savings association's service corporation be adequately financed as a separate unit in light of normal obligations reasonably foreseeable for a business of the service corporation's size and character in order to maintain the requisite corporate separateness.

• Consistent with 12 U.S.C. 1828(m), a Federal savings association would be required to file an application with the OCC before investing in any service corporation, including one that it would not control. Currently, the service corporation regulation requires a Federal savings association to file with the OCC only if it directly or indirectly controls the service corporation.

• Applications to establish or acquire a service corporation would be required to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and the state where the service corporation holds a resident license or charter.

• Each Federal savings association would be required to file an annual report listing, for each service corporation subsidiary that is not functionally regulated and does business with consumers in the United States, certain information including the name and principal place of business of the service corporation, the lines of business in which the service corporation subsidiary engages directly with consumers, and the nature of the parent savings association.

VI. Request for Comments

The OCC encourages comment on any aspect of this proposal and especially on those issues specified in this preamble. If commenting on a specific question contained in the preamble, please refer to that question number in your comment letter. As noted above, the OCC will also consider comments received in response to the Agencies' EGRPRA notice on licensing rules when finalizing this licensing integration rule.

VII. Regulatory Analysis

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[120] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describe the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' The OCC currently supervises approximately 1,189 small entities (361 Federal savings associations, 801 national banks, and 21 trust companies).[121] Because some of the NPRM's provisions could impact any national bank and other provisions could impact any Federal savings association, the proposed rule could impact a substantial number of small institutions.

We estimated that the monetized direct compliance cost would be approximately $14.7 thousand per institution. Using the average direct cost per institution we believe compliance with the proposed rule will have a significant economic impact on 24 small institutions (of which 10 are small Federal savings associations), which is not a substantial number. Furthermore, we conclude that the amendments to § 5.37, investment in national bank or Federal savings association premises, could have a significant impact on an additional five Federal savings associations.[122] Therefore, we conclude that the proposed rule in total will have a significant economic impact on no more than 29 small institutions of the 1,189 small entities currently supervised by the OCC, which is not a substantial number (approximately 2.4 percent of small entities).

Based on the information set forth above, and pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[123] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate 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 in any one year (adjusted annually for inflation). The OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, this proposal is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA) of 1995,[124] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The OCC has submitted the information collection requirements imposed by this rule to OMB for review.

The proposal contains both new and revised information collection requirements. Some of the revisions provide exceptions to existing requirements, which will result in a reduction in burden. Some of the requirements are currently in place for national banks and are being extended to cover both national banks and Federal savings associations. Some of the amendments impose new requirements on Federal savings associations and amend the requirements for national banks. A number of the revisions involve amendments to definitions, which, in some cases, would affect the respondent count for related provisions. For example, the change in the definition of ''eligible bank'' to include the compliance rating in addition to the CAMELS and CRA rating will affect respondent counts. The provisions are included the OCC's information collection for the Comptroller's Licensing Rules. The collection has been revised and submitted to OMB for review in connection with publication of the proposed rule. A number of the provisions being amended contain existing PRA requirements that have been previously approved by OMB.[125] The amendments proposed today do not create any new information collection requirements and, therefore, require no PRA filings, other than non-material changes necessary due to the consolidation of the regulations.

Rules of General Applicability

Federal savings associations would be required to follow the procedure and processing provisions currently imposed on national banks (part 5, subpart A) instead of those in part 116, which they currently follow. Only well

[120] Public Law 96–354, 5 U.S.C. 601–612 (1980).

[121] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $ 500 million and $ 35.5 million, respectively. 13 CFR 121.103(a). Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. We use December 31, 2013, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[122] Because the OCC will require some Federal savings associations to obtain approval, we assume that investments may be constrained for 15 small Federal savings associations with a positive return on assets (ROA) that are currently eligible to file an after-the fact notice for investments in premises that will not be able to do so under the proposal. (We assume that all small entities seek to maximize ROA and net income. Thus, we assume that those small Federal savings associations that currently have a negative ROA are not likely to seek approval to increase their investment in premises.) However, based on the recent behavior of these Federal savings associations, it is unlikely that all 15 would seek to increase their investments in premises in one year. (The number of these small Federal savings associations that increased their investment in premises during calendar years 2012 and 2013 were three and four, respectively.) For purposes of this analysis we estimate that no more than five Federal savings associations would seek to increase their investments in premises in one year. To test if a substantial number of small entities could be impacted by this provision, we assume that all of these requests will be declined and that the associated economic impact is significant.

[123] Public Law 104–4, 2 U.S.C. 1501 *et seq.* (1995).

[124] Public Law 104–13, (44 U.S.C. 3501 *et seq.*).

[125] OMB Control Nos. 1557–0106, 1557–0140, 1557–0190, 1557–0204, 1557–0221, 1557–0266, and 1557–0310.

capitalized Federal savings associations would qualify for expedited treatment and adequately capitalized institutions would no longer qualify. Public notices of filings would be required to be filed as soon as practicable after a filing date instead of seven days prior to the filing date. Public notice would have to state that a filing is being made and the date of the filing. A single public notice would be acceptable for multiple transactions or transactions filed with the OCC and another agency, under certain circumstances. Comments in response to a filing would have to be obtained from the OCC, as comments would no longer be sent directly to the institution.

The requirement for publication of notice of a filing by national banks would be made more specific and require the notice: to be published in English; to specify the name of institution that is the subject of the filing; to indicate that the public portion is available on request; and to provide the address of the applicant. Under certain circumstances, the OCC could require the applicant to publish a new notice.

Fiduciary Powers

In order to exercise fiduciary powers, Federal savings associations would be required to comply with the application requirements of § 5.26 in place of the requirements under current part 150. In addition, § 5.26 would be revised to require a national bank or Federal savings association that has not conducted previously approved fiduciary powers for 18 consecutive months to provide the OCC with 60 days' advance notice before engaging in the activities. It would also require that a national bank or Federal savings association that has received approval to offer limited fiduciary services apply to the OCC to offer full fiduciary services. Eligible Federal savings associations would receive expedited review of applications. A provision would be added setting out the circumstances under which a Federal savings association does not need to apply for fiduciary powers in connection with certain mergers.

Establishment, Acquisition, and Relocation of a Branch

New § 5.31 would address the establishment and relocation of branches, or the establishment of agency offices, by Federal savings associations and would replace several provisions currently found in part 145.

Section 5.31(f)(1) would set out the general requirement that each Federal savings association proposing to establish or relocate a branch shall submit a separate application for each proposed branch, unless the transaction qualifies for an exception. The provision in § 145.93(e) stating that a Federal savings association may not file an application or notice, or use any of the exceptions, to establish a branch if the association has filed an application to merge or otherwise surrender its charter and the application has been pending for less than six months would not be carried over to § 5.31.

Section 145.93(b)(3) provides that certain highly-rated Federal savings associations are not required to file an application to change the permanent location of an existing branch or to establish a new branch if it meets certain requirements, including that the Federal savings association meet the eligibility requirements for expedited treatment. The proposal would change this to require that the Federal savings association is an ''eligible savings association,'' as defined in 12 CFR 5.3(h), rather than eligible for expedited treatment.

Section 5.31(g) would set out exceptions to the rules of general applicability for applications by a Federal savings association to establish or relocate a branch and specify that the OCC would be able to waive or reduce the public notice and comment period in certain emergency situations or with respect to certain temporary branches.

Section 5.31(h) would provide that OCC's approval of a branch expires if the branch has not commenced business within 18 months, unless the OCC grants an extension. This period is longer than the current twelve month expiration period for branch approvals for Federal savings associations under § 145.95(c).

Section 145.93(c) currently requires prior approval for any savings association branch that would be subject to section 5(m)(1) of the HOLA (regarding District of Columbia savings associations), if the association meets the requirements of § 145.93(b) for an exception to the branch application filing requirement. New § 5.31(j) would require an application and prior written approval for each application.

State and Federal savings associations would be required to file an application with the OCC to establish or move a branch in the District of Columbia.

Investment in Bank Service Companies

This section would be expanded to cover Federal savings associations. It would replace the after-the-fact notice before making an investment in the equity of a bank service company or performing new activities in an existing bank service company with an expedited prior notice procedure.

Investments in Premises

This section would be expanded to cover Federal savings associations. In addition, an alternative, after-the-fact notice process would be added for both national banks and Federal savings associations and an exception to the premise application and notice requirements for investments in banking premises through a service corporation is provided for Federal savings associations. Amendments to the definitions of ''capital stock'' and ''capital and surplus,'' which would increase the amount that a Federal savings association could invest in banking premises without OCC approval, would result in a decrease in the number of requests for approval. A transition provision would be added for Federal savings associations to grandfather existing banking premises investments. Modifying, expanding, or approving such investments would require prior approval. A Federal savings association would be given a one to three year timeframe for the use of real estate acquired for future premises in place of the current requirement, which requires use of real estate acquired for future expansion within five years and, after holding the real estate for one year, requires a statement by resolution of the definite plans for use.

Main Office and Home Office Relocations

Federal savings associations would be required to submit prior notice to the OCC for home office relocations to a branch site in the same city, town, or village of the current home office and obtain prior approval for other relocations. They would also be required to obtain prior approval to establish a branch at the site of a former main or home office.

Change in Corporate Title

For change in corporate title, Federal savings associations would be required to submit an after-the-fact notice in place of the current 30-day prior notice.

Voluntary Liquidation

This section would be expanded to cover Federal savings associations. The liquidating agent or committee of the national bank or Federal savings association would be required to submit: A report to the appropriate OCC Licensing Office at the start of liquidation showing the bank's or savings associations balance sheet as of the start of liquidation; quarterly Call

Reports; a report of condition at the start of the liquidation; annual progress reports; and a final report of liquidation. National banks and Federal savings associations would be required to notify all depositors, other known creditors, and known claimants of the bank or savings association.

Change in Control; Reporting of Stock Loans

This section would be expanded to cover Federal savings associations. Procedures for rebuttal of control and concerted action under part 174 would no longer be applicable to Federal savings associations. Persons who acquire control of a Federal savings association as a result of testate or intestate succession would need to file a notice within 90 days of the transaction, while the current regulations require only a notification of the acquisition within 60 days. Under § 5.50, acquirers of beneficial ownership exceeding 10 percent of any class of stock of a Federal savings association that does not file a control notice or control rebuttal would not be required to file a certification of ownership.

Changes in Directors and Senior Executive Officers

The notice of a change in directors or senior executive officers for a national bank would need to include financial information on the individual, except when the OCC determines it is not required. If the OCC requests additional information, a national bank may request a time extension to provide the information, if necessary.

Federal savings associations would be required to provide 90 days prior notice of a new director or senior executive officer, under certain circumstances, in place of the current shorter notice period. Only a Federal savings association would be permitted to file the notice; nominees no longer will be able to file. Federal savings associations would be able to appeal an OCC notice of disapproval.

Change in Address

Under certain circumstances, national banks and Federal savings associations would no longer be required to file a notice of home office change of address and Federal savings associations would no longer be required to provide notice of a post office box address.

Bank Activities and Operations

A number of provisions in part 7 are being expanded to cover Federal savings associations. A transition period would be added to grandfather Federal savings associations' existing premise investments, provided they are not modified, expanded, or improved. A transition period would also be provided for Federal savings associations that share space or employees with another business under an agreement that complies with legal requirements previously in place that would violate this provision. They would be permitted to continue under the existing agreement, but would not be able to amend, renew, or extend the agreement without prior approval.

The requirements in part 145 regarding the establishment of agency offices of Federal savings associations would be removed and agency offices of Federal savings associations that conduct non-branch activities would not be considered branches and would not be required to obtain OCC approval for these offices.

Organizing a National Bank or Federal Savings Association

In § 5.20, paragraph (h) specifies requirements for the organizers' business plan or operating plan, paragraph (i) lists the procedures that the organizers must follow, paragraph (j) specifies the requirements for expedited review of an application, and paragraph (l) lists requirements for the establishment of special purpose banks. An application to charter a Federal savings association would be subject to the two-part approval process contained in paragraph (i)(5). The OCC uses a two-part approval process for *de novo* national bank charters. After an application is filed, if the OCC determines it meets the applicable standards, the application is given preliminary approval. The national bank in organization would then take the steps needed to organize itself, raise capital, obtain any other regulatory approvals, and generally become ready to commence business. Final approval is given and the national bank's charter is issued only after all these steps are concluded, including compliance with any conditions imposed in the preliminary approval. Currently, the OCC issues only one approval before it issues the charter, but this approval is subject to the institution completing various post-approval organizational steps and other requirements before it can begin conducting business. Paragraph (j) currently provides for expedited review of an application to establish a full-service national bank filed by a bank holding company with a lead depository institution that is an eligible depository institution. Under the proposal, Federal savings associations and savings and loan holding companies would be added.

The corresponding rules applicable to organizing Federal savings associations are found in parts 143, 144, 152, and § 163.1. Sections 144.1 and 152.3 contain specific language and requirements to be used for the charter of Federal mutual savings associations and Federal stock savings associations, respectively, and §§ 144.2 and 152.4 contain specific requirements for the bylaws of Federal mutual savings associations and Federal stock savings associations, respectively. Sections 143.2(g)(2)(i) and 152.1(b)(3)(i) provide that approval of an application to organize a Federal mutual or stock savings association, respectively, is conditioned on OCC receipt of written confirmation from the FDIC that accounts will be insured. Section 152.2, which provides procedures for the organization of interim Federal savings associations, would be rescinded and addressed in the business combinations regulation at § 5.33.

Proposed § 5.21(j) would specify the language and requirements for Federal mutual savings association bylaws. The provision reflects the requirements in § 144.5.

Federal Stock Savings Association Charter, Bylaws and Related Provisions

Proposed § 5.22(e) would specify the language and requirements for a Federal stock savings association charter. The provision reflects the requirements in § 152.3.

Federal Savings Association Charter and Bylaws Availability Requirement

Section 163.1(b), which requires each Federal savings association to cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and to deliver to any accountholders a copy of such charter and bylaws or amendments thereto, upon request, is being rescinded and OCC will continue applying this requirement only with respect to Federal mutual savings associations under new § 5.21(i).

Conversions to and From National Bank and Federal Savings Association Charters

In § 5.24(d), regarding the policy for approving and disapproving conversions to national bank charters, a statement would be added that the institution seeking to convert to a national bank charter must obtain all necessary regulatory and shareholder approvals. A parallel provision is found in § 143.8(a)(2), which would be now found in § 5.25. The public notice and inspection requirements at § 143.9(a)(2)

are being rescinded. If there are instances where the OCC believes publication is warranted, the OCC could require publication under § 5.2(b), which allows the OCC to require materially different procedures for a particular filing.

Section 5.24(e)(2)(ix) would require the application for conversion to include a business plan if the converting institution has been operating for less than three years or plans to make significant changes to its business after the conversion, instead of the current policy of requesting it on a case-by-case basis.

Section 5.24(g), which allows for expedited review of a conversion application filed by an eligible depository institution, would be limited to applications by institutions already supervised by the OCC.

Proposed § 5.23(d)(2)(ii)(K) would require a converting institution that does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m) to include a plan to achieve compliance within a reasonable period of time and to request an exception from the OCC in the application.

Proposed § 5.25(d) provides that converting from a Federal charter does not require prior OCC approval. The institution must file only a notice with the OCC. Currently, Federal savings associations that are not eligible for expedited treatment must file an application to convert to a national bank or state bank. The notice must contain a copy of the conversion application to the regulator to which it is applying for approval to convert, and a discussion of any issues regarding the permissibility of the conversion under section 612 of Dodd-Frank Act. The institution would also be required to file a copy of its conversion application with the Federal banking agency that would become its appropriate Federal banking agency after the conversion.

For conversions between a national bank and a Federal savings association, proposed § 5.25(e) requires the institution planning to convert to file a notice for the conversion-out aspect of the transaction with the OCC. Federal savings associations currently must file an application, unless they qualify for expedited review. The notice must contain a showing of its compliance with applicable requirements for converting from the Federal charter. The applicable ''converting-in'' regulation (§ 5.23 or § 5.24) would require the institution to file an application with the OCC with respect to the ''converting-in'' aspect of the transaction.

Proposed § 5.24(e)(2)(x) and § 5.23(d)(2)(ii)(J) would require the conversion application to include information about enforcement actions and other supervisory criticisms and the applicant's analysis of whether conversion is permissible under 12 U.S.C. 35, as amended by section 612.

Proposed § 5.25(d)(3) would require that the information that must be submitted to the OCC when a national bank or Federal savings association plans to convert to a state bank or state savings association must include a discussion of the impact of any enforcement action on the permissibility of the conversion under 12 U.S.C. 214d or 1464(i)(6).

Sections 5.24(e)(2), 5.23(d)(2)(ii), 5.25(d)(3)(i), and 5.25(d)(3)(ii)(A) require that, at the time an insured depository institution files a conversion application, it must transmit a copy of the conversion application to both the appropriate Federal banking agency for the institution and the Federal banking agency that would become the appropriate Federal banking agency for the institution after the proposed conversion.

Service Corporations

Under the current service corporation regulation, a Federal savings association must file a notice under part 116 at least 30 days before establishing or acquiring a subsidiary or engaging in a new activity in a subsidiary. A Federal savings association is not required to file a service corporation application if the association proposes to make a non-controlling investment in a service corporation. The proposal would amend the service corporation regulation at § 5.59 to require that a Federal savings association file with the OCC before acquiring or establishing any service corporation, including one that it would not control.

Section 5.59(h)(1)(ii) would require a Federal savings association to list for each state the lines of business for which the service corporation holds, or will hold, an insurance license, and each state in which the service corporation holds a resident license or charter. Section 5.59(h)(2) would change the circumstances under which a Federal savings association would receive expedited review for a service corporation filing, currently found in part 116. A service corporation filing would be eligible for expedited review if the savings association is ''well capitalized'' and ''well managed,'' and the service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

A new requirement would be added in section 5.59(k) to require each Federal savings association to file an annual report that includes, for each service corporation subsidiary that is not functionally regulated and does business with consumers in the United States, certain information including the name and principal place of business of the service corporation, the lines of business in which the service corporation subsidiary engages directly with consumers, and the nature of the parent savings association's interest in the service corporation subsidiary.

Operating Subsidiaries; Subordinate Organizations

New § 5.34(e)(2)(iii) would be added to clarify that a national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries. This requirement has been adapted from § 159.10 and would be consistent with the new operating subsidiary rule for Federal savings associations.

Current § 5.34(e)(5)(i) provides that national banks meeting certain requirements are not required to file a prior application but may give after-the-fact notice when establishing or acquiring an operating subsidiary or performing a new activity in an existing operating subsidiary. Paragraph (e)(5)(ii) requires a prior application and OCC approval in other instances and sets out the information that must be included in the filing.

Current § 5.34(e)(5)(vi) provides that no application or notice is required for a national bank that is well managed and adequately capitalized or well capitalized to acquire or establish an operating subsidiary or perform a new activity in an existing operating subsidiary, if the activities of the new subsidiary are limited to those previously reported to the OCC in connection with a prior operating subsidiary and certain other requirements are met. The proposal would change the criteria from adequately capitalized to well capitalized. This is consistent with the well capitalized requirement to be eligible for the after-the-fact notice procedure.

Section 5.38(b) would require a Federal savings association to file an application to acquire or establish any operating subsidiary or to commence a new activity in an existing operating subsidiary. Part 159 required Federal savings associations to give 30 days' notice to the OCC prior to establishing or acquiring an operating subsidiary or commencing a new activity in an operating subsidiary. Section 159.11

required a filing when it is required under 12 U.S.C. 1828(m), and section 1828(m) does not require a filing if the subsidiary is an insured depository institution. Proposed § 5.38(b) would require an application to acquire an insured depository institution as an operating subsidiary. A proposal for a Federal savings association to own an insured depository institution subsidiary that would cause the savings association to be a bank holding company or a savings and loan holding company raises issues of law and policy as well as supervisory concerns. The acquisition of other insured depository institutions as operating subsidiaries also requires agency review. Accordingly, the OCC believes an application is needed, even if not required under 12 U.S.C. 1828(m).

Section 5.38(d) sets out definitions for ''well capitalized'' and ''well managed,'' which will be used as part of the determination of which applications are eligible for expedited review by the OCC. These definitions are the same as those in § 5.34(d), and the OCC uses these terms as criteria to permit national banks to make an after-the-fact notice filing pursuant to § 5.34(e)(5). They are also used in proposed § 5.38 to determine if an application by a Federal savings association is eligible for expedited review.

Section § 5.38(e)(1)(ii) would provide that if the activities performed at a location of an operating subsidiary (other than the home office of the savings association) include activities that would require the savings association to have approval for a branch office if the office were a direct office of the savings association, the savings association must obtain OCC approval for a branch office at that location, if it has not already been authorized as a branch. Existing offices would be grandfathered. This is requirement is new for Federal savings associations.

Section 5.38(e)(2)(iii) (similar to § 159.10) would expressly require a savings association to have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries.

Section 159.11 specifies when Federal savings associations must file a notice at least 30 days prior to establishing or acquiring an operating subsidiary or conducting a new activity in an existing operating subsidiary. Section 5.38(e)(5) specifies the procedures a Federal savings association must follow when filing applications required under § 5.38. Section 5.38(e)(5)(ii)(A) provides for expedited review of applications to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary. The expedited review process is similar to that contained in § 159.11.

Section 159.3(p)(1) provides that a Federal savings association must consult with the appropriate OCC licensing office prior to redesignating a service corporation as an operating subsidiary, and make available for examination adequate internal records demonstrating that the redesignated office meets all of the requirements for an operating subsidiary and that the board of directors has approved of the redesignation. Section 5.38(e)(vi) would require a Federal savings association to provide 30 days' prior notice to the OCC when the savings association wants to redesignate a service corporation as an operating subsidiary.

Section 5.38(e)(8) requires Federal savings associations to file an annual report on operating subsidiaries that do business directly with consumers in the United States and are not functionally regulated subsidiaries, which the OCC will make available to the public.

Pass-Through Investments

Section 160.32(b) currently provides that a Federal savings association may make certain qualifying pass-through investments without prior notice to the OCC in any entity that is a limited partnership, an open-ended mutual fund, a closed-end investment trust, a limited liability company, or an entity in which the Federal savings association is investing primarily to use the company's services. Section 160.32(c) requires a Federal savings association to provide the OCC with written notice 30 days prior to making any pass-through investment that does not meet the no-notice standards. The notice is a form of application and may become a standard application if the OCC notifies the filer that the investment presents supervisory, legal, or safety and soundness concerns. The proposal would remove these provisions and cross-reference § 5.36.

Proposed § 5.58(e) mirrors § 5.36(e) and would provide that a well capitalized, well managed Federal savings association may make certain pass-through investments, directly or through its operating subsidiary, in certain entities by filing a written after-the-fact notice with the OCC no later than 10 days after making the investment if the activity conducted by the enterprise is on the list of activities eligible for a notice filing for operating subsidiaries, or if it is substantially the same as an activity that has been previously approved for a Federal savings association (or its operating subsidiary).

If a Federal savings association is not well capitalized and well managed or if the activity conducted by the enterprise does not qualify for the after-the-fact notice procedure, the savings association would be required to apply to the OCC and receive prior approval for the non-controlling investment.

Section 5.58(g)(1) would provide for an expedited notice procedure for pass-through investments in entities holding assets in satisfaction of debts previously contracted. A Federal savings association would not be required to file a notice or application under § 5.58 when acquiring a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

Under § 5.58, Federal savings associations would be permitted to make non-controlling investments greater than 25 percent of the company's equity. The investment, however, would constitute ''control,'' making the enterprise a subsidiary of the association and triggering a filing. Section 5.58(f)(2) provides that a Federal savings association must submit an application for approval prior to investing in an enterprise that would be considered a subsidiary of the Federal savings association.

Section 5.58 would change the filing requirements for Federal savings associations' non-controlling investments. Some pass-through investments could meet the requirements for the after-the-fact notice procedure, and only the after-the-fact notice would be required. Some non-controlling investments that qualify for the no-notice procedure under § 160.32(b) would require a filing under § 5.58. Section 5.58(h) would continue the no-notice procedure for investments by Federal savings associations in investment companies that held assets permissible to be held directly. Some investments that may have qualified for the no-notice procedure may be eligible for the after-the-fact notice of § 5.58(e).

Change in Asset Composition

The proposal would expand the requirements of § 5.53 and remove § 163.22 regarding change in asset composition. Institutions contemplating transactions that may constitute a material change would be advised to consult the appropriate OCC supervisory office. National banks would find more situations in which applications for approval would be required than under current § 5.53, but

these additional situations likely already would involve discussions between the bank and its supervisory office. Federal savings associations would find fewer situations in which applications for approval are required than now required under current § 163.22(c).

Under the application exception for asset changes that are part of a voluntary liquidation, the proposal would add that the bank or savings association must have received OCC approval of its plan of liquidation.

The expedited treatment under § 163.22(c) for of bulk transfer filings if all of the participating Federal savings associations meet the conditions for expedited treatment would not be carried over into § 5.53.

Business Combinations

Proposed § 5.33(d)(2)(v) expands the definition of ''business combination'' in § 5.33(d)(2), which currently includes only the assumption of deposit liabilities from another depository institution, to also include the assumption, from a credit union or any other institution that is not FDIC-insured, of deposit accounts or other liabilities that will become deposits at the assuming national bank or Federal savings association. Federal savings associations are currently required to file an application under § 163.22(c). The proposal retains the requirement and expands it to cover national banks.

Under the proposal, a Federal savings association would have the authority to engage in a whole entity purchase and assumption without regard to whether it has authority to consolidate or merge with the counterparty. National banks have had this authority but have not been required to apply to the OCC for approval of a whole entity purchase and assumption other than one with a depository institution. The proposal would require an application if the whole entity purchase and assumption would result in an increase in the asset size of the bank or savings association of twenty-five percent or more.

Proposed § 5.33(e)(3) would amend the business combination application to add to the current requirement to identify subsidiaries and provide an analysis of the permissibility for the national bank or Federal savings association to hold the subsidiary or investment, a financial subsidiary investment, bank service company investment, service corporation investment, and other equity investment.

Under proposed § 5.33(e)(6), regarding the exercise of fiduciary powers by the resulting national bank or Federal savings association, a clarification would be made that if the applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, it must include in the business combination application the information required in § 5.26 for a request for fiduciary powers.

Section 5.33(f)(1) would be amended to clarify that the requirement of public notice and comment would apply only when the application is subject to a public notice requirement under the Bank Merger Act or other applicable statute that requires notice to the public. This publication requirement would not be a change for national banks or Federal savings associations.

The frequency and timing of publication for transactions that are subject to the Bank Merger Act would be changed for Federal savings associations. Section 163.22(e)(1)(i) requires an initial publication and then publication on a weekly basis during the public comment period. Under proposed § 5.33(f)(1), the OCC would require the initial publication and two other publications during the standard 30-day public comment period.

Section 5.33(g)(1), addressing the merger or consolidation of a national bank or a state bank into a national bank, would require that a national bank that will not be the resulting bank in a merger or consolidation with another national bank must file a notice to the OCC under § 5.33(k). This notice would also be required whenever a national bank or Federal savings association merges or consolidates into another institution. It provides the OCC information about the target national bank's compliance with requirements to ''merge-out'' and sets in motion the steps for the disappearing national bank to end its separate existence.

Section 5.33(g)(2)(ii), under which the OCC may conduct an appraisal of dissenters' shares of stock in a national bank involved in a consolidation with a Federal savings association if all the parties agree, would be changed from a voluntary to a required process. Section 5.33(g)(2)(ii)(B) and (C) would specify the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a national bank.

Section 5.33(g)(2)(iii) would include a requirement that a consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

New § 5.33(g)(3), addressing consolidations and mergers of other institutions into a Federal savings association, would require application to the OCC and would require the Federal savings association to comply with requirements and procedures similar to those currently imposed on them. If a combination involves a whole purchase and assumption of a Federal savings association, then the combination would be treated as a consolidation for participating Federal savings associations, and the procedural requirements in § 5.33(o) would apply.

Section 5.33(g)(3)(ii) would include a requirement that the consolidation or merger agreement must address the effect upon and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(g)(6)(iv) would include a requirement that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution. This requirement is based on provisions in §§ 146.2(b)(9) and 152.13(f)(9).

Section 5.33(g)(7) would address a consolidation or merger of a Federal savings association into a state bank, state savings bank, state savings association, state trust company, or credit union and require only a notice to the OCC, not application and approval. This requirement is a change for Federal savings associations from § 163.22(c), under which an application is required for a combination with an uninsured bank, savings association or trust company or a credit union. Section 5.33(g)(7)(ii) would include a provision under which a whole purchase and assumption of the target Federal savings association would be treated as a consolidation for the Federal savings association, so that the procedural requirements in § 5.33(o) would apply.

Section 5.33(g)(7)(iii) would set out the process for appraisal of dissenters' shares of stock in a stock Federal savings association involved in a consolidation or merger into a state bank, state savings bank, state savings association, state trust company, or credit union. Section 5.33(g)(7)(iv) would require that the consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any other participating institution by the resulting institution.

Section 5.33(i), which would provide for expedited review of business reorganizations and streamlined applications, would be expanded to include Federal savings association applications.

Expedited review under § 5.33(j) would replace the automatic approval provision in § 163.22(f) for Federal savings associations, which provides that an application is deemed to be approved automatically 30 days after the OCC sends the applicant a written notice that the application is complete.

New § 5.33(k) would address notices to be filed when a national bank or Federal savings association is consolidating or merging with another national bank or Federal savings association or with a state chartered institution or credit union and the target national bank or Federal savings association is not the resulting institution. It includes the steps to be taken to terminate the institution's status as a national bank or Federal savings association. This consolidates requirements from §§ 5.33(g)(3), 146.2(g), 152.13(k), 163.22(b) and 163.22(h)(1)(i) and (ii). There would be no change for Federal savings associations, but national banks would be required to include more information in the notice than currently required.

Section 5.33(m) would address certification of a consolidation or merger and documentation of its effective date. The applicant would be required to submit information showing that all steps needed to complete the transaction have been met and to notify the OCC of the planned consummation date. This reflects current OCC practice for national banks. It accomplishes through an applicant notification letter and issuance of an OCC certification letter what § 152.13(j) does in requiring the applicant to submit two sets of ''Articles of Combination'' that are filed with the OCC, and then endorsed by the OCC, with one set returned to the applicant with a specification of the effective date.

New § 5.33(o) would include provisions from §§ 146.2 and 152.13 that set out the procedural requirements for board, shareholder (in the case of stock savings associations), and, if required by the OCC, voting member (in the case of mutual savings associations) approval of business combinations involving the Federal savings association.

Changes in Permanent Capital

Section 5.46(g)(1) would be amended to describe more fully those increases in permanent capital of a national bank for which an application and prior approval are not required and when such increases are considered approved by the OCC. Portions of this requirement are currently in paragraph (i)(3), which addresses the bank's notification to the OCC that the increase has occurred and the certification of the increase by the OCC.

Subordinated Debt

The expedited treatment process in part 116 for savings associations would be replaced by the expedited review process in part 5 for Federal savings associations seeking expedited review of filings to issue subordinated debt. This could result in a change in which savings associations qualify for the expedited process, due to the difference between the eligibility requirements for expedited review and the requirements for expedited treatment.

Capital Distributions

New § 5.55 contains Federal savings association procedures and standards for capital distributions currently found in part 163 and filing procedures based on provisions in part 5 regarding eligible savings associations and expedited review. A Federal savings association must be an ''eligible savings association'' in order to qualify for expedited review of filings for capital distributions. Because the eligibility requirements in part 5 and in the current Federal savings association rules are not identical, the part 5 eligibility requirements for expedited review could affect which Federal savings associations qualify for the expedited process.

Title of Information Collection: Comptroller's Licensing Rules.

OMB Control No: 1557–0014.

Frequency of Response: Event generated.

Affected Public: Businesses or other for-profit organizations.

Current Burden for the Comptroller's Licensing Rules:

Number of Respondents: 3,831.

Average Burden per Respondent: 3.18 hours.

Total Burden: 12,174 hours.

Burden Estimates for the Comptroller's Licensing Rules as Amended by the proposal:

Number of Respondents: 3,879.

Average Burden per Respondent: 3.22 hours.

Total Burden: 12,485 hours.

The change in burden for the collection is an overall increase of 311 hours, or 2.6%. The change in number of respondents is due to an increase in the number of regulated entities involved in licensing activities and the revisions to certain definitions. The change in burden per respondent is an overall increase in .04 hours. This is a result of the combination of the expansion of national bank requirements to savings associations, the revision of requirements for both national banks and savings associations, the addition of exemptions, and the streamlining and elimination of unnecessary requirements. The OCC requests comment on:

a. Whether the information collection is necessary for the proper performance of the OCC's functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the OCC's estimates of the burdens of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

VIII. Redesignation Table

The following redesignation table is provided for reader reference. It lists the current savings association provision and identifies the provision in this final rule that would replace it.

Subject	Former section number/guidance	New section No.
Application Processing Procedures	Part 116	Part 5, subpart A. *See also* relevant activity or transaction rule in part 5.
What does this part do?	116.1	5.1, 5.2.
Do the same procedures apply to all applications under this part?	116.5	5.2.
How does the OCC compute time periods under this part?	116.10	5.12.
Must I meet with the OCC before I file my application?	116.15	5.4(f).

Subject	Former section number/guidance	New section No.
What information must I include in my draft business plan?	116.20	See 5.4(f).
What type of application must I file?	116.25	See 5.4.
What information must I provide with my application?	116.30	See 5.4 (e).
May I keep portions of my application confidential?	116.35	5.9.
Where do I file my application?	116.40	5.4(d).
What is the filing date of my application?/Filing fees	116.45	*See* 5.12.
How do I amend or supplement my application?	116.47	None.
Public notice	116.50–116.80	5.8.
Comment procedures: What does this subpart do?	116.100	None.
Public comment	116.110–116.140	5.10.
Meeting procedures: What does this subpart do?	116.160	None.
When will the OCC conduct a meeting on an application?	116.170	5.11.
What procedures govern the conduct of a meeting?	116.180	5.11.
Will the OCC approve or disapprove an application at a meeting?	116.185	None.
Will a meeting affect application processing time frames?	116.190	*See* 5.10(b)(2), 5.11(h), and 5.13(a)(2).
If I file a notice under expedited treatment, when may I engage in the proposed activities?	116.200	*See* relevant activity or transaction rule in part 5.
What will the OCC do after I file my application?	116.210	5.13.
If the OCC requests additional information to complete my application, how will it process my application?	116.220	5.13.
Will the OCC conduct an eligibility examination?	116.230	5.7.
What may the OCC require me to do after my application is deemed complete?	116.240	5.8(g), 5.13(c).
Will the OCC require me to publish a new public notice?	116.250	5.8(g).
May the OCC suspend processing of my application?	116.260	None.
How long is the OCC review period?	116.270	5.13; *See also* relevant activity or transaction rule in part 5.
How will I know if my application is approved?	116.280	5.13(d).
What will happen if the OCC does not approve or disapprove my application within two calendar years after the filing date?	116.290	*See* 5.13(c).
Federal Mutual Savings Associations—Incorporation, Organization, and Conversion.	Part 143	5.20; 5.42.
Corporate title	143.1	5.20(f)(2(i)), 5.42.
Application for permission to organize	143.2	5.20.
''De novo'' applications for a Federal savings association charter	143.3	5.20.
Issuance of charter	143.4	None.
Completion of organization	143.5	5.20.
Limitations on transaction of business	143.6	None.
Federal savings association created in connection with an association in default or in danger of default.	143.7	None.
Conversions	143.8–143.10	5.23.
Organization plan for governance during first years after issuance of Federal mutual savings bank charter.	143.11	None.
Continuity of existence	143.14	5.23.
Federal Mutual Savings Associations—Charter and Bylaws	144	5.21.
Federal mutual charter	144.1	5.21(e).
Charter amendments	144.2	5.21(f)–(h).
Issuance of charter	144.4	None.
Federal mutual savings association bylaws	144.5	*See* 5.21(j).
Effect of subsequent charter of bylaw change	144.6	5.21(j)(4).
Availability—in association offices	144.7	5.21(i).
Communication between members of a Federal mutual savings association.	144.8	144.8.
Federal Savings Associations—Operations	Part 145	5.31, 5.40, 5.52.
Home office	145.91(a)	None.
	145.91(b)	5.52.
Branch offices	145.92	5.31.
Application and notice requirements and processing procedures for branch and home offices.	145.93, 145.95	5.31 (branch office). 5.40 (home office).
Agency office	145.96	5.31(k).
Federal Mutual Savings Associations—Merger, Dissolution, Reorganization, and Conversion.	Part 146	5.33, 5.48.
Definitions, procedures, and transfer of assets upon merger or consolidation.	146.1–146.3	5.33.
Voluntary dissolution	146.4	5.48.
Fiduciary Powers of Federal Savings Associations	Part 150, subpart A	5.26.
Obtaining fiduciary powers: Must I obtain OCC approval or file a notice before I exercise fiduciary powers?	150.70	150.70 (revised), 5.26.
Obtaining fiduciary powers	150.80–150.125	5.26.
Federal Stock Associations—Incorporation, Organization, and Conversion.	Part 152	5.20, 5.22, 5.23, 5.24, 5.25, 5.33.
Procedure for organization of Federal stock association	152.1	5.20.

Subject	Former section number/guidance	New section No.
Procedures for organization of interim Federal stock association ..	152.2	5.33(e)(4).
Charters, bylaws, boards of directors and officers, share certificates, and books and records.	152.3–152.11	5.22.
Business combinations	152.13–152.15	5.33.
Effect of subsequent charter or bylaw change	152.16	5.22.
Federal stock association created in connection with an association in default or in danger of default.	152.17	None.
Conversion from stock form depository institution to Federal stock association.	152.18	5.23.
Conversion to National banking association or state bank	152.19	5.24 (to national bank). 5.25 (to State bank).
Subordinate organizations	159 (159.1–159.13)	5.38 (operating subsidiaries). 5.59 (service corporations).
Lending and investment		
Pass-through investments	160.32, except:	5.58.
	160.32(a)	160.32(a) (same).
	160.32(b)	160.32(b) (revised).
Real estate for office and related facilities	160.37	5.37, 7.1000, 7.3001.
Savings Associations—Operations		
Submission for approval of chartering documents	163.1(a)	*See* 5.20(e)(1)(iii)(A).
Availability of chartering documents	163.1(b)	None (Federal stock savings associations). 5.21(i) (Federal mutual savings associations).
Merger, consolidation, purchase or sale of assets, or assumption of liabilities.	163.22	5.33, 5.53.
Conversion to state bank	163.22(b)(1)(ii)	5.25.
Conversion to national bank	163.22(b)(2)	5.24.
Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as supplementary capital.	163.81	5.56.
Capital Distributions	163.140–163.146 (subpart E)	5.55.
Management and financial policies	163.161	5.59 (e)(7)(service corporations only).
Notice of change of director or senior executive officer	163.550–163.590 (subpart H).	5.51.
Acquisition of Control of Federal Savings Associations	174.1–174.7	5.50.
	174, Appendix A	None.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

Computer technology, Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 14

Banks, Banking, Consumer protection, Insurance, National banks, Reporting and recordkeeping requirements.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 100

Savings associations.

12 CFR Part 116

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 143

Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 144

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 145

Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 146

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 150

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 152

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 159

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 162

Accounting, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Conflict of interests, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 174

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 193

Accounting, Savings associations, Securities.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST–EMPLOYMENT RESTRICTIONS

■ 1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 1, 12 U.S.C. 93a, 12 U.S.C. 5321, 12 U.S.C. 5412, and 12 U.S.C. 5414. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1820(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 et seq., 2601 et seq., 2801 et seq., 2901 et seq., 3101 et seq., 3401 et seq.; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e. Subpart E is also issued under 12 U.S.C. 1820(k).

■ 2. Revise § 4.5 to read as follows:

§ 4.5 Other OCC supervisory offices.

(a) *Midsize Bank Supervision (MBS).* Midsize Bank Supervision is responsible for supervising midsize national banks and Federal savings associations that present unique supervisory challenges based on size, complexity, and/or product line. MBS also supervises credit card and certain other special purpose banks. MBS is headquartered in Chicago, Il and located at 1 South Wacker Drive, Suite 2000, Chicago, IL 60606.

(b) *Community bank supervision.* (1) District offices. Each district office of the OCC is responsible for the direct supervision of the national banks and Federal savings associations in its district, with the exception of the national banks and Federal savings associations supervised by the Washington office pursuant to § 4.4 of this part or Midsize Bank Supervision pursuant to § 4.5(a). The four district offices cover the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. The geographical composition of each district follows:

District	Office location	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor New York, NY 10173–0002.	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, central and southern Kentucky, Michigan, northern and eastern Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Iowa, Kansas, southwestern Minnesota, western Missouri, Montana, Nebraska, Nevada, New Mexico, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, and Wyoming.

(2) *Field offices and other supervisory offices.* Field offices and field office satellite offices support the bank and savings association supervision responsibilities of the district offices.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 3. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

■ 4. Section 5.1 is revised to read as follows:

§ 5.1 Scope.

This part establishes rules, policies and procedures of the Office of the Comptroller of the Currency (OCC) for corporate activities and transactions involving national banks and Federal savings associations. It contains information on rules of general and specific applicability, where and how to file, and requirements and policies applicable to filings. This part also establishes the corporate filing procedures for Federal branches and agencies of foreign banks.

■ 5. Subpart A of part 5 is revised to read as follows:

Subpart A—Rules of General Applicability

Sec.
5.2 Rules of general applicability.
5.3 Definitions.
5.4 Filing required.
5.5 Fees.
5.6 [Reserved]
5.7 Investigations.
5.8 Public notice.
5.9 Public availability.
5.10 Comments.
5.11 Hearings and other meetings.
5.12 Computation of time.
5.13 Decisions.

Subpart A—Rules of General Applicability

§ 5.2 Rules of general applicability.

(a) *General.* The rules in this subpart apply to all sections in this part unless otherwise stated.

(b) *Exceptions.* The OCC may adopt materially different procedures for a

particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Comptroller's Licensing Manual.* The ''Comptroller's Licensing Manual'' (Manual) provides additional filing guidance, including policies and procedures. The Manual and sample forms are available on the OCC's Internet Web page at *www.occ.gov*.

(d) *Electronic filing.* The OCC encourages electronic filing for all filings. The Manual describes the OCC's electronic filing procedures.

§ 5.3 Definitions.

(a) *Applicant* means a person or entity that submits a notice or application to the OCC under this part.

(b) *Application* means a submission requesting OCC approval to engage in various corporate activities and transactions.

(c) *Appropriate OCC licensing office* means the OCC office that is responsible for processing applications or notices to engage in various corporate activities or transactions, as described at *www.OCC.gov.*

(d) *Appropriate OCC supervisory office* means the OCC office that is responsible for the supervision of a national bank or Federal savings association, as described in subpart A of 12 CFR part 4.

(e) *Capital and surplus* means:

(1) A bank's or Federal savings association's tier 1 and tier 2 capital calculated under the OCC's risk-based capital standards set forth in 12 CFR part 3, as applicable, as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(2) The balance of the national bank's or Federal savings association's allowance for loan and lease losses not included in the institution's Tier 2 capital, for purposes of the calculation of risk-based capital reported in the institution's Call Reports, described in paragraph (e)(1) of this section.

(f) *Depository institution* means any bank or savings association.

(g) *Eligible bank or eligible savings association* means a national bank or Federal savings association that:

(1) Is well capitalized as defined in 12 CFR 6.4;

(2) Has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS);

(3) Has a Community Reinvestment Act (CRA), 12 U.S.C. 2901 *et seq.,* rating of ''Outstanding'' or ''Satisfactory,'' if applicable;

(4) Has an OCC compliance rating of 1 or 2; and

(5) Is not subject to a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive (*see* 12 CFR part 6, subpart B) or, if subject to any such order, agreement, or directive, is informed in writing by the OCC that the bank or savings association may be treated as an ''eligible bank or eligible savings association'' for purposes of this part.

(h) *Eligible depository institution* means:

(1) With respect to a national bank, a state bank or a Federal or state savings association that meets the criteria for an ''eligible bank or eligible savings association'' under § 5.3(g) and is FDIC-insured; and

(2) With respect to a Federal savings association, a state or national bank or a state savings association that meets the criteria for an ''eligible bank or eligible savings association'' under § 5.3(g) and is FDIC-insured.

(i) *Filing* means an application or notice submitted to the OCC under this part.

(j) *Notice,* in general, means a submission notifying the OCC that a national bank or Federal savings association intends to engage in or has commenced certain corporate activities or transactions. The specific meaning of *notice* depends on the context of the rule in which it is used and may require the filer to obtain prior OCC approval before engaging in the activity or transaction, may provide the OCC with authority to disapprove the notice, or may be informational requiring no official OCC action.

(k) *Principal city* means an area designated as a ''principal city'' by the Office of Management and Budget.

(l) *Short-distance relocation* means moving the premises of a branch or main office of a national bank or a branch or home office of a Federal savings association within a:

(1) One thousand foot-radius of the site if the branch, main office, or home office is located within a principal city of an MSA;

(2) One-mile radius of the site if the branch, main office, or home office is not located within a principal city, but is located within an MSA; or

(3) Two-mile radius of the site if the branch, main office, or home office is not located within an MSA.

§ 5.4 Filing required.

(a) *Filing.* A depository institution shall file an application or notice with the OCC to engage in corporate activities and transactions as described in this part.

(b) *Availability of forms.* Forms and instructions for filing are available on the OCC's Internet Web page at *www.occ.gov*.

(c) *Other agency's applications or filings.* At the request of the applicant, the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed action or transaction and contains substantially the same information as required by the OCC. The OCC also may require the applicant to submit supplemental information.

(d) *Where to file.* An applicant should address a filing or other submission under this part to the appropriate OCC licensing office or appropriate OCC supervisory office, unless the OCC advises an applicant otherwise. Relevant addresses are listed on the OCC's Internet Web page at *www.occ.gov*.

(e) *Incorporation of other material.* An applicant may incorporate any material contained in any other application or filing filed with the OCC or other Federal agency by reference, provided that the material is attached to the application and is current and responsive to the information requested by the OCC. The filing must clearly indicate that the information is so incorporated and include a cross-reference to the information incorporated.

(f) *Prefiling meeting.* When submitting an application to the OCC, an applicant is encouraged to contact the appropriate OCC licensing office to determine the need for a prefiling meeting. The OCC decides whether to require a prefiling meeting on a case-by-case basis. Submission of a draft business plan or other relevant information before any prefiling meeting may expedite the filing review process. Information on model business plans can be found in the Manual.

§ 5.5 Filing fees.

(a) *Procedure.* An applicant shall submit the appropriate filing fee, if any, in connection with its filing. Filing fees may be paid by check, money order, cashier's check, or wire transfer. Additional information on filing fees, including where to file, can be found in the Manual. The OCC generally does not refund the filing fees.

(b) *Fee schedule.* The OCC publishes a fee schedule in the ''Notice of Comptroller of the Currency Fees,'' as described in 12 CFR 8.8.

§ 5.6 [Reserved]

§ 5.7 Investigations.

(a) *Authority.* The OCC may examine or investigate and evaluate facts related to a filing to the extent necessary to reach an informed decision.

(b) *Fees.* As described in 12 CFR 8.6, the OCC may assess fees for investigations or examinations conducted under paragraph (a) of this section. The OCC publishes a fee schedule in the ''Notice of Comptroller of the Currency Fees,'' as described in 12 CFR 8.8.

§ 5.8 Public notice.

(a) *General.* An applicant shall publish a public notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business, on the date of filing, or as soon as practicable before or after the date of filing. This notice shall be published in the English language but if the OCC determines that the primary language of a significant number of adult residents of the community is a language other than English, the OCC may require that an additional notice(s) simultaneously be published in the community in the appropriate language(s).

(b) *Contents of the public notice.* The public notice shall state that a filing is being made, the date of the filing, the name and address of the applicant, the subject matter of the filing (including the name of the institution that is the subject of the filing), that the public may submit comments to the appropriate OCC licensing office, the address of the appropriate OCC licensing office where comments should be sent, the closing date of the public comment period, that the public portion of the filing is available on request, and any other information that the OCC requires.

(c) *Confirmation of public notice.* Promptly following publication, the applicant shall mail or otherwise deliver to the appropriate OCC licensing office a statement containing the date of publication, the name and address of the newspaper that published the public notice, a copy of the public notice, and any other information that the OCC requires.

(d) *Multiple transactions.* The OCC may consider more than one transaction, or a series of transactions, to be a single filing for purposes of the publication requirements of this section. When filing a single public notice for multiple transactions, the applicant shall explain in the notice how the transactions are related.

(e) *Joint public notices accepted.* Upon the request of an applicant, for a transaction subject to a public notice requirement of both the OCC and another Federal agency, the OCC may accept publication of a single joint notice containing the information required by both the OCC and the other Federal agency, provided that the notice states that comments must be submitted to both the OCC and, if applicable, the other Federal agency.

(f) *Public notice by the OCC.* In addition to the foregoing, the OCC may require or give public notice and request comment on any filing and in any manner the OCC determines appropriate for the particular filing.

(g) *New public notice.* At the OCC's discretion, an applicant may be required to publish a new public notice if:

(1) The applicant submits either a revised filing or new or additional information related to a filing;

(2) A major issue of law or change in circumstance arises after a filing; or

(3) The OCC determines that a new public notice is appropriate.

§ 5.9 Public availability.

(a) *General.* The OCC provides a copy of the public file to any person who requests it. A requestor should submit a written request for the public file concerning a pending filing to the appropriate OCC licensing office. A requestor should submit a written request for the public file concerning a decided or closed filing to the OCC's Freedom of Information Act Officer, Communications Division, at the address listed on *www.OCC.gov*. The OCC may impose a fee in accordance with 12 CFR 4.17 and at the rate the OCC publishes in the ''Notice of Comptroller of the Currency Fees,'' described in 12 CFR 8.8.

(b) *Public file.* A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons, to the extent that those documents have not been afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to the OCC pursuant to paragraph (c) of this section.

(c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. 552 (*see* 12 CFR 4.12(b)). A submitter should draft its request for confidential treatment narrowly to extend only to those portions of a document it considers confidential. If a submitter requests confidential treatment for information that the OCC does not consider to be confidential, the OCC may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, the OCC may determine that certain information should be treated as confidential and withhold that information from the public file. A person requesting information withheld from the public file should submit the request to the OCC's Freedom of Information Act Officer, Communications Division, under the procedures described in 12 CFR part 4, subpart B. That request may be subject to the predisclosure notice procedures of 12 CFR 4.16.

§ 5.10 Comments.

(a) *Submission of comments.* During the comment period, any person may submit written comments on a filing to the appropriate OCC licensing office.

(b) *Comment period—* (1) *General.* Unless otherwise stated, the comment period is 30 days after publication of the public notice required by § 5.8(a). If a new public notice is required under § 5.8(g), the OCC may require a new comment period of up to 30 days after publication of the new public notice.

(2) *Extension.* The OCC may extend a comment period if:

(i) The applicant fails to file all required publicly available information on a timely basis to permit review by interested persons or makes a request for confidential treatment not granted by the OCC that delays the public availability of that information;

(ii) Any person requesting an extension of time satisfactorily demonstrates to the OCC that additional time is necessary to develop factual information that the OCC determines is necessary to consider the application; or

(iii) The OCC determines that other extenuating circumstances exist.

(3) *Applicant response.* The OCC may give the applicant an opportunity to respond to comments received.

§ 5.11 Hearings and other meetings.

(a) *Hearing requests.* Prior to the end of the comment period, any person may submit to the appropriate OCC office a written request for a hearing on a filing. The request must describe the nature of the issues or facts to be presented and the reasons why written submissions would be insufficient to make an adequate presentation of those issues or facts to the OCC. A person requesting a hearing shall simultaneously submit a copy of the request to the applicant.

(b) *Action on a hearing request.* The OCC may grant or deny a request for a hearing and may limit the issues to those it deems relevant or material. The OCC generally grants a hearing request

only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

(c) *Denial of a hearing request.* If the OCC denies a hearing request, it shall notify the person requesting the hearing of the reason for the denial.

(d) *OCC procedures prior to the hearing*—(1) *Notice of Hearing.* The OCC issues a Notice of Hearing if it grants a request for a hearing or orders a hearing because it is in the public interest. The OCC sends a copy of the Notice of Hearing to the applicant, to the person requesting the hearing, and anyone else requesting a copy. The Notice of Hearing states the subject and date of the filing, the time and place of the hearing, and the issues to be addressed. The OCC may limit the issues considered at a hearing to those it determines are relevant or material.

(2) *Presiding officer.* The OCC appoints a presiding officer to conduct the hearing. The presiding officer is responsible for all procedural questions not governed by this section.

(e) *Participation in the hearing.* Any person who wishes to appear (participant) shall notify the appropriate OCC licensing office of his or her intent to participate in the hearing within ten days from the date the OCC issues the Notice of Hearing. At least five days before the hearing, each participant shall submit to the appropriate OCC licensing office, the applicant, and any other person the OCC requires, the names of witnesses and one copy of each exhibit the participant intends to present.

(f) *Hearing transcripts.* The OCC arranges for a hearing transcript. The person requesting the hearing may be required to bear the cost of one copy of the transcript for his or her use.

(g) *Conduct of the hearing*—(1) *Presentations.* Subject to the rulings of the presiding officer, the applicant and participants may make opening statements and present witnesses, material, and data.

(2) *Information submitted.* A person presenting documentary material shall furnish one copy to the OCC and one copy to the applicant and each participant.

(3) *Laws not applicable to hearings.* The Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Federal Rules of Evidence (28 U.S.C. appendix), the Federal Rules of Civil Procedure (28 U.S.C. Rule 1 *et seq.*), and the OCC's Rules of Practice and Procedure (12 CFR part 19) do not apply to hearings under this section.

(4) *Meeting format.* The OCC may conduct a meeting in the format that it determines is appropriate, including a telephone conference, a face-to-face meeting, or a more formal meeting.

(h) *Closing the hearing record.* At the applicant's or participant's request, the OCC may keep the hearing record open for up to 14 days following the OCC's receipt of the transcript. The OCC resumes processing the filing after the record closes.

(i) *Other meetings*—(1) *Public meetings.* The OCC may arrange for a public meeting in connection with an application, either upon receipt during the comment period of a written request for such a meeting or upon the OCC's own initiative, if the OCC finds that written submissions are insufficient to address facts or issues raised in the application or otherwise determines that a meeting will benefit the decision-making process. Public meetings will be arranged and presided over by a presiding officer.

(2) *Private meetings.* The OCC may arrange a meeting with an applicant or other interested parties to clarify and narrow the issues and to facilitate the resolution of the issues.

(3) *Issues at meetings.* The OCC may limit the issues considered at a meeting to those it determines are relevant or material.

§ 5.12 Computation of time.

In computing the period of days, the OCC does not include the day of the act or event (*e.g.,* the date an application is received by the OCC) from which the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday or Federal holiday.

§ 5.13 Decisions.

(a) *General.* The OCC may approve, conditionally approve, or deny a filing after appropriate review and consideration of the record. In reviewing a filing, the OCC may consider the activities, resources, or condition of an affiliate of the applicant that may reasonably reflect on or affect the applicant. It also may consider information available from any source, including any comments submitted by interested parties or views expressed by interested parties at meetings with the OCC.

(1) *Conditional approval.* The OCC may impose conditions on any approval, including to address a significant supervisory, CRA (if applicable), or compliance concern, if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards and OCC policies thereunder and safe and sound banking practices.

(2) *Expedited review.* The OCC grants eligible banks and eligible savings associations expedited review within a specified time after filing or commencement of the public comment period.

(i) The OCC may extend the expedited review period or remove a filing from expedited review procedures if it concludes that the filing, or an adverse comment regarding the filing, presents a significant supervisory, CRA (if applicable), or compliance concern, or raises a significant legal or policy issue, requiring additional OCC review. The OCC will provide the applicant with a written explanation if it decides not to process an application from an eligible bank or eligible savings association under expedited review pursuant to this paragraph.

(ii) Adverse comments that the OCC determines do not raise a significant supervisory, CRA (if applicable), or compliance concern, or a significant legal or policy issue, or are frivolous, filed primarily as a means of delaying action on the filing, or that raise a CRA concern that the OCC determines has been satisfactorily resolved, do not affect the OCC's decision under paragraph (a)(2)(i) of this section. The OCC considers a CRA concern to have been satisfactorily resolved if the OCC previously reviewed (*e.g.,* in an examination or an application) a concern presenting substantially the same issue in substantially the same assessment area during substantially the same time, and the OCC determines that the concern would not warrant denial or imposition of a condition on approval of the application.

(iii) If a bank or savings association files an application for any activity or transaction that is dependent upon the approval of another application under this part, or if requests for approval for more than one activity or transaction are combined in a single application under applicable sections of this part, none of the subject applications may be deemed approved upon expiration of the applicable time periods, unless all of the applications are subject to expedited review procedures and the longest of the time periods expires without the OCC issuing a decision or notifying the bank or savings association that the filings are not eligible for expedited review under the standards in paragraph (a)(2)(i) of this section.

(b) *Denial.* The OCC may deny a filing if:

(1) A significant supervisory, CRA (if applicable), or compliance concern exists with respect to the applicant;

(2) Approval of the filing is inconsistent with applicable law, regulation, or OCC policy thereunder; or

(3) The applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.

(c) *Required information and abandonment of filing.* A filing must contain information required by the applicable section set forth in this part. To the extent necessary to evaluate an application, the OCC may require an applicant to provide additional information. The OCC may deem a filing abandoned if information required or requested by the OCC in connection with the filing is not furnished within the time period specified by the OCC. The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

(d) *Notification of final disposition.* The OCC notifies the applicant, and any person who makes a written request, of the final disposition of a filing, including confirmation of an expedited review under this part. If the OCC denies a filing, the OCC notifies the applicant in writing of the reasons for the denial.

(e) *Publication of decision.* The OCC will issue a public decision when a decision represents a new or changed policy or presents issues of general interest to the public or the banking industry. In rendering its decisions, the OCC may elect not to disclose information that the OCC deems to be private or confidential.

(f) *Appeal.* An applicant may file an appeal of an OCC decision in writing with the Deputy Comptroller for Licensing or with the Ombudsman at the address listed on *www.OCC.gov*. In the event that the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel or the Ombudsman.

(g) *Extension of time.* When the OCC approves or conditionally approves a filing, the OCC generally gives the applicant a specified period of time to commence that new or expanded activity. The OCC does not generally grant an extension of the time specified to commence a new or expanded corporate activity approved under this part, unless the OCC determines that the delay is beyond the applicant's control.

(h) *Nullifying a decision*—(1) *Material misrepresentation or omission.* An applicant shall certify that any filing or supporting material submitted to the OCC contains no material misrepresentations or omissions. The OCC may review and verify any information filed in connection with a notice or an application. If the OCC discovers a material misrepresentation or omission after the OCC has rendered a decision on the filing, the OCC may nullify its decision. Any person responsible for any material misrepresentation or omission in a filing or supporting materials may be subject to enforcement action and other penalties, including criminal penalties provided in 18 U.S.C. 1001.

(2) *Other nullifications.* The OCC may nullify any decision on a filing that is:

(i) Contrary to law, regulation, or OCC policy thereunder; or

(ii) Granted due to clerical or administrative error, or a material mistake of law or fact.

■ 6. Section 5.20 is revised to read as follows:

§ 5.20 Organizing a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 21, 22, 24(Seventh), 26, 27, 92a, 93a, 1814(b), 1816, 1462a, 1463, 1464, 2903, and 5412(b)(2)(B).

(b) *Licensing requirements.* Any person desiring to establish a national bank or a Federal savings association shall submit an application and obtain prior OCC approval.

(c) *Scope.* This section describes the procedures and requirements governing OCC review and approval of an application to establish a national bank or a Federal stock or mutual savings association, including a national bank or a Federal savings association with a special purpose. Information regarding an application to establish an interim national bank or an interim Federal savings association solely to facilitate a business combination is set forth in § 5.33.

(d) *Definitions.* For purposes of this section:

(1) *Bankers' bank* means a bank owned exclusively (except to the extent directors' qualifying shares are required by law) by other depository institutions or depository institution holding companies (as that term is defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813), the activities of which are limited by its articles of association exclusively to providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and to providing correspondent banking services at the request of other depository institutions or their holding companies.

(2) *Control* means with respect to an application to establish a national bank, control as used in section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2), and with respect to an application to establish a Federal savings association, control as used in section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a(a)(2).

(3) *Final approval* means the OCC action issuing a charter and authorizing a national bank or Federal savings association to open for business.

(4) *Holding company* means any company that controls or proposes to control a national bank or a Federal savings association whether or not the company is a bank holding company under section 2 of the Bank Holding Company Act, 12 U.S.C. 1841(a)(1), or a savings and loan holding company under section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a.

(5) *Lead depository institution* means the largest depository institution controlled by a bank holding company or savings and loan holding company based on a comparison of the average total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income required to be filed for the immediately preceding four calendar quarters.

(6) *Institution* means either a national bank or Federal savings association.

(7) *Organizing group* means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank or Federal savings association charter.

(8) *Preliminary approval* means a decision by the OCC permitting an organizing group to go forward with the organization of the proposed national bank or Federal savings association. A preliminary approval generally is subject to certain conditions that an applicant must satisfy before the OCC will grant final approval.

(e) *Requirements*—(1) *General.* (i) The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. 1 *et seq.* The bank may be a special purpose bank that limits its activities to fiduciary activities or to any other activities within the business of banking. A special purpose bank that conducts activities other than fiduciary activities must conduct at least one of the

following three core banking functions: receiving deposits; paying checks; or lending money. The name of a proposed national bank must include the word ''national.''

(ii) The OCC charters a Federal savings association under the authority of section 5 of the Home Owners' Loan Act, 12 U.S.C. 1464, which in an application to establish a Federal savings association requires the OCC to consider:

(A) Whether the applicants are persons of good character and responsibility;

(B) Whether a necessity exists for the association in the community to be served;

(C) Whether there is a reasonable probability of the association's usefulness and success; and

(D) Whether the association can be established without undue injury to properly conducted existing local savings associations and home financing institutions.

(iii) In determining whether to approve an application to establish a national bank or Federal savings association, the OCC verifies that the proposed national bank or Federal savings association has complied with the following requirements. A national bank or a Federal savings association shall:

(A) File either articles of association (for a national bank), or a charter and by-laws (for a Federal savings association) with the OCC;

(B) In the case of an application to establish a national bank, file an organization certificate containing specified information with the OCC;

(C) Ensure that all capital stock is paid in, or in the case of a Federal mutual savings association, ensure that at least a minimum amount of capital is paid in; and

(D) Have at least five elected directors.

(2) *Community Reinvestment Act.* (i) Twelve CFR part 25 requires the OCC to take into account a proposed insured national bank's description of how it will meet its CRA objectives.

(ii) Twelve CFR part 195 requires the OCC to take into account a proposed insured Federal savings association description of how it will meet its CRA objectives.

(3) *Federal Deposit Insurance.* Preliminary approval for an application to establish a Federal savings association will be conditioned on the savings association applying for and receiving approval for deposit insurance from the Federal Deposit Insurance Corporation (FDIC). Final approval for an application to establish a Federal savings association will not be issued until receipt by the OCC of written confirmation by the FDIC that the accounts of the Federal savings association will be insured by the FDIC.

(f) *Policy*—(1) *General.* In determining whether to approve an application to establish a national bank or Federal savings association, the OCC is guided by the following principles:

(i) Maintaining a safe and sound banking system;

(ii) Encouraging a national bank or Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(iii) Ensuring compliance with laws and regulations; and

(iv) Promoting fair treatment of customers including efficiency and better service.

(2) *Policy considerations.* (i) In evaluating an application to establish a national bank or Federal savings association, the OCC considers whether the proposed institution:

(A) Has organizers who are familiar with national banking laws and regulations or Federal savings association laws and regulations, respectively;

(B) Has competent management, including a board of directors, with ability and experience relevant to the types of services to be provided;

(C) Has capital that is sufficient to support the projected volume and type of business;

(D) Can reasonably be expected to achieve and maintain profitability;

(E) Will be operated in a safe and sound manner; and

(F) Does not have a title that misrepresents the nature of the institution or the services it offers.

(ii) In evaluating an application to establish a Federal savings association, the OCC considers whether the proposed Federal savings association will be operated as a qualified thrift lender under section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m).

(iii) The OCC may also consider additional factors listed in section 6 of the Federal Deposit Insurance Act, 12 U.S.C. 1816, including the risk to the Federal deposit insurance fund, and whether the proposed institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act, the National Bank Act, and the Home Owners' Loan Act, as applicable.

(3) *OCC evaluation.* The OCC evaluates a proposed institution's organizing group and its business plan or operating plan together. The OCC's judgment concerning one may affect the evaluation of the other. An organizing group and its business plan or operating plan must be stronger in markets where economic conditions are marginal or competition is intense.

(g) *Organizing group*— (1) *General.* Strong organizing groups generally include diverse business and financial interests and community involvement. An organizing group must have the experience, competence, willingness, and ability to be active in directing the proposed institution's affairs in a safe and sound manner. The institution's initial board of directors generally is comprised of many, if not all, of the organizers. The business plan or operating plan and other information supplied in the application must demonstrate an organizing group's collective ability to establish and operate a successful national bank or Federal savings association in the economic and competitive conditions of the market to be served. Each organizer should be knowledgeable about the business plan or operating plan. A poor business plan or operating plan reflects adversely on the organizing group's ability, and the OCC generally denies applications with poor business plans or operating plans.

(2) *Management selection.* The initial board of directors must select competent senior executive officers before the OCC grants final approval. Early selection of executive officers, especially the chief executive officer, contributes favorably to the preparation and review of a business plan or operating plan that is accurate, complete, and appropriate for the type of national bank or Federal savings association proposed and its market, and reflects favorably upon an application. As a condition of the charter approval, the OCC retains the right to object to and preclude the hiring of any officer, or the appointment or election of any director, for a two-year period from the date the institution commences business, or longer as appropriate.

(3) *Financial resources.* (i) Each organizer must have a history of responsibility, personal honesty, and integrity. Personal wealth is not a prerequisite to become an organizer or director of a national bank or Federal savings association. However, directors' stock purchases, or, in the case of a Federal mutual savings association, capital contributions, individually and in the aggregate, should reflect a financial commitment to the success of the institution that is reasonable in relation to their individual and collective financial strength. A director should not have to depend on institution dividends, fees, or other

compensation to satisfy financial obligations.

(ii) Because directors are often the primary source of additional capital for an institution not affiliated with a holding company, it is desirable that the proposed directors of the national bank or Federal savings association, as a group, be able to supply or have a realistic plan to enable the institution to obtain capital when needed.

(iii) Any financial or other business arrangement, direct or indirect, between the organizing group or other insiders and the proposed national bank or Federal savings association must be on nonpreferential terms.

(4) *Organizational expenses.* (i) Organizers are expected to contribute time and expertise to the organization of the national bank or Federal savings association. Organizers should not bill excessive charges to the institution for professional and consulting services or unduly rely upon these fees as a source of income.

(ii) A proposed national bank or Federal savings association shall not pay any fee that is contingent upon an OCC decision. Such action generally is grounds for denial of the application or withdrawal of preliminary approval. Organizational expenses for denied applications are the sole responsibility of the organizing group.

(5) *Sponsor's experience and support.* A sponsor must be financially able to support the new institution's operations and to provide or locate capital when needed. The OCC primarily considers the financial and managerial resources of the sponsor and the sponsor's record of performance, rather than the financial and managerial resources of the organizing group, if an organizing group is sponsored by:

(i) An existing holding company;

(ii) Individuals currently affiliated with other depository institutions; or

(iii) Individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(h) *Business plan or Operating plan*—(1) *General.* (i) Organizers of a proposed national bank or Federal savings association shall submit a business plan or operating plan that adequately addresses the statutory and policy considerations set forth in paragraphs (e) and (f)(2) of this section. In the case of a proposed Federal savings association the plan must also specifically address meeting qualified thrift lender requirements. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served.

(ii) The OCC may offset deficiencies in one factor by strengths in one or more other factors. However, deficiencies in some factors, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other factors, such as capital adequacy, or may be serious enough by themselves to result in denial. The OCC considers inadequacies in a business plan or operating plan to reflect negatively on the organizing group's ability to operate a successful institution.

(2) *Earnings prospects.* The organizing group shall submit *pro forma* balance sheets and income statements as part of the business plan or operating plan. The OCC reviews all projections for reasonableness of assumptions and consistency with the business plan or operating plan.

(3) *Management.* (i) The organizing group shall include in the business plan or operating plan information sufficient to permit the OCC to evaluate the overall management ability of the organizing group. If the organizing group has limited banking experience or community involvement, the senior executive officers must be able to compensate for such deficiencies.

(ii) The organizing group may not hire an officer or elect or appoint a director if the OCC objects to that person at any time prior to the date the institution commences business.

(4) *Capital.* A proposed bank or Federal savings association must have sufficient initial capital, net of any organizational expenses that will be charged to the institution's capital after it begins operations, to support the institution's projected volume and type of business.

(5) *Community service.* (i) The business plan or operating plan must indicate the organizing group's knowledge of and plans for serving the community. The organizing group shall evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The business plan or operating plan must demonstrate how the proposed national bank or Federal savings association responds to those needs consistent with the safe and sound operation of the institution. The provisions of this paragraph may not apply to an application to organize an institution for a special purpose.

(ii) As part of its business plan or operating plan, the organizing group shall submit a statement that demonstrates its plans to achieve CRA objectives.

(iii) Because community support is important to the long-term success of a national bank or Federal savings association, the organizing group shall include plans for attracting and maintaining community support.

(6) *Safety and soundness.* The business plan or operating plan must demonstrate that the organizing group (and the sponsoring company, if any), is aware of, and understands, applicable depository institution laws and regulations, and safe and sound banking operations and practices. The OCC will deny an application that does not meet these safety and soundness requirements.

(7) *Fiduciary services.* The business plan or operating plan must indicate if the proposed institution intends to offer fiduciary services. The information required by § 5.26 shall be filed with the charter application. A separate application is not required.

(i) *Procedures*—(1) *Prefiling meeting.* The OCC normally requires a prefiling meeting with the organizers of a proposed national bank or Federal savings association before the organizers file an application. Organizers should be familiar with the OCC's chartering policy and procedural requirements in the Comptroller's Licensing Manual before the prefiling meeting. The prefiling meeting normally is held in the district office where the application will be filed but may be held at another location at the request of the applicant.

(2) *Business plan or operating plan.* An organizing group shall file a business plan or operating plan that addresses the subjects discussed in paragraph (h) of this section.

(3) *Contact person.* The organizing group shall designate a contact person to represent the organizing group in all contacts with the OCC. The contact person shall be an organizer and proposed director of the new national bank or Federal savings association, except a representative of the sponsor or sponsors may serve as contact person if an application is sponsored by an existing holding company, individuals currently affiliated with other depository institutions, or individuals who, in the OCC's view, are otherwise collectively experienced in banking and have demonstrated the ability to work together effectively.

(4) *Decision notification.* The OCC notifies the spokesperson and other interested persons in writing of its decision on an application.

(5) *Activities.* (i) Before the OCC grants final approval, a proposed national bank or Federal savings association must be established as a legal entity. A national bank becomes a

legal entity after it has filed its organization certificate and articles of association with the OCC as required by law. A Federal savings association becomes a legal entity after it has filed its proposed charter and bylaws with the OCC. A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association, an organization certificate, and a completed charter application and the bank complies with paragraph (i)(5)(iii) of this section. A proposed Federal stock savings association may offer and sell securities prior to OCC preliminary approval of the proposed Federal stock savings association's charter application, provided that the proposed Federal stock savings association has filed a proposed charter, bylaws, and a completed charter application and the Federal stock savings association complies with paragraph (i)(5)(iii) of this section.

(ii) (A) After the OCC grants preliminary approval, the organizing group shall elect a board of directors, take steps necessary to organize the proposed national bank or Federal savings association and prepare it for commencing business.

(B) A proposed national bank may not conduct the business of banking until the OCC grants final approval and issues a charter. A proposed Federal savings association may not commence business until the OCC grants final approval and issues a charter, which shall be in the form provided in this part.

(iii) For all capital obtained through a public offering a proposed national bank or Federal savings association shall use an offering circular that complies with the OCC's securities offering regulations, 12 CFR part 16 or part 197, as applicable. All securities of a particular class in the initial offering shall be sold at the same price.

(iv) A national bank or Federal savings association in organization shall raise its capital before it commences business. Preliminary approval expires if the proposed national bank or Federal savings association does not raise the required capital within 12 months from the date the OCC grants preliminary approval. Preliminary approval expires if the proposed national bank or Federal savings association does not commence business within 18 months from the date of preliminary approval, unless the OCC grants an extension. If preliminary approval expires, all cash collected on subscriptions shall be returned.

(j) *Expedited review.* An application to establish a full-service national bank or Federal savings association that is sponsored by a bank holding company or savings and loan holding company whose lead depository institution is an eligible bank or eligible savings association is deemed preliminarily approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC:

(1) Notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2); or

(2) Notifies the applicant prior to that date that the OCC has determined that the proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

(k) *National bankers' banks*—(1) *Activities and customers.* In addition to the other requirements of this section, when an organizing group seeks to organize a national bankers' bank, the organizing group shall list in the application the anticipated activities and customers or clients of the proposed national bankers' bank.

(2) *Waiver of requirements.* At the organizing group's request, the OCC may waive requirements that are applicable to national banks in general if those requirements are inappropriate for a national bankers' bank and would impede its ability to provide desired services to its market. An applicant must submit a request for a waiver with the application and must support the request with adequate justification and legal analysis. A national bankers' bank that is already in operation may also request a waiver. The OCC cannot waive statutory provisions that specifically apply to national bankers' banks pursuant to 12 U.S.C. 27(b)(1).

(3) *Investments.* A national bank or Federal savings association may invest up to ten percent of its capital and surplus in a bankers' bank and may own five percent or less of any class of a bankers' bank's voting securities.

(l) *Special purpose institutions.* An applicant for a national bank or Federal savings association charter that will limit its activities to fiduciary activities, credit card operations, or another special purpose shall adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. An applicant for a national bank or Federal savings association charter that will have a community development focus shall also adhere to established charter procedures with modifications appropriate for the circumstances as determined by the OCC. A national bank that seeks to invest in a bank or savings association with a community development focus must comply with applicable requirements of 12 CFR part 24. A Federal savings association that seeks to invest in a bank or savings association with a community development focus must comply with § 160.36 or any other applicable requirements.

■ 7. Section 5.21 is added to read as follows:

§ 5.21 Federal Mutual Savings Association Charter and Bylaws.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, and 2901 *et seq.*

(b) *Licensing requirements.* A Federal mutual savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) *Scope.* This section describes the procedures and requirements governing charters and bylaws for Federal mutual savings associations.

(d) *Exceptions to rules of general applicability.* Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) *Charter form.* Except as provided in paragraphs (f) and (g), a Federal mutual savings association shall have a charter in the following form. A charter for a Federal mutual savings bank shall substitute the term ''savings bank'' for ''association.'' The term ''trustee'' may be substituted for the term ''director.'' Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the OCC. Such borrowers shall have one vote for the period of time such borrowings are in existence.

Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal savings association is _.

Section 2. Office. The home office shall be located in _ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are

now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of the Comptroller of the Currency (''OCC'').

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the OCC.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. No member, however, shall cast more than 1000 votes. All accounts shall be nonassessable.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the OCC.

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the OCC. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the OCC: *Provided,* That the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the association shall be entitled to equal distribution of assets, *pro rata* to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the OCC prior to approval by the members at a legal meeting, and shall be effective upon filing with the OCC in accordance with regulatory procedures.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Deputy Comptroller for Licensing

By: _____

Comptroller of the Currency

Effective Date: _____

(f) *Charter amendments.* In order to adopt a charter amendment, a Federal mutual savings association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would: render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; or involve a significant issue of law or policy; then, the association shall file the proposed amendment and obtain the prior approval of the OCC.

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (f)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, then the association shall submit the proposed amendment to the appropriate OCC licensing office, at least 30 days prior to the effective date of the proposed charter amendment.

(g) *Approval.* Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment. This automatic approval does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, notwithstanding anything in paragraph (f) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual charter as set forth in paragraph (e) of this section, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with the OCC, within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Purpose and powers.* Add a second paragraph to section 4, as follows:

Section 4. Purpose and powers. * * * The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by rules and regulations made by the OCC, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such rules and regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the OCC; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things

reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) *Title change.* A Federal mutual savings association that has complied with § 5.42 of this chapter may amend its charter by substituting a new corporate title in section 1.

(3) *Home office.* A Federal mutual savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40 of this chapter.

(4) *Maximum number of votes.* A Federal mutual savings association may amend its charter by substituting any number of votes per member between 1 and 1000 in section 6.

(h) *Reissuance of charter.* A Federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such request for reissuance should be filed at the appropriate OCC licensing office and contain signatures required under paragraph (e) of this section, together with such supporting documents as may be needed to demonstrate that the amendments were properly adopted.

(i) *Availability of chartering documents.* A Federal mutual savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association, and shall upon request deliver to any accountholders a copy of such charter and bylaws or amendments thereto.

(j) *Bylaws for Federal mutual savings associations*—A Federal mutual savings association shall operate under bylaws that contain provisions that comply with all requirements specified by the OCC in this paragraph and that are not otherwise inconsistent with the provisions of this paragraph, the association's charter, and all other applicable laws, rules, and regulations *provided that,* a bylaw provision inconsistent with the provisions of this paragraph may be adopted with the approval of the OCC. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the association's board of directors. The bylaws for a Federal mutual savings bank shall substitute the term ''savings bank'' for ''association''. The term ''trustee'' may be substituted for the term ''director''.

(1) The following requirements are applicable to Federal mutual savings associations:

(i) *Annual meetings of members.* (A) An association shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the association may be conducted. Such meeting shall be held at any convenient place the board of directors may designate, and at a date and time within 150 days after the end of the association's fiscal year.

(B) At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(ii) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The board of directors of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this paragraph, ''voting capital'' means FDIC-insured deposits as of the voting record date.

(iii) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(iv) *Fixing of record date.* The bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(v) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(vi) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the OCC. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(vii) *Communications between members.* Provisions relating to communications between members shall be consistent with § 144.8 of this part. No member, however, shall have the right to inspect or copy any portion of any books or records of a Federal mutual savings association containing:

(A) A list of depositors in or borrowers from such association;

(B) Their addresses;

(C) Individual deposit or loan balances or records; or

(D) Any data from which such information could be reasonably constructed.

(viii) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OCC. Each director of the association shall be a member of the association. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate. State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of directors so long as such provisions are authorized by the OCC, and provide for compliance with the standard provisions of this paragraph no later

than six years after the conversion to a Federal savings association.

(ix) *Meetings of the board.* The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and waiver of notice for all regular and special meetings. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(x) *Officers, employees and agents.* (A) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(B) Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Termination for cause, for purposes of this § 5.21 and § 5.22, shall include termination because of the person's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease and desist order, or material breach of any provision of an employment contract.

(xi) *Vacancies, resignation or removal of directors.* In the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director. Directors may be removed only for cause, as defined in § 5.21(j)(1)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(xii) *Powers of the board.* The board of directors shall have the power to exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(xiii) *Nominations for directors.* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(xiv) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting.

(xv) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(A) Amendments shall be effective:

(*1*) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the association at a legal meeting; and

(*2*) After receipt of any applicable regulatory approval.

(B) When an association fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(xvi) *Miscellaneous.* The bylaws may also address any other subjects necessary or appropriate for effective operation of the association.

(2) *Form of filing*—(i) *Application requirement.* (A) Any bylaw amendment shall be submitted to the appropriate OCC licensing office for OCC approval if it would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the association, or the removal of incumbent management; involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or be inconsistent with the requirements of this paragraph or with applicable laws, rules, regulations, or the association's charter.

(B) For purposes of paragraph (j)(2), bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i)(A) of this section, then the association shall submit the amendment to the appropriate OCC licensing office at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) *Corporate governance procedures.* A Federal mutual association may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (j)(2)(i)(A) of this section. If this election is selected, a Federal mutual association shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i)(A) of this section.

(3) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment. This automatic effective date does not apply if, prior to the expiration of such 30-day period, the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(4) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

■ 8. Section 5.22 is added to read as follows:

§ 5.22 Federal stock savings association charter and bylaws.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, and 2901 *et seq.*

(b) *Licensing requirements.* A Federal stock savings association must file an application, notice, or other filing as prescribed by this section when adopting or amending its charter or bylaws.

(c) *Scope.* This section describes the procedures and requirements governing charters and bylaws for Federal stock savings associations.

(d) *Exceptions to rules of general applicability.* Notwithstanding any other provision of this part, §§ 5.8 through 5.11 shall not apply to this section.

(e) *Charter form.* The charter of a Federal stock association shall be in the following form, except as provided in this section. An association that has converted from the mutual form pursuant to part 192 of this chapter shall include in its charter a section establishing a liquidation account as required by § 192.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term ''savings bank'' for ''association.'' Charters may also include any preapproved optional provision contained in this section.

Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is ___.

Section 2. Office. The home office shall be located in ___ [city, state].

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of the Comptroller of the Currency (''OCC'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the association has the authority to issue is ___, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of ___ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued.

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the OCC.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the association, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the OCC.

Attest: _____

Secretary of the Association

By: _____

President or Chief Executive Officer of the Association

Attest: _____

Deputy Comptroller for Licensing

By: _____

Comptroller of the Currency

Effective Date: _____

(f) *Charter amendments.* In order to adopt a charter amendment, a Federal stock savings association must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the association must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing*—(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the association's stock, the removal of incumbent management, or involve a significant issue of law or policy, the association shall file the proposed amendment and shall obtain the prior approval of the OCC; and

(ii) *Notice requirement.* If the proposed charter amendment does not involve a provision that would be covered by paragraph (f)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, then the association shall submit the proposed amendments to the appropriate OCC licensing office,

at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the association's shareholders.

(g) *Approval.* Any charter amendment filed pursuant to paragraph (f)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment is deemed to be filed under the provisions of paragraph (f)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the Federal stock charter as set forth in paragraph (e) of this section, shall be approved at the time of adoption, if adopted without change and filed with the OCC within 30 days after adoption, provided the association follows the requirements of its charter in adopting such amendments:

(1) *Title change.* A Federal stock association that has complied with § 5.42 of this chapter may amend its charter by substituting a new corporate title in section 1.

(2) *Home office.* A Federal savings association may amend its charter by substituting a new home office in section 2, if it has complied with applicable requirements of § 5.40 of this chapter.

(3) *Number of shares of stock and par value.* A Federal stock association may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that the association has the authority to issue is __, of which __ shall be common stock of par [or if no par value is specified the stated] value of __ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the association or in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided,* That this restriction on voting separately by class or series shall not apply:

i. To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

ii. To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the OCC or the Federal Deposit Insurance Corporation;

iii. To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment

or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

a. The distinctive serial designation and the number of shares constituting such series;

b. The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

c. The voting powers, full or limited, if any, of shares of such series;

d. Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

e. The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

f. Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

g. Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

h. The price or other consideration for which the shares of such series shall be issued; and

i. Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the OCC a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A Federal stock association may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York Stock Exchange if the shares were then listed on the New York Stock Exchange.

(6) *Cumulative voting.* A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: ''Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.''

(7) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of less than 25 percent of a class of stock by a tax-qualified employee stock benefit plan as defined in § 192.25 of the OCC's regulations.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10% shall be considered ''excess shares'' and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

1. The term ''person'' includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

2. The term ''offer'' includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

3. The term ''acquire'' includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

4. The term ''acting in concert'' means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding,

relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(h) *Anti-takeover provisions.* The OCC may grant approval to a charter amendment not listed in paragraph (g) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for approval an opinion, acceptable to the OCC, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located. Any such provision must be consistent with applicable statutes, regulations, and OCC policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the association and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(i) *Reissuance of charter.* A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the OCC. Such requests for reissuance should be filed with the appropriate OCC licensing office, and contain signatures required under (c) of this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

(j) *Bylaws for Federal stock savings associations*—(1) *General.* Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. A bylaw provision inconsistent with paragraph (k), (l), (m) or (n), of this section may be adopted only with the approval of the OCC.

(2) *Form of Filing*—(i) *Application requirement.* (A) Any bylaw amendment shall be submitted to the OCC for approval if it would:

(*1*) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; or

(*2*) Be inconsistent with paragraphs (k) through (n) of this section, with applicable laws, rules, regulations or the association's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(B) Bylaw provisions that adopt the language of the OCC's model or optional bylaws, if adopted without change, and filed with the OCC within 30 days after adoption, are effective upon adoption.

(ii) *Filing requirement.* If the proposed bylaw amendment does not involve a provision that would be covered by paragraph (j)(2)(i) or (iii) of this section and is permissible under all applicable laws, rules, or regulations, then the association shall submit the amendment to the OCC at least 30 days prior to the date the bylaw amendment is to be adopted by the association.

(iii) *Corporate governance procedures.* A Federal stock association may elect to follow the corporate governance procedures of: The laws of the state where the main office of the association is located; the laws of the state where the association's holding company, if any, is incorporated or chartered; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (j)(2)(i) of this section. If this election is selected, a Federal stock association shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions meet the requirements stated in paragraph (j)(2)(i) of this section.

(3) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (j)(2)(ii) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the association follows the requirements of its charter and bylaws in adopting such amendment, unless prior to the expiration of such 30-day period the OCC notifies the association that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (j)(2)(i) of this section.

(4) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

(k) *Shareholders of Federal stock savings associations.*—(1) *Shareholder meetings.* A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at any convenient place the board of directors may designate.

(2) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (i)(3) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the shareholder notice requirement.

(3) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a

determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(4) *Voting lists.* (i) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the association shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a Federal stock association that is wholly owned shall not be subject to the voting list requirements.

(ii) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (j)(4)(i) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(5) *Shareholder quorum.* A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(6) *Shareholder voting*—(i) *Proxies.* Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(ii) *Shares controlled by association.* Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(7) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

(8) *Informal action by stockholders.* If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

(l) *Board of directors.* (1) *General powers and duties.* The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting. Directors need not be stockholders unless the bylaws so require.

(2) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the OTS, prior to July 21, 2011 or the OCC. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually.

(3) *Regular meetings.* The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(4) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the OCC.

(5) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(6) *Removal or resignation of directors.* (i) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as termination for cause is defined in § 5.21(j)(1)(x)(B), by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Associations may provide for procedures regarding resignations in the bylaws.

(ii) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(iii) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections

thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(7) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees. No committee shall have the authority of the board of directors with reference to: The declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(8) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for electronic participation at a meeting.

(9) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(10) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(11) *Age limitation on directors.* A Federal association may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

(m) *Officers.* (1) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same person and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president.

(2) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, as termination for cause is defined in § 5.21(j)(1)(x)(B), shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall conform with 12 CFR 163.39.

(3) *Age limitation on officers.* A Federal association may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

(n) *Certificates for shares and their transfer*—(1) *Certificates for shares.* Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the OCC. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(2) *Transfer of shares.* Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

■ 9. Section 5.23 is added to read as follows:

§ 5.23 Conversion to Become a Federal Savings Association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 2903, and 5412(b)(2)(B).

(b) *Scope.* (1) This section describes procedures and standards governing OCC review and approval of an application by a mutual depository institution to convert to a Federal mutual savings association or an application by a stock depository institution to convert to a Federal stock savings association.

(2) As used in this section, depository institution means any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(c) *Licensing requirements.* A depository institution that is mutual in form (‘‘mutual depository institution’’) shall submit an application and obtain prior OCC approval to convert to a Federal mutual savings association. A stock depository institution shall submit an application and obtain prior OCC approval to convert to a Federal stock association. At the time of conversion, the applicant must have deposits insured by the Federal Deposit Insurance Corporation (FDIC). An institution that is not already insured by the FDIC must apply to the FDIC, and obtain FDIC approval, for deposit insurance before converting.

(d) *Conversion of a mutual depository institution or a stock depository institution to a Federal savings association.*—(1) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a Federal

savings association charter by another financial institution that can operate safely and soundly as a Federal savings association in compliance with applicable laws, regulations, and policies. This includes consideration of the factors set out in section 5(e) of the Home Owners' Loan Act, 12 U.S.C. 1464(e). The converting financial institution must obtain all necessary regulatory and shareholder or member approvals. The OCC may deny an application by any mutual depository institution or stock depository institution to convert to a Federal mutual savings association charter or Federal stock association charter, respectively, on the basis of the standards for denial set forth in § 5.13(b) or when conversion would permit the applicant to escape supervisory action by its current regulators.

(2) *Procedures.* (i) *Prefiling communications.* The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held in the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(ii) *Application.* A mutual depository institution or a stock depository institution shall submit its application to convert to a Federal mutual savings association or Federal stock depository association, respectively, to the appropriate OCC licensing office and shall send a copy of the application to its current appropriate Federal banking agency. The application must:

(A) Be signed by the president or other duly authorized officer;

(B) Identify each branch that the resulting financial institution expects to operate after conversion;

(C) Include the institution's most recent audited financial statements (if any);

(D) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(E) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of state-chartered institutions, the conversion is not in contravention of applicable state law, or in the case of Federally-chartered institutions, the conversion is not in contravention of applicable Federal law;

(F) State whether the institution wishes to exercise fiduciary powers after the conversion;

(G) Identify all subsidiaries, service corporation investments, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities and the service corporation investments and other equity investments that would be required if the converting mutual institution or stock institution were a Federal mutual savings association or Federal stock savings association, respectively, establishing each subsidiary or making each service corporation or other equity investment pursuant to §§ 5.35, 5.36, 5.38, or 5.59, or other applicable law and regulation;

(H) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in, and describe the plans to retain or divest those assets and activities;

(I) Include a business plan if the converting institution has been operating for less than three years, plans to make significant changes to its business after the conversion, or at the request of the OCC;

(J) Include a list of all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether any such actions prohibit conversion under 12 U.S.C. 35, and the converting institution's plans regarding adhering to such conditions and requirements after conversion; and

(K) If the converting institution does not meet the qualified thrift lender test of 12 U.S.C. 1467a(m), include a plan to achieve compliance within a reasonable period of time and a request for an exception from the OCC.

(iii) The OCC may permit a Federal savings association to retain nonconforming assets of a converting institution for the time period prescribed by the OCC following a conversion, subject to conditions and an OCC determination of the carrying value of the retained assets consistent with the requirements of section 5(c) of the HOLA relating to loans and investments. The OCC may permit a Federal savings association to continue nonconforming activities of a converting institution for the time period prescribed by the OCC following a conversion, subject to conditions.

(iv) Approval for an institution to convert to a Federal savings association expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(v) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements and any other conditions, the OCC issues a charter. The charter provides that the institution is authorized to begin conducting business as a Federal mutual savings association or a Federal stock savings association as of a specified date.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(4) *Expedited review.* An application by an eligible national bank to convert to a Federal savings association charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(e) *Conversion of a mutual depository institution to a Federal mutual savings association—supplemental rules.* In addition to the rules and procedures set forth in § 5.23(d), an applicant converting from a mutual depository institution to a mutual savings association shall comply with the following: After a Federal charter is issued to a converting institution, the association's members shall after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take care of all other actions necessary to fully effectuate the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter, the board of directors shall meet, elect officers, and transact any other appropriate business.

(f) *Continuation of business and entity.* The existence of the converting institution shall continue in the resulting Federal savings association. The resulting Federal savings association shall be considered the same business and entity as the converting institution, although as to rights, powers, and duties, the resulting Federal savings association is a Federal savings association. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible,

including choses in action, rights, and credits) of the converting institution become assets and property of the resulting Federal savings association when the conversion occurs. Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the Federal savings association when the conversion occurs.

■ 10. Section 5.24 is revised to read as follows:

§ 5.24. Conversion to Become a National Bank.

(a) *Authority.* 12 U.S.C. 35, 93a, 214a, 214b, 214c, and 2903.

(b) *Licensing requirements.* A state bank, a stock state savings association, or a Federal stock savings association shall submit an application and obtain prior OCC approval to convert to a national bank charter.

(c) *Scope.* (1) This section describes procedures and standards governing OCC review and approval of an application by a state bank, a stock state savings association, or a Federal stock savings association to convert to a national bank charter.

(2) As used in this section, *state bank* includes a state bank as defined in 12 U.S.C. 214(a).

(d) *Policy.* Consistent with the OCC's chartering policy, it is OCC policy to allow conversion to a national bank charter by another financial institution that can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. A converting financial institution also must obtain all necessary regulatory and shareholder approvals. The OCC may deny an application by any state bank, stock state savings association, and any Federal stock savings association to convert to a national bank charter on the basis of the standards for denial set forth in § 5.13(b), or when conversion would permit the applicant to escape supervisory action by its current regulators.

(e) *Procedures*—(1) *Prefiling communications.* The applicant should consult with the appropriate OCC licensing office prior to filing if it anticipates that its application will raise unusual or complex issues. If a prefiling meeting is appropriate, it will normally be held at the OCC licensing office where the application will be filed, but may be held at another location at the request of the applicant.

(2) *Application.* A state bank, a stock state savings association, or a Federal stock savings association shall submit its application to convert to a national bank to the appropriate OCC licensing office and send a copy to its current appropriate Federal banking agency. The application must:

(i) Be signed by the president or other duly authorized officer;

(ii) Identify each branch that the resulting bank expects to operate after conversion;

(iii) Include the institution's most recent audited financial statements (if any);

(iv) Include the latest report of condition and report of income (the most recent daily statement of condition will suffice if the institution does not file these reports);

(v) Unless otherwise advised by the OCC in a prefiling communication, include an opinion of counsel that, in the case of a state bank, the conversion is not in contravention of applicable state law, or in the case of a Federal stock savings association, the conversion is not in contravention of applicable Federal law;

(vi) State whether the institution wishes to exercise fiduciary powers after the conversion;

(vii) Identify all subsidiaries, bank service company investments, and other equity investments that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities, the bank service company investments, and the other equity investments that would be required if the converting bank or savings association were a national bank establishing each subsidiary or making each bank service company investment or other equity investment pursuant to §§ 5.34, 5.35, 5.36, 5.39, 12 CFR part 1, or other applicable law and regulation;

(viii) Identify any nonconforming assets (including nonconforming subsidiaries) and nonconforming activities that the institution engages in and describe the plans to retain or divest those assets and activities;

(ix) Include a business plan if the converting institution has been operating for fewer than three years or plans to make significant changes to its business after the conversion; and

(x) List all outstanding conditions or other requirements imposed by the institution's current appropriate Federal banking agency and, if applicable, current state bank supervisor or state attorney-general in any cease and desist order, written agreement, other formal enforcement order, memorandum of understanding, approval of any application, notice or request, commitment letter, board resolution, or in any other manner, including the converting institution's analysis whether the conversion is prohibited under 12 U.S.C. 35, and state the institution's plans regarding adhering to such conditions or requirements after conversion.

(3) The OCC may permit a national bank to retain nonconforming assets of a state bank or stock state savings association, subject to conditions and an OCC determination of the carrying value of the retained assets, pursuant to 12 U.S.C. 35. The OCC may permit a national bank to continue nonconforming activities of a state bank or stock state savings association, or to retain the nonconforming assets or nonconforming activities of a Federal stock savings association, for a reasonable period of time following a conversion, subject to conditions imposed by the OCC.

(4) Approval for an institution to convert to a national bank expires if the conversion has not occurred within six months of the OCC's approval of the application, unless the OCC grants an extension of time.

(5) When the OCC determines that the applicant has satisfied all statutory and regulatory requirements, including those set forth in 12 U.S.C. 35, and any other conditions, the OCC issues a charter certificate. The certificate provides that the institution is authorized to begin conducting business as a national bank as of a specified date.

(f) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all of §§ 5.8, 5.10, and 5.11 apply.

(g) *Expedited review.* An application by an eligible savings association to convert to a national bank charter is deemed approved by the OCC as of the 60th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(h) *Continuation of business and corporate entity.* The corporate existence of the converting institution shall continue in the resulting national bank. The resulting national bank shall be considered the same business and corporate entity as the converting institution, although as to rights, powers, and duties, the resulting national bank is a national bank. Any and all of the assets and other property (whether real, personal, mixed, tangible or intangible, including choses in action, rights, and credits) of the converting institution become assets and property of the resulting national bank when the conversion occurs.

Similarly, any and all of the obligations and debts of and claims against the converting institution become obligations and debts of and claims against the national bank when the conversion occurs.

■ 11. Section 5.25 is added to read as follows:

§ 5.25 Conversion from a National Bank or Federal Savings Association.

(a) *Authority.* 12 U.S.C. 93a, 214a, 214b, 214c, 214d, 1462a, 1463, 1464, and 5412(b)(2)(B).

(b) *Licensing Requirement.* A national bank shall give notice to the OCC before converting to a state bank (including a state bank as defined in 214(a)), a state savings association, or a Federal savings association. A Federal savings association shall give notice to the OCC before converting to a state savings association, a state bank, or a national bank. A Federal mutual savings association that plans to convert to a stock state bank or a national bank must first convert to a Federal stock savings association under 12 CFR part 192.

(c) *Scope.* This section describes the procedures for a national bank seeking to convert to a state bank or a state savings association or for a Federal savings association seeking to convert to a state savings association or a state bank. In addition, this section, along with procedures in 5.24 and 5.23, describes procedures for conversions between national banks and Federal stock savings associations.

(d) *Conversions of a national bank to a state bank or state savings association or of a Federal savings association to a state savings association or state bank*—(1) *Procedure for national banks.* A national bank may convert to a state bank (including a state bank as defined in 214(a)) or a state savings association in accordance with 12 U.S.C. 214a and 214c, without prior OCC approval, subject to compliance with 12 U.S.C. 214d. Termination of a national bank's status as a national bank occurs upon the bank's completion of the requirements of 12 U.S.C. 214a, and upon the OCC's receipt of the bank's national bank charter in connection with the consummation of the conversion.

(2) *Procedure for Federal savings associations.* A Federal savings association may convert to a state savings association or to a state bank, without prior OCC approval, subject to compliance with 12 U.S.C. 1464(i)(6). Termination of a Federal savings association's status as a Federal savings association occurs upon receipt of the Federal savings association's charter in connection with the consummation of the conversion.

(3) *Notice of intent.* (i) A national bank that desires to convert to a state bank (including a state bank as defined in 214(a)) or state savings association, or a Federal savings association that desires to convert to a state savings association or a state bank, shall submit a notice of intent to convert to the appropriate OCC licensing office. The national bank or Federal savings association shall file this notice with the OCC at the time it files a conversion application with the appropriate state authority or the prospective appropriate Federal banking agency. The national bank or Federal savings association also shall transmit a copy of the conversion application to the prospective appropriate Federal banking agency if it has not already done so.

(ii) The notice shall include:

(A) A copy of the conversion application; and

(B) An analysis demonstrating that the conversion is in compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(4) *Consultation.* The OCC may consult with the appropriate state authorities or the prospective appropriate Federal banking agency regarding the proposed conversion.

(5) *Termination of status.* After receipt of the notice, the appropriate OCC licensing office provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings association.

(e) *Conversions between national banks and Federal savings associations*—(1) *National bank to Federal savings association.* (i) A national bank may convert to a Federal stock savings association. A national bank that desires to convert to a Federal stock savings association shall follow the requirements and procedures set forth in 12 U.S.C. 214a as if it were converting to a state bank and submit a notice to the appropriate OCC licensing office demonstrating compliance with the applicable requirements of 12 U.S.C. 214a.

(ii) A national bank desiring to convert to a Federal stock savings association shall also file an application for prior OCC approval to convert under 12 CFR 5.23.

(2) *Federal savings association to a national bank.* (i) A Federal stock savings association may convert to a national bank. A Federal savings association that desires to convert to a national bank shall submit a notice to the appropriate OCC licensing office demonstrating compliance with laws of the applicable jurisdictions regarding the permissibility, requirements, and procedures for conversions, including any applicable stockholder or account holder approval requirements.

(ii) A Federal stock savings association that desires to convert to a national bank shall also file an application for prior OCC approval to convert under 12 CFR 5.24.

(3) *Termination and change of status.* The appropriate OCC licensing office provides instructions to the converting national bank or Federal savings association for terminating its status as a national bank or Federal savings association and beginning its status as a Federal savings association or national bank, respectively.

(f) *Exceptions to rules of general applicability.* Sections 5.5 through 5.8 and 5.10 through 5.13 do not apply to this section.

■ 12. Section 5.26 is revised to read as follows:

§ 5.26 Fiduciary powers of national banks and Federal savings associations.

(a) *Authority.* 12 U.S.C. 92a and 1462a, 1463, 1464(n), and 5412(b)(2)(B).

(b) *Licensing requirements.* A national bank or Federal savings association must submit an application and obtain prior approval from, or in certain circumstances file a notice with, the OCC in order to exercise fiduciary powers. No approval or notice is required in the following circumstances:

(1) Where two or more national banks consolidate or merge, and any of the national banks has, prior to the consolidation or merger, received OCC approval to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting national bank may exercise fiduciary powers in the same manner and to the same extent as the national bank to which approval was originally granted;

(2) Where two or more Federal savings associations consolidate or merge, and any of the Federal savings associations has, prior to the consolidation or merger, received approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers and that approval is in force at the time of the consolidation or merger, the resulting Federal savings association may exercise fiduciary powers in the same manner and to the same extent as the Federal savings association to which approval was originally granted;

(3) Where a national bank with prior OCC approval to exercise fiduciary

powers is the resulting bank in a merger or consolidation with a state bank, state savings association, or Federal savings association and the national bank will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted; and

(4) Where a Federal savings association with prior approval from the OCC or the Office of Thrift Supervision to exercise fiduciary powers is the resulting savings association in a merger or consolidation with a state bank, state savings association, or national bank and the Federal savings association will exercise fiduciary powers in the same manner and to the same extent to which approval was originally granted.

(c) *Scope.* This section sets forth the procedures governing OCC review and approval of an application, and in certain cases the filing of a notice, by a national bank or Federal savings association to exercise fiduciary powers. Fiduciary activities of national banks are subject to the provisions of 12 CFR part 9. Fiduciary activities of Federal savings associations are subject to the provisions of 12 CFR part 150.

(d) *Policy.* The exercise of fiduciary powers is primarily a management decision of the national bank or Federal savings association. The OCC generally permits a national bank or Federal savings association to exercise fiduciary powers if the bank or savings association is operating in a satisfactory manner, the proposed activities comply with applicable statutes and regulations, and the bank or savings association retains qualified fiduciary management.

(e) *Procedure*—(1) *General.* The following institutions must obtain approval from the OCC in order to offer fiduciary services to the public: (i) A national bank or Federal savings association without fiduciary powers:

(ii) A national bank without fiduciary powers that desires to exercise fiduciary powers as the resulting bank after merging with a state bank, state savings association, or Federal savings association with fiduciary powers or a Federal savings association without fiduciary powers that desires to exercise fiduciary powers as the resulting savings association after merging with a state bank, state savings association or national bank;

(iii) A national bank that results from the conversion of a state bank or a state or Federal savings association that was exercising fiduciary powers prior to the conversion or a Federal savings association that results from a conversion of a state or national bank or a state savings association that was exercising fiduciary powers prior to the conversion; and

(iv) A national bank or Federal savings association that has received approval from the OCC to offer limited fiduciary services that desires to offer full fiduciary services.

(2) *Application.* (i) Except as provided in paragraph (e)(2)(ii) of this section, a national bank or Federal savings association that desires to exercise fiduciary powers shall submit to the OCC an application requesting approval. The application must contain:

(A) A statement requesting full or limited powers (specifying which powers);

(B) A statement that the capital and surplus of the national bank or Federal savings association is not less than the capital and surplus required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) Sufficient biographical information on proposed trust management personnel to enable the OCC to assess their qualifications;

(D) A description of the locations where the national bank or Federal savings association will conduct fiduciary activities;

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or state law, including citations to applicable law; and

(F) Any other information necessary to enable the OCC to sufficiently assess the factors described in (e)(2)(iii).

(ii) If approval to exercise fiduciary powers is desired in connection with any other transaction subject to an application under this part, the applicant covered under paragraph (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this section may include a request for approval of fiduciary powers, including the information required by paragraph (e)(2)(i) of this section, as part of its other application. The OCC does not require a separate application requesting approval to exercise fiduciary powers under these circumstances.

(iii) When reviewing any application filed under this section, the OCC considers factors such as the following:

(A) The financial condition of the national bank or Federal savings association;

(B) The adequacy of the national bank's or Federal savings association's capital and surplus and whether it is sufficient under the circumstances and not less than the capital and surplus required by state law or state banks, trust companies, and other corporations exercising comparable fiduciary powers;

(C) The character and ability of proposed trust management, including qualifications, experience, and competency. The OCC must approve any trust management change the bank or savings association makes prior to commencing trust activities;

(D) The adequacy of the proposed business plan, if applicable;

(E) The needs of the community to be served; and

(F) Any other factors or circumstances that the OCC considers proper.

(3) *Expedited review.* An application by an eligible national bank or eligible Federal savings association to exercise fiduciary powers is deemed approved by the OCC as of the 30th day after the application is received by the OCC, unless the OCC notifies the bank or savings association prior to that date that the filing is not eligible for expedited review under § 5.13(a)(2).

(4) *Permit.* Approval of an application under this section constitutes a permit under 12 U.S.C. 92a for national banks and 12 U.S.C. 1464(n) for Federal savings associations to conduct the fiduciary powers requested in the application.

(5) *Notice required.* A national bank or Federal savings association that has ceased to conduct previously approved fiduciary powers for 18 consecutive months must provide the OCC with a notice describing the nature and manner of the activities proposed to be conducted and containing the information required by paragraph (e)(2)(i) of this section 60 days prior to commencing any fiduciary activity.

(6) *Notice of fiduciary activities in additional states.* (i) No further application under this section is required when a national bank or Federal savings association with existing OCC approval to exercise fiduciary powers plans to engage in any of the activities specified in § 9.7(d) of this chapter or to conduct activities ancillary to its fiduciary business, in a state in addition to the state described in the application for fiduciary powers that the OCC has approved.

(ii) Unless the national bank or Federal savings association provides notice through other means (such as a merger application), the national bank or Federal savings association shall provide written notice to the OCC no later than ten days after it begins to engage in any of the activities specified in § 9.7(d) of this chapter in a state in addition to the state described in the application for fiduciary powers that the OCC has approved. The written notice must identify the new state or states involved, identify the fiduciary activities to be conducted, and describe the extent to which the activities differ materially from the fiduciary activities

the national bank or Federal savings association previously conducted.

(iii) No notice is required if the national bank or Federal savings association is conducting only activities ancillary to its fiduciary business through a trust representative office or otherwise.

(7) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(8) *Expiration of approval.* Approval expires if a national bank or Federal savings association does not commence fiduciary activities within 18 months from the date of approval, unless the OCC grants an extension of time.

■ 13. Section 5.30 is revised to read as follows:

§ 5.30 Establishment, acquisition, and relocation of a branch of a national bank.

(a) *Authority.* 12 U.S.C. 1–42 and 2901–2907.

(b) *Licensing requirements.* A national bank shall submit an application and obtain prior OCC approval in order to establish or relocate a branch.

(c) *Scope*—(1) *General.* This section describes the procedures and standards governing OCC review and approval of an application by a national bank to establish a new branch or to relocate a branch.

(2) *Branch established through a conversion or business combination.* The standards of this section governing review and approval of applications by the OCC and, as applicable, 12 U.S.C. 36(b), but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.24 or a business combination approved under § 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.24 or 5.33.

(d) *Definitions*—(1) *Branch* includes any branch bank, branch office, branch agency, additional office, or any branch place of business established by a national bank in the United States or its territories at which deposits are received, checks paid, or money lent.

(i) A branch established by a national bank includes a mobile facility, temporary facility, intermittent facility, drop box or a seasonal agency as described in 12 U.S.C. 36(c).

(ii) A facility otherwise described in this paragraph (d)(1) is not a branch if:

(A) The bank establishing the facility does not permit members of the public to have physical access to the facility for purposes of making deposits, paying checks, or borrowing money (*e.g.,* an office established by the bank that receives deposits only through the mail); or

(B) It is located at the site of, or is an extension of, an approved main office or branch office of the national bank. The OCC determines whether a facility is an extension of an existing main office or branch office on a case-by-case basis. For this purpose, the OCC will consider a drive-in or pedestrian facility located within 500 feet of a public entrance to an existing main office or branch office to be an extension of the existing main office or branch office, provided the functions performed at the drive-in or pedestrian facility are limited to functions that are ordinarily performed at a teller window.

(iii) A branch does not include an automated teller machine (ATM), a remote service unit (such as an automated loan machine or personal computer used in providing financial services), a loan production office, a deposit production office, a trust office, an administrative office, a data processing office, or any other office that does not engage in any of the activities in paragraph (d)(1) of this section.

(2) *Home state* means the state in which the national bank's main office is located.

(3) *Intermittent branch* means a branch that is operated by a national bank for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a state fair on state fairgrounds or at a fixed site adjacent to the fairgrounds.

(4) *Messenger service* has the meaning set forth in 12 CFR 7.1012.

(5) *Mobile branch* is a branch of a national bank, other than a messenger service branch, that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

(6) *Temporary branch* means a branch of a national bank that is located at a fixed site and which, from the time of its opening, is scheduled to, and will, permanently close no later than a certain date (not longer than one year after the branch is first opened) specified in the branch application and the public notice.

(e) *Policy.* In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a national bank to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) *Procedures*—(1) *General.* Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(2) *Messenger services.* A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (*See* 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches.* If a national bank proposes to establish a branch jointly with one or more national banks or other depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Intermittent branches.* Prior to operating an intermittent branch, a national bank shall file a branch application and publish notice in accordance with § 5.8, both of which shall identify the event at which the branch will be operated; designate a location for operation of the branch which shall be on the grounds or premises at which the event is held or on a fixed site adjacent to those grounds or premises; and specify the approximate time period during which the event will be held and during which

the branch will operate, including whether operation of the branch will be on an annual or otherwise recurring basis. If the branch is approved, then the bank need not obtain approval each time it seeks to operate the branch in accordance with the original application and approval.

(5) *Authorization.* The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(6) *Expedited review.* An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches.* A national bank that seeks to establish and operate a *de novo* branch in any state other than the bank's home state or a state in which the bank already has a branch shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability.* (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(j) *Branch closings.* A national bank shall comply with the requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

■ 14. Section 5.31 is added to read as follows:

§ 5.31 Establishment, acquisition, and relocation of a branch and establishment of an agency office of a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464. 2901–2907 and 5412(b)(2)(B).

(b) *Licensing requirements.* A Federal savings association shall submit an application and obtain prior OCC approval in order to establish or relocate a branch or to establish an agency office or conduct additional activities at an agency office, if required under this section.

(c) *Scope*—(1) *General.* This section describes the procedures and standards governing OCC review and approval of an application by a Federal savings association to establish a new branch or to relocate a branch and the circumstances in which a Federal savings association may establish or relocate a branch without application to the OCC. It also describes the authority of a Federal savings association to establish an agency office.

(2) *Branch established through a conversion or business combination.* The standards of this section governing review and approval of applications by the OCC, but not the application procedures set forth in this section, apply to branches acquired or retained in a conversion approved under 12 CFR 5.23 or a business combination approved under 12 CFR 5.33. A branch acquired or retained in a conversion or business combination is subject to the application procedures set forth in §§ 5.23 or 5.33.

(3) *Branching by savings associations in the District of Columbia.* This section also implements section 5(m) of the HOLA, 12 U.S.C. 1464(m), addressing branching by savings associations in the District of Columbia.

(d) *Definitions*—(1) A *branch office* of a Federal savings association for purposes of this section is a branch office as defined in 12 CFR 145.92(a).

(2) *Home state* means the state in which the Federal savings association's home office is located.

(e) *Policy.* In determining whether to approve an application to establish or relocate a branch, the OCC is guided by the following principles:

(1) Maintaining a safe and sound banking system;

(2) Encouraging a Federal savings association to provide fair access to financial services by helping to meet the credit needs of its entire community;

(3) Ensuring compliance with laws and regulations; and

(4) Promoting fair treatment of customers including efficiency and better service.

(f) *Procedures*—(1) *Application requirements.* (i) Except as provided in paragraph (f)(2) of this section, each Federal savings association proposing to establish or relocate a branch shall submit to the appropriate OCC licensing office a separate application for each proposed branch.

(ii) *Authorization.* The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(iii) *Expedited review.* An application submitted by an eligible Federal savings association to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the savings association prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(2) *Exceptions.* A Federal savings association is not required to submit an application and receive OCC approval under the following circumstances:

(i) *Drive-in or pedestrian offices.* A Federal savings association may establish a drive-in or pedestrian office that is located within 500 feet of a public entrance to its existing home or branch office, provided the functions performed at the office are limited to functions that are ordinarily performed at a teller window.

(ii) *Short-distance relocation.* A Federal savings association may change the permanent location of an existing branch office to a site that is within the market area and short-distance location area, as defined in § 5.3(l).

(iii) *Highly-rated Federal savings associations.* A Federal savings association that is an eligible savings association as defined in § 5.3(g) may change the permanent location of, or establish a new, branch office if it meets all of the following requirements:

(A) It published a public notice under § 5.8 of its intent to change the location of the branch office or establish a new

branch office. The public notice must be published at least 35 days before the proposed action establishment or relocation. If the notice is published more than 12 months before the proposed action, the publication is invalid.

(B) If the Federal savings association intends to change the location of an existing branch office, it must post a notice of its intent in a prominent location in the existing office to be relocated. This notice must be posted for 30 days from the date of publication of the initial public notice described in paragraph (f)(2)(iii)(A) of this section.

(C)(*1*) No person files a comment opposing the proposed action within 30 days after the date of the publication of the public notice; or

(*2*) A person files a comment opposing the proposed action and the OCC determines that the comment raises issues that are not relevant to the approval standards for an application for a branch or that OCC action in response to the comment is not required.

(g) *Exceptions to rules of general applicability.* (1) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the savings association cannot provide services or must curtail banking services.

(2) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a Federal savings association with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(h) *Expiration of approval.* Approval expires if a branch has not commenced business within 18 months after the date of approval unless the OCC grants an extension.

(i) *Branch closings.* A Federal savings association shall comply with the applicable requirements of 12 U.S.C. 1831r–1 with respect to procedures for branch closings.

(j) *Section 5(m) of the HOLA.* (1) Under section 5(m)(1) of the HOLA (12 U.S.C. 1464(m)(1)), no savings association may establish or move any branch in the District of Columbia or move its principal office in the District of Columbia without the OCC's prior written approval.

(2) Any Federal savings association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section. Any state savings association that must obtain approval of the OCC under 12 U.S.C. 1464(m)(1) shall follow the application procedures of this section as if it were a Federal savings association.

(k) *Agency offices.* (1) *General.* A Federal savings association may establish or maintain an agency office to engage in one or more of the following activities:

(i) Servicing, originating, or approving loans and contracts;

(ii) Managing or selling real estate owned by the Federal savings association; and

(iii) Conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with § 5.26(e).

(2) *Additional services*—(i) *General.* A Federal savings association may request, and the OCC may approve, any service not listed in paragraph (k)(1) of this section, except for payment on savings accounts.

(ii) *Application required.* A Federal savings association desiring to engage in such additional services shall submit an application to the appropriate OCC licensing office.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to filings under this paragraph 5.31(k)(2). However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(3) *Records.* A Federal savings association must maintain records of all business it transacts at an agency office. It must maintain these records at the agency office, and must transmit copies to a home or branch office.

■ 15. Section 5.32 is amended by:

■ a. Adding paragraph (d)(4): and

■ b. Removing, in paragraph (h)(2), the phrase ''to the appropriate district office'' and inserting in its place the phrase ''to the appropriate OCC licensing office''.

The addition reads as follows:

§ 5.32 Expedited procedures for certain reorganizations of a national bank.

* * * * *

(d) * * *

(4) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

* * * * *

■ 16. Section 5.33 is revised to read as follows:

§ 5.33 Business combinations involving a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 24(Seventh), 93a, 181, 214a, 214b, 215, 215a, 215a–1, 215a–3, 215b, 215c, 1462a, 1463, 1464, 1467a, 1828(c), 1831u, 2903, and 5412(b)(2)(B).

(b) *Scope.* This section sets forth the provisions governing business combinations and the standards for:

(1) OCC review and approval of an application by a national bank or a Federal savings association for a business combination resulting in a national bank or Federal savings association; and

(2) Requirements of notices and other procedures for national banks and Federal savings associations involved in other combinations in which a national bank or Federal savings association is not the resulting institution.

(c) *Licensing requirements.* As prescribed by this section, a national bank or Federal savings association shall submit an application and obtain prior OCC approval for a business combination when the resulting institution is a national bank or Federal savings association. As prescribed by this section, a national bank or Federal savings association shall give notice to the OCC prior to engaging in an other combination where the resulting institution will not be a national bank or Federal savings association.[1] A national bank shall submit an application and obtain prior OCC approval for any merger between the national bank and one or more of its nonbank affiliates.

(d) *Definitions*—For purposes of this § 5.33:

(1) *Bank* means any national bank or any state bank.

(2) *Business combination* means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is a national bank or Federal savings association;

(ii) In the case of a Federal savings association, any merger or consolidation with a credit union in which the resulting institution is a Federal savings association;

[1] Other combination transactions do not require an application under this section. However, some may require an application under 12 CFR 5.53.

(iii) In the case of a national bank, any merger between a national bank and one or more of its nonbank affiliates;

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets of another depository institution;

(v) The assumption by a national bank or a Federal savings association of any deposit liabilities of another insured depository institution or any deposit accounts or other liabilities of a credit union or any other institution that will become deposits at the national bank or Federal savings association; or

(vi) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets, or the assumption of all or substantially all of the liabilities, of any company other than a depository institution, if the acquisition would cause the assets of the national bank or Federal savings association to increase by twenty-five percent or more.

(3) *Business reorganization* means either:

(i) A business combination between eligible banks and eligible savings associations, or between an eligible bank or an eligible savings association and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the combination; or

(ii) A business combination between an eligible bank or an eligible savings association and an interim national bank or interim Federal savings association chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank or eligible savings association for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank or eligible savings association (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank or savings association.

(4) *Company* means a corporation, limited liability company, partnership, business trust, association, or similar organization.

(5) For business combinations under § 5.33(g)(4) and (5), a company or shareholder is deemed to *control* another company if:

(i) Such company or shareholder, directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company, or

(ii) Such company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company. No company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

(6) *Credit union* means a financial institution subject to examination by the National Credit Union Administration Board.

(7) *Home state* means:

(i) With respect to a national bank, the state in which the main office of the national bank is located,

(ii) With respect to a Federal savings association, the state in which the home office of the Federal savings association is located, and

(iii) With respect to a state bank, a state savings association, or a state trust company, the state by which the bank, savings association, or trust company is chartered.

(8) *Interim national bank or interim Federal savings association* means a national bank or Federal savings association that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(9) *Nonbank affiliate* of a national bank means any company (other than a bank or Federal savings association) that controls, is controlled by, or is under common control with the national bank.

(10) *Other combination* means:

(i) Any merger or consolidation between a national bank or a Federal savings association and one or more depository institutions or state trust companies, in which the resulting institution is not a national bank or Federal savings association;

(ii) In the case of a Federal stock savings association, any merger or consolidation with a credit union in which the resulting institution is a credit union;

(iii) The transfer by a national bank or a Federal savings association of any deposit liabilities to another insured depository institution, a credit union or any other institution; or

(iv) The acquisition by a national bank or a Federal savings association of all, or substantially all, of the assets, or the assumption of all or substantially all of the liabilities, of any company other than a depository institution, if the acquisition would cause the assets of the national bank or Federal savings association to increase by less than twenty-five percent.

(11) *Savings association* and *state savings association* have the meaning set forth in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1).

(12) *State trust company* means a trust company organized under state law that is not engaged in the business of receiving deposits, other than trust funds.

(e) *Policy.* (1) *Factors.* (i) *General.* When the OCC evaluates any application for a business combination, the OCC considers the following factors:

(A) The capital level of any resulting national bank or Federal savings association;

(B) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(C) The purpose of the transaction;

(D) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(E) The effect of the transaction on the national bank or Federal savings association's shareholders, depositors, other creditors, and customers.

(ii) *Bank Merger Act.* When the OCC evaluates an application for a business combination under the Bank Merger Act, the OCC also considers the following factors:

(A) *Competition.* (*1*) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the Manual for procedures to expedite its competitive analysis.

(*2*) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank or Federal savings association will provide significantly improved, additional, or less costly services to the community.

(B) *Financial and managerial resources and future prospects.* The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.

(C) *Convenience and needs of community.* The OCC considers the probable effects of the business combination on the convenience and needs of the community served. The applicant shall describe these effects in its application, including any planned office closings or reductions in services following the business combination and the likely impact on the community. The OCC also considers additional relevant factors, including the resulting national bank's or Federal savings association's ability and plans to provide expanded or less costly services to the community.

(D) *Money laundering.* The OCC considers the effectiveness of any insured depository institution involved in the business combination in combating money laundering activities, including in overseas branches.

(E) *Financial stability.* The OCC considers the risk to the stability of the United States banking and financial system.

(F) *Deposit concentration limit.* The OCC will not approve a transaction that would violate the deposit concentration limit in 12 U.S.C. 1828(c)(13) for certain interstate merger transactions.

(iii) *Community Reinvestment Act.* When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC also considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

(2) *Acquisition and retention of branches.* An applicant shall disclose the location of any branch it will acquire and retain in a business combination, including approved but unopened branches. The OCC considers the acquisition and retention of a branch under the standards set out in § 5.30, but it does not require a separate application under § 5.30.

(3) *Subsidiaries.* (i) An applicant must identify any subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment to be acquired in a business combination and state the activities of each subsidiary or other company in which the applicant would be acquiring an investment. The OCC does not require a separate application or notice under §§ 5.34, 5.35, 5.36, 5.38, 5.39, 5.58, and 5.59.

(ii) An national bank applicant proposing to acquire, through a business combination, a subsidiary, financial subsidiary investment, bank service company investment, service corporation investment, or other equity investment of any entity other than a national bank must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.34, 5.35, 5.36, or 5.39.

(iii) A Federal savings association applicant proposing to acquire, through a business combination, a subsidiary, bank service company investment, service corporation investment, or other equity investment of any entity other than a Federal savings association must provide the same information and analysis of the subsidiary's activities, or of the investment, that would be required if the applicant were establishing the subsidiary, or making such investment, pursuant to §§ 5.35, 5.38, 5.58, or 5.59.

(4) *Interim national bank or interim Federal savings association*—(i) Application. An applicant for a business combination that plans to use an interim national bank or interim Federal savings association to accomplish the transaction shall file an application to organize an interim national bank or interim Federal savings association as part of the application for the related business combination.

(ii) *Conditional approval.* The OCC grants conditional preliminary approval to form an interim national bank or interim Federal savings association when it acknowledges receipt of the application for the related business combination.

(iii) *Corporate status.* An interim national bank or interim Federal savings association becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim national bank's duly executed articles of association and organization certificate or the Federal savings association's charter and bylaws. OCC acceptance occurs:

(A) On the date the OCC advises the interim national bank that its articles of association and organization certificate are acceptable or advises the interim Federal savings association that its charter and bylaws are acceptable; or

(B) On the date the interim national bank files articles of association and an organization certificate that conform to the form for those documents provided by the OCC in the Manual or the date the interim Federal savings association files a charter and bylaws that conform to the requirements set out in this part 5.

(iv) *Other corporate procedures.* An applicant should consult the Manual to determine what other information is necessary to complete the chartering of the interim national bank as a national bank or the interim Federal savings association as a Federal savings association.

(5) *Nonconforming assets.* (i) An applicant shall identify any nonconforming activities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank or Federal savings association to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following the business combination.

(ii) Any resulting Federal savings association shall conform to the requirements of sections 5(c) and 10(m) of the Home Owners' Loan Act (12 U.S.C. 1464(c) and 1467a(m)) within the time period prescribed by the OCC.

(6) *Fiduciary powers.* (i) An applicant shall state whether the resulting national bank or Federal savings association intends to exercise fiduciary powers pursuant to § 5.26(b). (ii) If an applicant intends to exercise fiduciary powers after the combination and requires OCC approval for such powers, the applicant must include the information required under § 5.26(e)(2).

(7) *Expiration of approval.* Approval of a business combination, and conditional approval to form an interim national bank or interim Federal savings association, if applicable, expires if the business combination is not consummated within six months after the date of OCC approval, unless the OCC grants an extension of time.

(8) *Adequacy of disclosure.* (i) An applicant shall inform shareholders of all material aspects of a business combination and shall comply with any applicable requirements of the Federal securities laws and securities regulations of the OCC. Accordingly, an applicant shall ensure that all proxy and information statements prepared in connection with a business combination do not contain any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(ii) A national bank or Federal savings association applicant with one or more classes of securities subject to the registration provisions of section 12(b) or (g) of the Securities Exchange Act of 1934, 15 U.S.C. 78l(b) or 78l(g), shall file preliminary proxy material or information statements for review with the Director, Securities and Corporate Practices Division, OCC, Washington, DC 20219. Any other applicant shall submit the proxy materials or information statements it uses in connection with the combination to the appropriate OCC licensing office no later than when the materials are sent to the shareholders.

(f) *Exceptions to rules of general applicability*—(1) *National bank or Federal savings association applicant*—(i) *In general.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10 and 5.11 apply.

(ii) *Statutory notice.* If an application is subject to the Bank Merger Act or to another statute that requires notice to the public, a national bank or Federal savings association applicant shall follow the public notice requirements contained in 12 U.S.C. 1828(c)(3) or the other statute and sections 5.8(b) through 5.8(e), 5.10, and 5.11.

(2) *Interim national bank or interim Federal savings association.* Sections 5.8, 5.10, and 5.11 do not apply to an application to organize an interim national bank or interim Federal savings association. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply. The OCC treats an application to organize an interim national bank or interim Federal savings association as part of the related application to engage in a business combination and does not require a separate public notice and public comment process.

(3) *State bank, or state savings association, state trust company, or credit union as resulting institution.* Sections 5.7 through 5.13 do not apply to transactions covered by paragraphs (g)(6) or (g)(7) of this section.

(g) *Provisions governing consolidations and mergers with different types of entities*—(1) *Consolidations and mergers under 12 U.S.C. 215 or 215a of a national bank with other national banks and state banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* (i) A national bank entering into a consolidation or merger authorized pursuant to 12 U.S.C. 215 or 215a, respectively, is subject to the approval procedures and requirements with respect to treatment of dissenting shareholders set forth in those provisions.

(ii) Any national bank that will not be the resulting bank in a consolidation or merger under 12 U.S.C. 215 or 215a shall provide a notice to the OCC under paragraph (k) of this section.

(2) *Consolidations and mergers of a national bank with Federal savings associations under 12 U.S.C. 215c resulting in a national bank.* (i) With the approval of the OCC, any national bank and any Federal savings association may consolidate or merge with a national bank as the resulting institution by complying with the following procedures:

(A) A national bank entering into the consolidation or merger shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a national bank.

(B)(*1*) A Federal savings association entering into the consolidation or merger shall comply with the requirements of paragraph (n) of this section and follow the procedures set out in paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) For purposes of this paragraph (g)(2), a combination in which a national bank acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of a Federal savings association shall be treated as a consolidation for the Federal savings association.

(ii) (A) National bank shareholders who dissent from a plan to consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 215 as if the Federal savings association were a national bank.

(B) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 215 or 215a as if the Federal savings association were a national bank.

(C) The OCC will conduct an appraisal or reappraisal of the value of the national bank or Federal savings association held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 215 or 215a, as applicable, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(iii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(3) *Consolidation or merger of a Federal savings association with another Federal savings association, a national bank, a state bank, a state savings association, a state trust company, or a credit union resulting in a Federal savings association*—(i) With the approval of the OCC, a Federal savings association may consolidate or merge with another Federal savings association, a national bank, a state bank, a state savings association, a state trust company, or a credit union with the Federal savings association as the resulting institution by complying with the following procedures:

(A)(*1*) The applicant Federal savings association shall comply with the requirements of paragraph 5.33(n) and follow the procedures set out in paragraph 5.33(o).

(*2*) For purposes of this paragraph (g)(3), a combination in which a Federal savings association acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of another other participating institution shall be treated as a consolidation for the acquiring Federal savings association and as a consolidation by a Federal savings association whose assets are acquired, if any.

(B)(*1*) A national bank entering into a merger or consolidation with a Federal savings association when the resulting institution will be a Federal savings association shall comply with the requirements of 12 U.S.C. 214a and 12 U.S.C. 214c as if the Federal savings association were a state bank. However, for these purposes the references in 12 U.S.C. 214c to ''law of the State in which such national banking association is located'' and ''any State authority'' mean ''laws and regulations governing Federal savings associations'' and ''Office of the Comptroller of the Currency'' respectively. The national bank also shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of

12 U.S.C. 214a as if the Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraphs.

(C)(*1*) A Federal savings association entering into a merger or consolidation with another Federal savings association when the resulting institution will be the other Federal savings association shall comply with the requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide a notice to the OCC under paragraph (k) of this section.

(*2*) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the other Federal savings association were a state bank. The OCC will conduct an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders in accordance with the provisions of 12 U.S.C. 214a, except that the costs and expenses of any appraisal or reappraisal may be apportioned and assessed by the Comptroller as he or she may deem equitable against all or some of the parties. In making this determination the Comptroller shall consider whether any party has acted arbitrarily or not in good faith in respect to the rights provided by this paragraph.

(*3*) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders of the Federal savings association.

(D)(*1*) A state bank, state savings association, state trust company, or credit union entering into a consolidation or merger with a Federal savings association when the resulting institution will be a Federal savings association shall follow the procedures for such consolidations or mergers set out in the law of the state or other jurisdiction under which the state bank, state savings association, state trust company, or credit union is organized.

(*2*) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the state bank, state savings association, or state trust company, entering into the consolidation or merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the state bank, state savings association, or state trust company is organized.

(ii) The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(4) *Mergers of a national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a national bank.* (i) With the approval of the OCC, a national bank may merge with one or more of its nonbank affiliates, with the national bank as the resulting institution, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. If the national bank is an insured bank, the transaction is also subject to approval by the FDIC under the Bank Merger Act, 12 U.S.C. 1828(c).

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 215a as if the nonbank affiliate were a state bank, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each institution participating in the merger shall be continued in the resulting national bank, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating institutions shall be transferred to the resulting national bank, as set forth in 12 U.S.C. 215a(a), (e), and (f) in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 215a(a), as if the nonbank affiliate were a state bank.

(5) *Mergers of an uninsured national bank with its nonbank affiliates under 12 U.S.C. 215a–3 resulting in a nonbank affiliate.* (i) With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.

(ii) A national bank entering into the merger shall follow the procedures of 12 U.S.C. 214a, as if the nonbank affiliate were a state bank, except as otherwise provided in this section.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv)(A) National bank shareholders who dissent from an approved plan to merge may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the nonbank affiliate were a state bank. The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in the merger if all parties agree that the determination is final and binding on each party and agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate involved in the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the resulting nonbank affiliate, and all the rights, franchises, property, appointments, liabilities, and other interests of the participating national bank shall be transferred to the resulting nonbank affiliate as set forth in 12 U.S.C. 214b, in the same manner and to the same extent as in a merger between a national bank and a state bank under 12 U.S.C. 214a, as if the nonbank affiliate were a state bank.

(6) *Consolidation or merger under 12 U.S.C. 214a of a national bank with a state bank resulting in a state bank as defined in 12 U.S.C. 214(a)*—(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a national bank with a state bank as defined in 12 U.S.C. 214(a) Termination of a national bank's existence and status as a national banking association is automatic, and its charter cancelled, upon completion of the statutory and regulatory

requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) *Procedures.* A national bank desiring to merge or consolidate with a state bank as defined in 12 U.S.C. 214(a) when the resulting institution will be a state bank shall comply with the requirements and follow the procedures of 12 U.S.C. 214a and 214c and shall provide notice to the OCC under paragraph (k) of this section.

(iii) *Dissenters' rights and appraisal procedures.* National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a. The OCC conducts an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders as provided for in 12 U.S.C. 214a.

(iv) *Liquidation account.* The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(7) *Consolidation or merger of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union resulting in a state bank, state savings bank, state savings association, state trust company, or credit union*—(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a Federal savings association with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements for engaging in the consolidation or merger and consummation of the consolidation or merger.

(ii) *Procedures.* (A) A Federal savings association desiring to merge or consolidate with a state bank, state savings bank, state savings association, state trust company, or credit union when the resulting institution will be a state institution or credit union shall comply with the requirements of paragraph (n) of this section and the procedures of paragraph (o) of this section and shall provide notice to the OCC under paragraph (k) of this section.

(B) For purposes of this paragraph (g)(7), a combination in which a state bank, state savings bank, state savings association, state trust company, or credit union acquires all or substantially all of the assets, or assumes all or substantially all of the liabilities, of a Federal savings association shall be treated as a consolidation by the Federal savings association.

(iii) *Dissenters' rights and appraisal procedures.* (A) Federal savings association shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their Federal savings association shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a national bank. The OCC conducts an appraisal or reappraisal of the value of the Federal savings association shares held by dissenting shareholders only if all parties agree that the determination will be final and binding. The parties shall also agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC.

(B) The plan of merger or consolidation must provide the manner of disposing of the shares of the resulting state institution not taken by the dissenting shareholders of the Federal savings association.

(iv) *Liquidation account.* The consolidation or merger agreement must address the effect upon, and the terms of the assumption of, any liquidation account of any participating institution by the resulting institution.

(h) *Interstate combinations under 12 U.S.C. 1831u.* A business combination between insured banks with different home states under the authority of 12 U.S.C. 1831u must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and either 12 U.S.C. 215, 215a, and 215a–1, as applicable, if the resulting bank is a national bank, or 12 U.S.C. 214a, 214b, and 214c if the resulting bank is a state bank. For purposes of 12 U.S.C. 1831u, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home state is the state in which the branch is located.

(i) *Expedited review for business reorganizations and streamlined applications.* A filing that qualifies as a business reorganization as defined in paragraph (d)(2) of this section, or a filing that qualifies as a streamlined application as described in paragraph (j) of this section, is deemed approved by the OCC as of the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the applicant that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application under this paragraph must contain all necessary information for the OCC to determine if it qualifies as a business reorganization or streamlined application.

(j) *Streamlined applications.* (1) An applicant may qualify for a streamlined business combination application in the following situations:

(i) At least one party to the transaction is an eligible bank or eligible Federal savings association, and all other parties to the transaction are eligible banks, eligible Federal savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;

(ii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application;

(iii) The acquiring bank or Federal savings association is an eligible bank or eligible Federal savings association, the target bank or savings association is not an eligible bank, eligible Federal savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or

(iv) In the case of a transaction under paragraph (g)(4) of this section, the acquiring bank is an eligible bank, the resulting national bank will be well

capitalized immediately following consummation of the transaction, the applicants in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

(2) Notwithstanding paragraph (j)(1) of this section, an applicant does not qualify for a streamlined business combination application if the transaction is part of a conversion under part 192 of this chapter.

(3) When a business combination qualifies for a streamlined application, the applicant should consult the Manual to determine the abbreviated application information required by the OCC. The OCC encourages prefiling communications between the applicants and the appropriate OCC licensing office before filing under paragraph (j) of this section.

(k) *Exit notice to OCC*—(1) *Notice required.* As provided in paragraphs (g)(1)(ii), (g)(2)(i)(B), (g)(3)(i)(B)(*1*), (g)(3)(i)(C)(*1*), (g)(6)(ii), and (g)(7)(ii) of this section, a national bank or Federal savings association engaging in a consolidation or merger in which it is not the applicant and the resulting institution must file a notice rather than an application to the appropriate OCC licensing office advising of its intention.

(2) *Timing of notice.* The national bank or Federal savings association shall submit the notice at the time the application to merge or consolidate is filed with the responsible agency under the Bank Merger Act, 12 U.S.C. 1828(c), or if there is no such filing then no later than 30 days prior to the effective date of the merger or consolidation.

(3) *Content of Notice.* The notice shall include the following: (i)(A) A short description of the material features of the transaction, the identity of the acquiring institution, the identity of the state or Federal regulator to whom the application was made, and the date of the application; or

(B) A copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger Act or other applicable statute:

(ii) The planned consummation date for the transaction;

(iii) Information to demonstrate compliance by the national bank or Federal savings association with applicable requirements to engage in the transactions (*e.g.,* board approval or shareholder or accountholder requirements); and

(iv) If the national bank or Federal savings association submitting the notice maintains a liquidation account established pursuant to part 192 of this chapter, the notice must state that the resulting institution will assume such liquidation account.

(4) *Termination of status.* The national bank or Federal savings association shall advise the OCC when the transaction is about to be consummated. Termination of a national bank's or Federal savings association's existence and status as a national banking association or Federal savings association is automatic, and its charter cancelled, upon completion of the statutory and regulatory requirements and consummation of the consolidation or merger. When the national bank or Federal savings association files the notice under paragraph (k)(2) of this section, the OCC provides instructions to the national bank or Federal savings association for terminating its status as a national bank or Federal savings, including surrendering its charter to the OCC immediately after consummation of the transaction.

(5) *Expiration.* If the action contemplated by the notice is not completed within six months after the OCC's receipt of the notice, a new notice must be submitted to the OCC, unless the OCC grants an extension of time.

(l) *Mergers and consolidations; transfer of assets and liabilities to the resulting institution.* (1) In any consolidation or merger in which the resulting institution is a national bank or Federal savings association, on the effective date of the merger or consolidation, all assets and property (real, personal and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each participating institution or which would inure to any of them, shall, immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting national bank or Federal savings association. The resulting national bank or Federal savings association shall be deemed to be a continuation of the entity of each participating institution, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith.

(2) The authority in paragraph (l)(1) is in addition to any authority granted by applicable statutes for specific transactions and is subject to the National Bank Act, the Home Owners' Loan Act, and other applicable statutes.

(m) *Certification of combination; effective date.* (1) When a national bank or Federal savings association is the applicant and will be the resulting entity in a consolidation or merger, after receiving approval from the OCC, it shall complete any remaining steps needed to complete the transaction, provide the OCC with a certification that all other required regulatory or shareholder approvals have been obtained, and inform the OCC of the planned consummation date.

(2) When the transaction is consummated, the applicant shall notify the OCC of the consummation date. The OCC will issue a letter certifying that the combination was effective on the date specified in the applicant's notice.

(n) *Authority for and certain limits on business combinations by Federal savings associations* (1) Federal savings associations may enter into business combinations only in accordance with this section, the Bank Merger Act, and sections 5(d)(3)(A) and 10(s) of the Home Owners' Loan Act.

(2) A Federal savings association may consolidate or merge with another depository institution, a state trust company or a credit union, or may engage in another business combination listed in paragraphs (d)(2)(iv), (v) and (vi) of this section or an other combination listed in paragraph (d)(10), provided that:

(i) The combination is in compliance with, and receives all approvals required under, any applicable statutes and regulations;

(ii) Any resulting Federal savings association meets the requirements for insurance of accounts; and

(iii) If any combining savings association is a mutual savings association, the resulting institution shall be a mutually held savings association, unless:

(A) The transaction is approved under part 192 governing mutual to stock conversions; or

(B) The transaction involves a mutual holding company reorganization under 12 U.S.C. 1467a(o).

(3) Where the resulting institution is a Federal mutual savings association, the OCC may approve a temporary increase in the number of directors of the resulting institution provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 5.21(e) within a reasonable period of time.

(4)(i) The Federal savings associations described in paragraph (m)(4)(ii) below must provide affected accountholders

with a notice of a proposed account transfer and an option of retaining the account in the transferring Federal savings association. The notice must allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring Federal savings association.

(ii) The following savings associations must provide the notices:

(A) A Federal mutual savings association transferring account liabilities to an institution the accounts of which are not insured by the Deposit Insurance Fund or the National Credit Union Share Insurance Fund; and

(B) Any Federal mutual savings association transferring account liabilities to a stock form depository institution.

(o) *Procedural requirements for Federal savings association approval of combinations*—(1) *Board approval.* Before a Federal savings association files a notice or application for any consolidation or merger, the combination and combination agreement must be approved by majority vote of the entire board of each constituent Federal savings association in the case of Federal stock savings associations or a two-thirds vote of the entire board of each constituent Federal savings association in the case of Federal mutual savings associations;

(2) *Change of name or home office.* If the name the resulting Federal savings association or the location of the home office of the resulting Federal savings association will be changed as a result of the business combination, the resulting Federal savings association shall amend its charter accordingly;

(3) *Shareholder vote*—(i) *General rule.* Except as otherwise provided in this paragraph (n)(3), an affirmative vote of two-thirds of the outstanding voting stock of any constituent Federal stock savings association shall be required for approval of a consolidation or merger. If any class of shares is entitled to vote as a class pursuant to § 152.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required vote shall be taken at a meeting of the savings association.

(ii) *General exception.* Stockholders of the resulting Federal stock savings association need not authorize a consolidation or merger if:

(A) It does not involve an interim Federal savings association or an interim state savings association;

(B) The association's charter is not changed;

(C) Each share of stock outstanding immediately prior to the effective date of the consolidation or merger is to be an identical outstanding share or a treasury share of the resulting Federal stock savings association after such effective date; and

(D) Either:

(*1*) No shares of voting stock of the resulting Federal stock savings association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or

(*2*) The authorized unissued shares or the treasury shares of voting stock of the resulting Federal stock savings association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the consolidation or merger.

(iii) *Exceptions for certain combinations involving an interim association.* Stockholders of a Federal stock savings association need not authorize by a two-thirds affirmative vote consolidations or mergers involving an interim Federal savings association or interim state savings association when the resulting Federal stock savings association is acquired pursuant to the regulations of the Board of Governors of the Federal Reserve System at 12 CFR 238.15(e) (relating to the creation of a savings and loan holding company by a savings association). In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock savings association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 5.22(g) of this part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(4) *Mutual member vote.* Notwithstanding any other provision of this section, the OCC may require that a consolidation, merger or other business combination be submitted to the voting members of any mutual savings association participating in the proposed transaction at duly called meetings and that the transaction, to be effective, must be approved by such voting members.

■ 17. Section 5.34 is revised to read as follows:

§ 5.34 Operating subsidiaries of a national bank.

(a) *Authority.* 12 U.S.C. 24 (Seventh), 24a, 25b, 93a, 3101 *et seq.*

(b) *Licensing requirements.* A national bank must file a notice or application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39. Unless provided otherwise, this section applies to a Federal branch or agency that acquires, establishes, or maintains any subsidiary that a national bank is authorized to acquire or establish under this section in the same manner and to the same extent as if the Federal branch or agency were a national bank, except that the ownership interest required in paragraphs (e)(2) and (e)(5)(i)(B) of this section shall apply to the parent foreign bank of the Federal branch or agency and not to the Federal branch or agency. The OCC may, at any time, limit a national bank's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) *Definitions.* For purposes of this § 5.34:

(1) *Authorized product* means a product that would be defined as insurance under section 302(c) of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1407) (GLBA) (15 U.S.C. 6712) that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal or national banks were in fact lawfully providing the product as principal, and as of that date no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide the product as principal. An authorized product does not include title insurance, or an annuity contract the income of which is subject to treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72).

(2) *Well capitalized* means the capital level described in 12 CFR 6.4 or, in the case of a Federal branch or agency, the capital level described in 12 CFR 4.7(b)(1)(iii).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) In the case of a national bank:

(A) The national bank has received a composite rating of 1 or 2 under the

Uniform Financial Institutions Rating System in connection with its most recent examination; or

(B) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(ii) In the case of a Federal branch or agency:

(A) The Federal branch or agency has received a composite ROCA supervisory rating (which rates risk management, operational controls, compliance, and asset quality) of 1 or 2 at its most recent examination; or

(B) In the case of a Federal branch or agency that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* (i) A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority, including:

(A) Providing authorized products as principal; and

(B) Providing title insurance as principal if the national bank or subsidiary thereof was actively and lawfully underwriting title insurance before November 12, 1999, and no affiliate of the national bank (other than a subsidiary) provides insurance as principal. A subsidiary may not provide title insurance as principal if the state had in effect before November 12, 1999, a law which prohibits any person from underwriting title insurance with respect to real property in that state.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The bank has the ability to control the management and operations of the subsidiary, and no other person or entity has the ability to control the management or operations of the subsidiary;

(B) The parent bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the bank's interest; and

(C) The operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.,* a bank service company under 12 U.S.C. 1861 *et seq.* or a financial subsidiary under section 5136A of the Revised Statutes (12 U.S.C. 24a)); and

(B) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(iii) Notwithstanding the requirements of paragraph (e)(2)(i),

(A) A national bank must have reasonable policies and procedures to preserve the limited liability of the bank and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a national bank and its operating subsidiaries to operate as a single entity.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank, unless otherwise specifically provided by statute, regulation, or published OCC policy, including sections 1044(e) and 1045 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 25b) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures*—(i) *National banks.* Pertinent book figures of the parent national bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, e.g., for purposes of 12 U.S.C. 56, 59, 60, 84, and 371d.

(ii) *Federal branches or agencies.* Transactions conducted by all of a foreign bank's Federal branches and agencies and State branches and agencies, and their operating subsidiaries, shall be combined for the purpose of applying any limitation or restriction as provided in 12 CFR 28.14.

(5) *Procedures*—(i) *Application required.* (A) Except for an operating subsidiary that qualifies for the notice procedures in paragraph (e)(5)(ii) of this section or is exempt from notice or application requirements under paragraph (e)(5)(vi) of this section, a national bank must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the bank ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than bank ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the notice procedures set forth in paragraph (e)(5)(ii), the bank must provide a statement explaining why it is not eligible. The application also must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank must also list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a

resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Notice process only for certain qualifying filings.* (A) Except for an operating subsidiary that is exempt from notice or application procedures under paragraph (e)(5)(vi) of this section, a national bank that is ''well capitalized'' and ''well managed'' may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate OCC licensing office written notice prior to, or within 10 days after, acquiring or establishing the subsidiary, or commencing the new activity, if:

(*1*) The activity is listed in paragraph (e)(5)(v) of this section;

(*2*) The entity is a corporation, limited liability company, or limited partnership; and

(*3*) The bank:

(*i*) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity has the ability to control the management or operations of the subsidiary;

(*ii*) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the bank or an operating subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(*iii*) Is required to consolidate its financial statements with those of the subsidiary under Generally Accepted Accounting Principles.

(B) The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent that the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank also must list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) *OCC review and approval.* The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible under Federal banking laws and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) *Activities eligible for notice.* The following activities qualify for the notice procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank:

(A) Holding and managing assets acquired by the parent bank or its operating subsidiaries, including investment assets and property acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the bank or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders, savings bonds, and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing courier services between financial institutions;

(F) Providing management consulting, operational advice, and services for other financial institutions;

(G) Providing check guaranty, verification and payment services;

(H) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates;

(I) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling;

(J) Providing tax planning and preparation services;

(K) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(L) Underwriting and reinsuring credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

(M) Leasing of personal property and acting as an agent or adviser in leases for others;

(N) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services;

(O) Underwriting and dealing, including making a market, in bank permissible securities and purchasing and selling as principal, asset backed obligations;

(P) Acting as an insurance agent or broker, including title insurance to the extent permitted under section 303 of the GLBA (15 U.S.C. 6713);

(Q) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A ''quota share agreement'' is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer;

(R) Acting as a finder pursuant to 12 CFR 7.1002 to the extent permitted by published OCC precedent for national banks; [2]

(S) Offering correspondent services to the extent permitted by published OCC precedent for national banks;

(T) Acting as agent or broker in the sale of fixed or variable annuities;

(U) Offering debt cancellation or debt suspension agreements;

(V) Providing real estate settlement, closing, escrow, and related services; and real estate appraisal services for the subsidiary, parent bank, or other financial institutions;

(W) Acting as a transfer or fiscal agent;

(X) Acting as a digital certification authority to the extent permitted by published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Y) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent for national banks, subject to the terms and conditions contained in that precedent;

(Z) Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), databases, advice and access to such services, facilities, databases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006 to the extent permitted by published OCC precedent for national banks;

(AA) Providing bill presentment, billing, collection, and claims-processing services;

(BB) Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent for national banks;

(CC) Providing payroll processing;

(DD) Providing branch management services;

(EE) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants; and

(FF) Performing administrative tasks involved in benefits administration.

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and well capitalized and the:

(A) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary;

(C) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank;

(D) The standards set forth in paragraphs (e)(5)(ii)(A)(*2*) and (*3*) of this section are satisfied.

(vii) *Fiduciary powers.* (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the national bank must have fiduciary powers under 12 U.S.C. 92a and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 and 12 CFR part 9.

(viii) *Expiration of approval.* Approval expires if the national bank has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in § 5.34(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a national bank lawfully acquired or established as an operating subsidiary before April 24, 2008 may continue to operate as a national bank operating subsidiary under this section, provided that the bank and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the bank established or acquired the operating subsidiary.

(7) *Annual Report on Operating Subsidiaries*—(i) *Filing requirement.* Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(7)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(7) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) *Information required.* The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name (include any ''dba'' (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), email address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(7)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Web site at *www.occ.gov.* If the operating subsidiary

[2] *See, e.g.,* the OCC's monthly publication ''Interpretations and Actions.'' Beginning with the May 1996 issue, the OCC's Web site provides access to electronic versions of ''Interpretations and Actions'' (*www.occ.gov*).

is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) *Filing time frames and availability of information.* Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its Annual Report on Operating Subsidiaries on or before January 31st each year. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries at *www.helpwithmybank.gov.*

■ 18. Section 5.35 is revised to read as follows:

§ 5.35 Bank service company investments by a national bank or Federal savings association investment.

(a) *Authority.* 12 U.S.C. 93a, 1462a, 1463, 1464, 1861–1867, 5412(b)(2)(B).

(b) *Licensing requirements.* Except where otherwise provided, a national bank or Federal savings association shall submit a notice and obtain prior OCC approval to invest in the equity of a bank service company or to perform new activities in an existing bank service company.

(c) *Scope.* This section describes the procedures and requirements regarding OCC review and approval of a notice by a national bank or Federal savings association to invest in the equity of a bank service company. The OCC may, at any time, limit a national bank's or Federal savings association's investment in a bank service company or may limit or refuse to permit any activities in any bank service company for which a national bank or Federal savings association is the principal investor for supervisory, legal, or safety and soundness reasons.

(d) *Definitions*—(1) *Bank service company* means a corporation or limited liability company organized to provide services authorized by the Bank Service Company Act, 12 U.S.C. 1861 *et seq.,* all of whose capital stock is owned by one or more insured depository institutions in the case of a corporation, or all of the members of which are one or more insured depository institutions in the case of a limited liability company.

(2) *Limited liability company* means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company.

(3) *Depository institution* for purposes of this section, means, except when such term appears in connection with the term 'insured depository institution', an insured bank (as defined in section 3 of the Federal Deposit Insurance Act), a savings association (as defined in section 3 of the Federal Deposit Insurance Act), a financial institution subject to examination by the appropriate Federal banking agency or the National Credit Union Administration Board, or a financial institution the accounts or deposits of which are insured or guaranteed under state law and are eligible to be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(4) *Insured depository institution,* for purposes of this section, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(5) *Invest* includes making any advance of funds to a bank service company, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered before the payment was made.

(6) *Principal investor* means the insured depository institution that has the largest amount invested in the equity of a bank service company. In any case where two or more insured depository institutions have equal amounts invested and no other insured depository institution has a larger amount invested, the bank service company shall designate one of those insured depository institutions as its principal investor.

(e) *Standards and requirements.* A national bank or Federal savings association may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section and activities (other than taking deposits) permissible for the national bank or Federal savings association and other insured depository institution shareholders or members of the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs, (f)(3) and (f)(4) of this section, a national bank or Federal savings association that intends to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The notice must include the information required by paragraph (g) of this section. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue.

(2) *Expedited Review for certain activities.* (i) A notice to invest in the equity of a bank service company, or to perform new activities in an existing bank service company, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the notice is received by the OCC, unless the OCC notifies the filer prior to that date that the filing is not eligible for expedited review or the expedited review process is extended. Any bank or savings association making an investment pursuant to this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

(ii) A notice is eligible for expedited review if all of the following requirements are met:

(A) The national bank or Federal savings association is ''well capitalized'' and ''well managed'' as defined in § 5.34(d) or § 5.38(d), as applicable; and

(B) The bank service company engages only in activities that are permissible for the bank service company under 12 U.S.C. 1864 and that are listed in § 5.34(e)(5)(v) or § 5.38(d), as applicable.

(3) *Investments requiring no approval or notice.* A national bank or Federal savings association does not need to submit a notice or obtain OCC approval to invest in a bank service company, or to perform a new activity in an existing bank service company, if the bank service company will provide only the following services only for depository institutions: Check and deposit posting and sorting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical, or similar functions.

(4) *Federal Reserve approval.* A national bank or Federal savings association also may, with the approval of the Board of Governors of the Federal Reserve System (Federal Reserve Board), invest in the equity of a bank service company that provides any other service (except deposit taking) that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1843(c)(8).

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a request for approval to invest in a bank service company. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all provisions of §§ 5.8, 5.10, and 5.11 apply.

(g) *Required information.* A notice required under paragraph (f)(1), of this section must contain the following:

(1) The name and location of the bank service company;

(2) A complete description of the activities the bank service company will conduct and a representation and undertaking that the activities will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the bank or savings association with a company engaged in insurance activities, the bank or savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank or savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(3) A complete description of the bank's or savings association's investment in the bank service company and information demonstrating that the bank or savings association will comply with the investment limitations of paragraph (i) of this section; and

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or State law and will perform such services only at locations in a State in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

(h) *Examination and supervision.* Each bank service company in which a national bank or Federal savings association is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank or Federal savings association. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) *Investment limitations.* A national bank or Federal savings association may not invest more than ten percent of its capital and surplus in a bank service company. In addition, the bank's or savings association's total investments in all bank service companies may not exceed five percent of the bank's or savings association's total assets.

■ 19. Section 5.36 is amended by:

■ a. Revising the section heading;

■ b. In paragraphs (d)(1), (e), and (g)(1), by removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC licensing office''.

The revision reads as follows:

§ 5.36 Other equity investments by a national bank.

* * * * *

■ 20. Section 5.37 is revised to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

(a) *Authority.* 12 U.S.C. 29, 93a, 317d, 1464(c)(2), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

(b) *Scope.* This section addresses a national bank's or Federal savings association's investment in banking premises and other premises-related investments, loans, or indebtedness. This section also sets forth the quantitative investment limitations and procedures governing the OCC's review and approval of an application by a national bank or Federal savings association to invest in these premises.

(c) *Definitions.* The following definitions apply for purposes of this section.

(1) *Banking premises* includes:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by a national bank or Federal savings association, its respective branches, or its consolidated subsidiaries;

(ii) Capitalized leases and leasehold improvements, vaults, and fixed machinery and equipment;

(iii) Remodeling costs to existing premises;

(iv) Real estate acquired and intended, in good faith, for use in future expansion; or

(v) Parking facilities that are used by customers or employees of the national bank or Federal savings association.

(2) *Capital stock* means, for national banks and Federal stock savings associations, the amount of common stock outstanding and unimpaired plus the amount of perpetual preferred stock outstanding and unimpaired. With respect to Federal mutual savings associations, ''capital stock'' should be read to mean the amount of the association's retained earnings.

(3) *Capital and surplus* means:

(i) A national bank's or Federal savings association's Tier 1 and Tier 2 capital calculated under the OCC's risk-based capital standards applicable to the institution as reported in the bank's or savings association's Consolidated Reports of Condition and Income (Call Reports) filed under 12 U.S.C. 161 or 12 U.S.C. 1464(v), respectively; plus

(ii) The balance of a national bank's or Federal savings association's allowance for loan and lease losses not included in the bank's or savings association's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(i) of this section, as reported in the national bank's or Federal savings association's Call Reports filed under 12 U.S.C. 161 or 1464(v), respectively.

(d) *Procedure*—(1) *Premises application*—(i) *When required.* A national bank or Federal savings association shall submit an application to the appropriate OCC supervisory office to invest in banking premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of the national bank or Federal savings association, or to make loans to or upon the security of the stock of such corporation, if the aggregate of all such investments and loans, together with the indebtedness incurred by any such corporation that is an affiliate of the national bank or Federal savings association, as defined in 12 U.S.C. 221a or 12 U.S.C. 1462, respectively, will exceed the amount of the capital stock of the national bank or Federal savings association, or, in the case of a Federal mutual savings association the amount of retained earnings.

(ii) *Contents of premises application.* The application must include:

(A) A description of the national bank's or Federal savings association's present investment in banking premises;

(B) The investment in banking premises that the national bank or Federal savings association intends to make, and the business reason for making the investment; and

(C) The amount by which the national bank's or Federal savings association's aggregate investment will exceed the amount of the national bank's or Federal stock savings association's capital stock, or, in the case of a Federal mutual savings association, the amount of retained earnings.

(2) *Approval of premises application.* An application from a national bank or Federal savings association to invest in banking premises or in certain banking

premises-related investments, loans or indebtedness, as described in paragraph (d)(1)(i) of this section, is deemed approved as of the 30th day after the filing is received by the OCC, unless the OCC notifies the national bank or Federal savings association prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. An approval for a specified amount under this section remains valid up to that amount until the OCC notifies the national bank or Federal savings association otherwise.

(3) *Premises notice process*—(i) *General rule.* Notwithstanding paragraph (d)(1)(i) of this section, a national bank or Federal savings association that is rated 1 or 2 under the Uniform Financial Institutions Rating System (CAMELS) may make an aggregate investment in banking premises up to 150 percent of the national bank's or Federal savings association's capital and surplus without the OCC's prior approval, provided that the national bank or Federal savings association is well capitalized as defined in 12 CFR parts 6 and will continue to be well capitalized after the investment or loan is made. However, the national bank or Federal savings association shall notify the appropriate OCC supervisory office in writing of the investment within 30 days after the investment or loan is made. The written notice must include a description of the national bank's or Federal savings association's investment or loan.

(ii) *Exception.* If a Federal savings association that would otherwise be eligible for the premises notice process described in paragraph (d)(3)(i) proposes to establish or acquire a subsidiary to make an investment in banking premises, or if investing in banking premises would be a new activity for such a subsidiary, the Federal savings association would not be eligible for the premises notice process and would be required to comply with the provisions of § 5.59 in the case of a service corporation, or § 5.38 in the case of an operating subsidiary.

(4) *Service corporation.* A Federal savings association that invests in banking premises through a service corporation is not subject to the premises application and premises notice requirements of paragraph (d) of this section; however, it must include this investment when calculating the quantitative limitations in paragraph (d) of this section, and must comply with 12 CFR 5.59.

(5) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(e) *Transition.* If, on June 10, 2014, a Federal savings association holds an investment in banking premises that complies with the legal requirements in effect on the day prior to June 10, 2014 but would violate any provision of this section, the Federal savings association may continue to hold such banking premises in accordance with the prior legal requirements. However, a Federal savings association that holds such banking premises shall not modify, expand or improve these premises, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

■ 21. Section 5.38 is added to read as follows:

§ 5.38 Operating subsidiaries of a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1465, 1828, 5412(b)(2)(B).

(b) *Licensing requirements.* A Federal savings association must file an application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application procedures for Federal savings associations engaging in activities through an operating subsidiary. The OCC may, at any time, limit a Federal savings association's investment in an operating subsidiary or may limit or refuse to permit any activities in an operating subsidiary for supervisory, legal, or safety and soundness reasons.

(d) *Definitions.* For purposes of this § 5.38:

(1) *Well capitalized* means the capital level described in 12 CFR 6.4.

(2) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) The Federal savings association has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(ii) In the case of any Federal savings association that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* (i) A Federal savings association may conduct in an operating subsidiary activities that are permissible for a Federal savings association to engage in directly.

(ii) In addition to OCC authorization, before it begins business an operating subsidiary also must comply with other laws applicable to it and its proposed business, including applicable licensing or registration requirements, if any, such as registration requirements under securities laws.

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a Federal savings association may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The savings association has the ability to control the management and operations of the subsidiary, and no other person or entity has the ability to control the management or operations of the subsidiary;

(B) The parent savings association owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent savings association otherwise controls the operating subsidiary and no other party controls a percentage of the voting (or similar type of controlling) interest of the operating subsidiary greater than the savings association's interest; and

(C) The operating subsidiary is consolidated with the savings association under Generally Accepted Accounting Principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

(A) A subsidiary in which the savings association's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.,* a service corporation under 12 U.S.C. 1464(c)(4) or a bank service company under 12 U.S.C. 1861 *et seq.*); and

(B) A subsidiary in which the savings association has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(iii) Notwithstanding the requirements of paragraph (e)(2)(i) of this section,

(A) a Federal savings association must have reasonable policies and procedures to preserve the limited liability of the savings association and its operating subsidiaries; and

(B) OCC regulations shall not be construed as requiring a Federal savings association and its operating subsidiaries to operate as a single entity.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant

to the same authorization, terms and conditions that apply to the conduct of such activities by its parent Federal savings association, unless otherwise specifically provided by statute, regulation, or published OCC policy, including section 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1465) with respect to the application of state law. If the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the savings association, the OCC will direct the savings association or operating subsidiary to take appropriate remedial action, which may include requiring the savings association to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures.* (i) Except as provided in paragraph (e)(4)(ii) of this section, pertinent book figures of the parent Federal savings association and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, *e.g.,* for purposes of 12 U.S.C. 1464(c) and 1464(u).

(ii) Consolidation for purposes of calculating portfolio assets and qualified thrift investments is subject to 12 U.S.C. 1467a(m)(5).

(5) *Procedures*—(i) *Application required.* (A) A Federal savings association must first submit an application to, and receive prior approval from, the OCC to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the savings association ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than savings association ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership or limited liability company that does not qualify for the expedited review procedure set forth in paragraph (e)(5)(ii) of this section, the savings association must provide a statement explaining why it is not eligible. The application also must include a complete description of the savings association's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the savings association and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial affiliation of the savings association with a company engaged in insurance activities, the savings association must describe the type of insurance activity in which the company is engaged and has present plans to conduct. The savings association must also list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the home office or a previously approved branch of the savings association. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Expedited review.* (A) An application to establish or acquire an operating subsidiary, or to perform a new activity in an existing operating subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended under § 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(B) An application is eligible for expedited review if all of the following requirements are met:

(*1*) The savings association is ''well capitalized'' and ''well managed'';

(*2*) The activity is listed in paragraph (e)(5)(v) this section;

(*3*) The entity is a corporation, limited liability company, or limited partnership; and

(*4*) The savings association:

(*i*) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership or a limited liability company, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management), and no other person or entity has the ability to control the management or operations of the subsidiary;

(*ii*) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership or limited liability company, the savings association or an operating subsidiary thereof is the sole general partner of the limited partnership or the sole managing member of the limited liability company, provided that under the partnership agreement or limited liability company agreement, limited partners or other limited liability company members have no authority to bind the partnership or limited liability company by virtue solely of their status as limited partners or members; and

(*iii*) Is required to consolidate its financial statements with those of the subsidiary under Generally Accepted Accounting Principles.

An applicant proposing to qualify for expedited review must include in the application all necessary information showing the application meets the requirements.

(iii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iv) *OCC review and approval.* The OCC reviews a Federal savings association's application to determine whether the proposed activities are legally permissible under Federal savings association law and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(v) *Activities eligible for expedited review.* The following activities qualify for the expedited review procedures in paragraph (e)(5)(ii) of this section, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association:

(A) Holding and managing assets acquired by the parent savings association or its operating subsidiaries, including investment assets and property acquired by the savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the savings association or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing management consulting, operational advice, and services for other financial institutions;

(F) Providing check payment services;

(G) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts;

(H) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(I) Underwriting and reinsuring credit life and disability insurance;

(J) Leasing of personal property;

(K) Providing securities brokerage;

(L) Underwriting and dealing, including making a market, in savings association permissible securities and purchasing and selling as principal, asset backed obligations;

(M) Acting as an insurance agent or broker for credit life, disability, and unemployment insurance; single property interest insurance; and title insurance;

(N) Offering correspondent services to the extent permitted by published OCC precedent for Federal savings associations;

(O) Acting as agent or broker in the sale of fixed annuities;

(P) Offering debt cancellation or debt suspension agreements;

(Q) Providing escrow services;

(R) Acting as a transfer agent; and

(S) Providing or selling postage stamps.

(vi) *Redesignation.* A Federal savings association that proposes to redesignate a service corporation as an operating subsidiary must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated service corporation meets all of the requirements of this section to be an operating subsidiary, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(vii) *Fiduciary powers.* (A) If an operating subsidiary proposes to accept fiduciary appointments for which fiduciary powers are required, such as acting as trustee or executor, then the Federal savings association must have fiduciary powers under 12 U.S.C. 1464(n) and the subsidiary also must have its own fiduciary powers under the law applicable to the subsidiary.

(B) Unless the subsidiary is a registered investment adviser, if an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the Federal savings association must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26 (or a predecessor provision) and 12 CFR part 150.

(viii) *Expiration of approval.* Approval expires if the Federal savings association has not established or acquired the operating subsidiary, or commenced the new activity in an existing operating subsidiary within 12 months after the date of the approval, unless the OCC shortens or extends the time period.

(6) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in § 5.38(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a Federal savings association lawfully acquired or established as an operating subsidiary before June 10, 2014 may continue to operate as a Federal savings association operating subsidiary under this section, provided that the savings association and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the savings association established or acquired the operating subsidiary.

(7) *Issuances of securities by operating subsidiaries.* An operating subsidiary shall not state or imply that the securities it issues are covered by Federal deposit insurance. An operating subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

(8) *Annual Report on Operating Subsidiaries*—(i) *Filing requirement.* Each Federal savings association shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(8)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(8) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) *Information required.* The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent Federal savings association;

(B) The name (include any ''dba'' (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state,

and zip code), email address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(8)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Web site at *www.occ.gov.* If the operating subsidiary is engaged in an activity not set forth in this list, a Federal savings association shall report the code 0000 and provide a brief description of the activity.

(iii) *Filing time frames and availability of information.* Each Federal savings association's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The Federal savings association shall submit its first Annual Report on Operating Subsidiaries (for information as of December 31, 20__) to the OCC on or before January 31, 20__, and on or before January 31st each year thereafter. The Federal savings association may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Operating Subsidiaries at *www.helpwithmybank.gov*.

■ 22. Section 5.39 is amended by:

■ a. Revising the section heading; and

■ b. In paragraphs (i)(1)(i) and (ii), and (i)(2), removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC licensing office''.

The revision reads as follows:

§ 5.39 Financial subsidiaries of a national bank.

* * * * *

■ 23. Section 5.40 is revised to read as follows:

§ 5.40 Change in location of main office or home office.

(a) *Authority.* 12 U.S.C. 30, 93a, 1462a, 1463, 1464, 1828, 2901–2907 and 5412(b)(2)(B).

(b) *Scope.* This section describes OCC procedures and approval standards for an application or a notice by a national bank to change the location of its main office or by a Federal savings association to change the location of its home office.[3] A national bank or Federal savings association shall follow the procedures described in paragraph (c) of this section to relocate its main office or home office, as applicable.

(c) *Licensing requirements and procedures*—(1) *Main office or home office relocation to an authorized branch location within city, town, or village limits.* A national bank or Federal savings association may change the location of its main office or home office, as applicable, to an authorized branch location (approved or existing branch site) within the limits of the same city, town, or village. The national bank or Federal savings association shall give prior notice to the appropriate OCC licensing office before the relocation. The notice must include the new address of the main office or home office, as applicable, and the effective date of the relocation.

(2) *To any other location*—(i) *National banks.* A national bank shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its main office to any other location in the city, town, or village in which the main office of the bank is located other than an authorized branch location or to any other location within 30 miles of the limits of such city, town, or village. If relocating the main office outside the limits of its city, town, or village, a national bank shall also obtain the approval of shareholders owning two-thirds of the voting stock of the bank and shall amend its articles of association.

(ii) *Federal savings associations.* A Federal savings association shall submit an application to the appropriate OCC licensing office and obtain prior OCC approval to relocate its home office to any location other than an authorized branch location within the city, town, or village in which the home office of the savings association is located. If relocating the home office outside the limits of its city, town, or village, a Federal savings association shall amend its charter.

(3) *Establishment of a branch at site of former main office or home office.* A national bank or Federal savings association desiring to establish a branch at its former main office or home office location, as applicable, shall follow the provisions of § 5.30 or § 5.31, respectively.

(4) *Expedited review.* A main office or home office relocation application submitted by an eligible bank or eligible Federal savings association under paragraph (c)(2) of this section is deemed approved by the OCC as of the 15th day after the close of the public comment period or the 45th day after the filing is received by the OCC (or in the case of a short-distance relocation the 30th day after the filing is received by the OCC), whichever is later, unless the OCC notifies the bank or savings association prior to that time that the filing is not eligible for expedited review, or the expedited review period is extended, under § 5.13(a)(2).

(5) *Exceptions to rules of general applicability.* (i) Sections 5.8, 5.9, 5.10, and 5.11 do not apply to a main office or home office relocation to an authorized branch location within the limits of the city, town, or village as described in paragraph (c)(1) of this section. However, if the OCC concludes that the notice under paragraph (c)(1) of this section presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, and 5.11 apply.

(ii) The comment period on any application filed under paragraph (c)(2) of this section to engage in a short-distance relocation of a main office or home office is 15 days.

(d) *Expiration of approval.* Approval expires if the national bank or Federal savings association has not opened its main office or home office, as applicable, at the relocated site within 18 months of the date of approval, unless the OCC grants an extension.

■ 24. Section 5.42 is revised to read as follows:

§ 5.42 Corporate title of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 21a, 30, 93a, 1462a, 1463, 1464, 1467a, 2901 *et. seq.* and, 5412(b)(2)(B).

(b) *Scope.* This section describes the method by which a national bank or Federal savings association may change its corporate title.

(c) *Standards*—(1) A national bank or Federal savings association may change its corporate title provided that the new title complies with applicable laws, including 18 U.S.C. 709, regarding false advertising and the misuse of names to

[3] A national bank's main office is the place identified in the bank's original organization certificate under 12 U.S.C. 22 or the subsequent location to which the main office has been changed under this § 5.40, 12 U.S.C. 30(b), or other applicable law, as reflected in the national bank's amended articles of association. A Federal savings association's home office is the office identified as such in the savings association's original charter or the subsequent location to which the home office has been changed under this § 5.40, or other applicable law, as reflected in the savings association's amended charter. These terms are functionally the same but are used in our regulations in order to be consistent with the relevant statutes that govern national banks and Federal savings associations, respectively.

indicate a Federal agency, and any applicable OCC guidance.

(2) For a national bank, the new title must include the word ''national.''

(d) *Procedures*—(1) *Notice process.* A national bank or Federal savings association shall promptly notify the appropriate OCC licensing office if it changes its corporate title. The notice must contain the old and new titles and the effective date of the change.

(2) *Amendment to articles of association.* A national bank whose corporate title is specified in its articles of association shall amend its articles, in accordance with the procedures of 12 U.S.C. 21a, to change its title.

(3) *Amendment to charter.* A Federal savings association shall change its title by amending its charter in accordance with 12 CFR 5.21 or 5.22, as applicable.

(4) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13(a) do not apply to a national bank or Federal savings association's change of corporate title. However, if the OCC concludes that the application presents a significant or novel policy, supervisory, or legal issue, the OCC may determine that any or all parts of §§ 5.8, 5.9, 5.10, 5.11, and 5.13(a) apply.

■ 25. Section 5.45 is added to read as follows:

§ 5.45 Increases in permanent capital of a Federal stock savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o and 5412(b)(2)(B).

(b) *Licensing requirements.* Generally a Federal savings association is not required to apply for an increase in capital unless the method of increase itself requires a filing (such as issuance of a new class of stock). However, in certain circumstances, a Federal stock savings association is required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in an increase in a Federal stock savings association's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to increases in a Federal stock savings association's permanent capital.

(e) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Capital plan* means a plan describing the manner and schedule by which a Federal savings association will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the Federal stock savings association other than for capital stock;

(iii) The amount transferred from retained net income; and

(iv) The amount transferred from retained net income reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(5) *Retained net income* means the net income of a specified period less the amount of all dividends and other capital distributions declared in that period.

(f) *Policy.* In determining whether to approve a proposed increase in a Federal stock savings association's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the savings association's capital plan.

(g) *Procedures*—(1) *When prior approval is required.* A Federal stock savings association must submit an application to the appropriate OCC licensing office and obtain prior OCC approval to increase its permanent capital if the savings association is:

(i) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(ii) Selling common or preferred stock for consideration other than cash; or

(iii) Receiving a material noncash contribution to capital surplus.

(2) *Content of application.* The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iii) State if the savings association is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(3) *Expedited review.* An eligible savings association's application is deemed approved by the OCC 15 days after the date the OCC receives the application, unless the OCC notifies the savings association prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2).

(4) *Notice of increase.* (i) After a savings association completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must contain:

(A) The amount, including the par value of the stock, and effective date of the increase;

(B) A certification that the funds have been paid in, if applicable; and

(C) A statement that the savings association has complied with all laws, regulations and conditions imposed by the OCC.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(h) *Offers and sales of stock.* A savings association shall comply with the Securities Offering Disclosure Rules in 12 CFR part 197 for offers and sales of common and preferred stock.

(i) *Shareholder approval.* A savings association shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

■ 26. Section 5.46 is revised to read as follows:

§ 5.46 Changes in permanent capital of a national bank.

(a) *Authority.* 12 U.S.C. 21a, 51a, 51b, 51b–1, 52, 56, 57, 59, 60, and 93a.

(b) *Licensing requirements.* A national bank shall submit an application and obtain OCC approval to decrease its permanent capital. Generally, a national bank need only submit a notice to increase its permanent capital, although, in certain circumstances, a national bank shall be required to submit an application and obtain OCC approval.

(c) *Scope.* This section describes procedures and standards relating to a transaction resulting in a change in a national bank's permanent capital.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to changes in a national bank's permanent capital.

(e) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Capital plan* means a plan describing the manner and schedule by which a national bank will attain specified capital levels or ratios and a capital restoration plan filed with the OCC under 12 U.S.C. 1831o and 12 CFR 6.5.

(2) *Capital stock* means the total amount of common stock and preferred stock.

(3) *Capital surplus* means the total of:

(i) The amount paid in on capital stock in excess of the par or stated value;

(ii) Direct capital contributions representing the amounts paid in to the national bank other than for capital stock;

(iii) The amount transferred from undivided profits; and

(iv) The amount transferred from undivided profits reflecting stock dividends.

(4) *Permanent capital* means the sum of capital stock and capital surplus.

(f) *Policy.* In determining whether to approve a proposed change to a national bank's permanent capital, the OCC considers whether the change is:

(1) Consistent with law, regulation, and OCC policy thereunder;

(2) Provides an adequate capital structure; and

(3) If appropriate, complies with the bank's capital plan.

(g) *Increases in permanent capital*—(1) *Approval*—(i) *Prior approval not required.* If a national bank is not required to file an application and obtain prior approval under paragraph (g)(1)(ii) of this section, the bank need not submit an application. It must submit the notice of capital increase under paragraph (i)(3) of this section. The increase in capital is deemed approved by the OCC as of the date the increase was made, once the bank has filed the notice of capital increase and the OCC certifies the increase, as provided in paragraph (i)(3).

(ii) *Prior approval required.* A national bank must submit an application under paragraph (i)(1) of this section and obtain prior OCC approval to increase its permanent capital if the bank is:

(A) Required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise;

(B) Selling common or preferred stock for consideration other than cash; or

(C) Receiving a material noncash contribution to capital surplus. The bank also must submit the notice of capital increase under paragraph (i)(3) of this section.

(2) *Preferred stock.* Notwithstanding paragraph (g)(1)(i) of this section, in the case of a sale of preferred stock, the national bank shall also submit provisions in the articles of association concerning preferred stock dividends, voting and conversion rights, retirement of the stock, and rights to exercise control over management to the appropriate OCC licensing office prior to the sale of the preferred stock. The provisions will be deemed approved by the OCC within 15 days of its receipt, unless the OCC notifies the applicant otherwise, including a statement of the reason for the delay.

(h) *Decreases in permanent capital.* A national bank shall submit an application and obtain prior approval under paragraph (i)(1) or (i)(2) of this section for any reduction of its permanent capital.

(i) *Procedures*—(1) *Prior approval.* A national bank proposing to make a change in its permanent capital that requires prior OCC approval under paragraphs (g) or (h) of this section shall submit an application to the appropriate OCC licensing office. The application must:

(i) Describe the type and amount of the proposed change in permanent capital and explain the reason for the change;

(ii) In the case of a reduction in capital, provide a schedule detailing the present and proposed capital structure;

(iii) In the case of a material noncash contribution to capital, provide a description of the method of valuing the contribution; and

(iv) State if the bank is subject to a capital plan with the OCC and how the proposed change would conform to a capital plan or if a capital plan is otherwise required in connection with the proposed change in permanent capital.

(2) *Expedited review.* An eligible bank's application is deemed approved by the OCC 15 days after the date the OCC receives the application described in paragraph (i)(1) of this section, unless the OCC notifies the bank prior to that date that the application is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An eligible bank seeking to decrease its capital may request OCC approval for up to four consecutive quarters. An eligible bank may decrease its capital pursuant to such a plan only if the bank maintains its eligible bank status before and after each decrease in its capital.

(3) *Notice of increase.* (i) After a bank completes an increase in capital it shall submit a notice to the appropriate OCC licensing office. The notice must be acknowledged before a notary public by the bank's president, vice president, or cashier and contain:

(A) A description of the transaction, unless already provided pursuant to paragraph (i)(1) of this section;

(B) The amount, including the par value of the stock, and effective date of the increase;

(C) A certification that the funds have been paid in, if applicable;

(D) A certified copy of the amendment to the articles of association, if required; and

(E) A statement that the bank has complied with all laws, regulations and conditions imposed by the OCC.

(ii) After it receives the notice of capital increase, the OCC issues a certification specifying the amount of the increase and the effective date (*i.e.,* the date on which the increase occurred). In the case of a capital increase for which prior approval was not required pursuant to paragraph (g)(i)(i), the increase is deemed certified by the OCC seven days after receipt of the notice if the OCC has not issued a certification prior to that date.

(4) *Notice of decrease.* A national bank that decreases its capital in accordance with paragraphs (i)(1) or (i)(2) of this section shall notify the appropriate OCC licensing office following the completion of the transaction.

(5) *Expiration of approval.* Approval expires if a national bank has not completed its change in permanent capital within one year of the date of approval.

(j) *Offers and sales of stock.* A national bank shall comply with the Securities Offering Disclosure Rules in 12 CFR part 16 for offers and sales of common and preferred stock.

(k) *Shareholder approval.* A national bank shall obtain the necessary shareholder approval required by statute for any change in its permanent capital.

■ 27. Section 5.47 is amended by:

■ a. Revising the section heading; and

■ b. In paragraphs (f)(1) and (g), removing the phrase ''the appropriate district office'' and adding in its place the phrase ''the appropriate OCC licensing office''.

The revision reads as follows:

§ 5.47 National bank subordinated debt as capital.

* * * * *

■ 28. Section 5.48 is revised to read as follows:

§ 5.48 Voluntary liquidation of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 181, 182, 1463, 1464, and 5412(b)(1)(B).

(b) *Licensing requirements.* A national bank or a Federal savings association considering going into voluntary liquidation shall provide preliminary notice to the OCC. The bank or savings association shall also file a notice with the OCC once a liquidation plan is definite. The bank or savings association may not begin liquidation unless the

OCC has notified it that the OCC does not object to the liquidation plan.

(c) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to a voluntary liquidation. However, if the OCC concludes that the notice presents significant or novel policy, supervisory or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply.

(d) *Standards*—(1) In *general.* In reviewing a proposed liquidation plan, the OCC will consider:

(i) The purpose of the liquidation;

(ii) Its impact on the safety and soundness of the national bank or Federal savings association; and

(iii) Its impact on the bank's or savings association's depositors, other creditors, and customers.

(2) *National banks.* For national banks, the OCC also will review liquidation plans for compliance with 12 U.S.C. 181 and 182.

(3) Federal mutual savings associations. For Federal mutual savings associations, the OCC also will assess the advisability of, and alternatives to, liquidation and the effect of liquidation on all concerned.

(e) *Procedure*—(1) *Preliminary notice of voluntary liquidation.* A national bank or Federal savings association that is considering going into voluntary liquidation shall provide preliminary notice to the appropriate OCC licensing office.

(2) *Submission of liquidation plan and nonobjection*—(A) After a national bank or Federal savings association provides preliminary notice under paragraph (e)(1) of this section, if the bank or savings association plans to proceed with liquidation, it shall submit a voluntary liquidation plan to the OCC. A liquidation plan may be effected in whole or part through purchase and assumption transactions.

(B) The national bank or Federal savings association must receive the OCC's supervisory non-objection to the liquidation plan before beginning the liquidation.

(3) *Notice upon commencing liquidation*—(i) *General.* When the board of directors and the shareholders of a solvent national bank or Federal savings association, or in the case of a Federal mutual savings association, the board of directors and the members, have voted to voluntarily liquidate, the bank or savings association shall:

(A) File a notice with the appropriate OCC Licensing Office; and

(B) provide notice to depositors, other known creditors, and known claimants of the bank or savings association.

(ii) *National banks.* A vote to liquidate a national bank must comply with 12 U.S.C. 181. In addition, a national bank shall publish notice in accordance with 12 U.S.C. 182.

(iii) *Federal savings associations.* A Federal savings association shall publish public notice if so directed by the OCC.

(4) *Report of condition.* The national bank's or Federal savings association's liquidating agent or committee shall submit a report to the appropriate OCC Licensing Office at the start of liquidation showing the bank's or savings association's balance sheet as of the start of liquidation. The liquidating national bank or Federal savings association shall submit reports of the condition of its commercial, trust, and other departments to the appropriate OCC Licensing Office by filing the quarterly Consolidated Reports of Condition and Income (Call Reports).

(5) *Report of progress.* The national bank's or Federal savings association's liquidating agent or committee shall submit a ''Report of Progress of Liquidation'' annually to the appropriate OCC Licensing Office until the liquidation is complete.

(6) *Final report.* The national bank's or Federal savings association's liquidating agent or committee shall submit a final report at the conclusion of liquidation showing that all creditors have been satisfied, remaining assets have been distributed to shareholders, resolutions to dissolve the bank or savings association have been adopted, and the bank or savings association has been dissolved. The national bank or Federal savings association also shall return its charter certificate to the OCC.

(f) *Expedited liquidations in connection with acquisitions*—(1) *General.* When an acquiring depository institution in a business combination purchases all the assets, and assumes all the liabilities, including all contingent liabilities, of a target national bank or Federal savings association, the target national bank or Federal savings association may be dissolved immediately after the combination. However, if any liabilities will remain in the target national bank or Federal savings association, then the standard liquidation procedures apply. This paragraph (f) does not apply to dissolutions of Federal mutual savings associations, which are subject to the standard liquidation procedures.

(2) *Procedure.* After its board of directors and shareholders have voted to liquidate and the national bank or Federal savings association has notified the appropriate OCC licensing office of its plans, the bank or savings association may surrender its charter and dissolve immediately, if:

(i) The acquiring depository institution certifies to the OCC that it has purchased all the assets and assumed all the liabilities, including all contingent liabilities, of the national bank or Federal savings association in liquidation; and

(ii) The acquiring depository institution and the national bank or Federal savings association in liquidation have published notice that the bank or savings association will dissolve after the purchase and assumption to the acquiror. This notice shall be included in the notice and publication for the purchase and assumption required under the Bank Merger Act, 12 U.S.C. 1828(c).

■ 29. Section 5.50 is revised to read as follows:

§ 5.50 Change in control of a national bank or Federal savings association; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a, 1817(j), and 1831aa.

(b) *Licensing requirements.* Any person seeking to acquire control of a national bank or Federal savings association shall provide 60 days prior written notice of a change in control to the OCC, except where otherwise provided in this section.

(c) *Scope*—(1) *General.* This section describes the procedures and standards governing OCC review of notices for a change in control of a national bank or Federal savings association and reports of stock loans.

(2) *Exempt transactions.* The following transactions are not subject to the requirements of this section:

(i) The acquisition of additional shares of a national bank or Federal savings association by a person who:

(A) Has, continuously since March 9, 1979, (or since that institution commenced business, if later) held power to vote 25 percent or more of the voting securities of that bank or Federal savings association; or

(B) Under paragraph (f)(2)(ii) of this section, would be presumed to have controlled that bank or Federal savings association continuously since March 9, 1979, if the transaction will not result in that person's direct or indirect ownership or power to vote 25 percent or more of any class of voting securities of the national bank or Federal savings association; or, in other cases, where the OCC determines that the person has controlled the bank or savings association continuously since March 9, 1979;

(ii) Unless the OCC otherwise provides in writing, the acquisition of

additional shares of a national bank or Federal savings association by a person who has lawfully acquired and maintained continuous control of the bank or Federal savings association under paragraph (f) of this section after complying with the procedures and filing the notice required by this section;

(iii) A transaction subject to approval under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, section 18(c) of Federal Deposit Insurance Act, 12 U.S.C. 1828(c), or section 10 of the Home Owners' Loan Act (HOLA), 12 U.S.C. 1467a;

(iv) Any transaction described in section 2(a)(5) or 3(a)(A) or (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5) and 1842(a)(A) and (B), by a person described in those provisions;

(v) A customary one-time proxy solicitation or receipt of *pro rata* stock dividends; and

(vi) The acquisition of shares of a foreign bank that has a Federally licensed branch in the United States. This exemption does not extend to the reports and information required under paragraph (i) of this section.

(3) *Prior notice exemption.* The following transactions are not subject to the prior notice requirements of this section but are otherwise subject to this section, including filing a notice and paying the appropriate filing fee, within 90 calendar days after the transaction occurs:

(i) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association through testate or intestate succession;

(ii) The acquisition of control as a result of acquisition of voting shares of a national bank or Federal savings association as a bona fide gift;

(iii) The acquisition of voting shares of a national bank or Federal savings association resulting from a redemption of voting securities;

(iv) The acquisition of control of a national bank or Federal savings association as a result of actions by third parties (including the sale of securities) that are not within the control of the acquiror; and

(v) The acquisition of control as a result of the acquisition of voting shares of a national bank or Federal savings association in satisfaction of a debt previously contracted in good faith.

(A) ''Good faith'' means that a person must either make, renew, or acquire a loan secured by voting securities of a national bank or Federal savings association in advance of any knowledge of a default or of the substantial likelihood that a default is forthcoming. A person who purchases a previously defaulted loan, or a loan for which there is a substantial likelihood of default, secured by voting securities of a national bank or Federal savings association may not rely on this paragraph (c)(3)(v) to foreclose on that loan, seize or purchase the underlying collateral, and acquire control of the national bank or Federal savings association without complying with the prior notice requirements of this section.

(B) To ensure compliance with this section, the acquiror of a defaulted loan secured by a controlling amount of a national bank's or a Federal savings association's voting securities shall file a notice prior to the time the loan is acquired unless the acquiror can demonstrate to the satisfaction of the OCC that the voting securities are not the anticipated source of repayment for the loan.

(d) *Definitions.* As used in this section:

(1) *Acquire* when used in connection with the acquisition of stock of a national bank or Federal savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, pledge, exchange, succession, or other disposition of voting stock, including:

(i) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(ii) The acquisition of stock by a group of persons and/or companies acting in concert, which shall be deemed to occur upon formation of such group.

(2) *Acting in concert* means:

(i) Knowing participation in a joint activity or parallel action towards a common goal of acquiring control whether or not pursuant to an express agreement; or

(ii) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

(3) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization.

(4) *Control* means the power, directly or indirectly, to direct the management or policies of a national bank or Federal savings association or to vote 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(6) *Federal savings association* means a Federal savings association or a Federal savings bank chartered under section 5 of the HOLA.

(7) *Immediate family* includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the forgoing.

(8) Insured *depository institution* means an insured depository institution as defined in 12 U.S.C. 1813(c)(2).

(9) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a national bank, savings association, or a company, whether or not incorporated.

(10) *Notice* means a filing by a person in accordance with paragraph (f) of this section.

(11) *Person* means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity, and includes voting trusts and voting agreements and any group of persons acting in concert.

(12) *Similar organization* for purposes of paragraph (d)(3) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(i) The transferability and voting of any stock or other indicia of participation in another entity, or

(ii) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(13) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(14) *Voting securities* means:

(i) Shares of stock, if the shares or interests, by statute, charter, or in any manner, allow the holder to vote for or select directors (or persons exercising similar functions) of the issuing national bank or Federal savings association, or to vote on or to direct the conduct of the operations or other significant policies of the issuing national bank or Federal savings association. However, preferred stock or similar interests are not voting securities if:

(A) Any voting rights associated with the shares or interests are limited solely to voting rights customarily provided by statute regarding matters that would significantly affect the rights or preference of the security or other interest. This includes the issuance of additional amounts of classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing national bank, or the payment of dividends by the issuing national bank or Federal savings association when preferred dividends are in arrears;

(B) The shares or interests are a passive investment or financing device and do not otherwise provide the holder with control over the issuing national bank or Federal savings association; and

(C) The shares or interests do not allow the holder by statute, charter, or in any manner, to select or to vote for the selection of directors (or persons exercising similar functions) of the issuing national bank or Federal savings association.

(ii) Securities, other instruments, or similar interests that are immediately convertible, at the option of the owner or holder thereof, into voting securities.

(e) *Policy*—(1) *General.* The OCC seeks to enhance and maintain public confidence in the banking system by preventing a change in control of a national bank or Federal savings association that could have serious adverse effects on a national bank's or Federal savings association's financial stability or management resources, the interests of the bank's or Federal savings association's customers, the Deposit Insurance Fund, or competition.

(2) *Acquisitions subject to the Bank Holding Company Act.* (i) If corporations, partnerships, certain trusts, associations, and similar organizations, that are not already bank holding companies, are not required to secure prior Federal Reserve Board approval to acquire control of a bank under section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, other than indirectly through the acquisition of shares of a bank holding company, they are subject to the notice requirements of this section.

(ii) Certain transactions, including foreclosures by depository institutions and other institutional lenders, fiduciary acquisitions by depository institutions, and increases of majority holdings by bank holding companies, are described in sections 2(a)(5)(D) and 3(a)(A) and (B) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(5)(D) and 12 U.S.C. 1842(a)(A) and (B), but do not require the Federal Reserve Board's prior approval. For purposes of this section, they are considered subject to section 3 of the Bank Holding Company Act, 12 U.S.C. 1842, and do not require either a prior or subsequent notice to the OCC under this section.

(3) *Assessing financial condition.* In assessing the financial condition of the acquiring person, the OCC weighs any debt servicing requirements in light of the acquiring person's overall financial strength; the institution's earnings performance, asset condition, capital adequacy, and future prospects; and the likelihood of the acquiring party making unreasonable demands on the resources of the institution.

(f) *Procedures*—(1) *Exceptions to rules of general applicability.* Sections 5.8(a), 5.9, 5.10, 5.11, and 5.13(a) through (f) do not apply to filings under this section. When complying with § 5.8(b) no address is required for a notice filed by one or more individuals under this section.

(2) *Who must file.* (i) Any person seeking to acquire the power, directly or indirectly, to direct the management or policies, or to vote 25 percent or more of a class of voting securities of a national bank or Federal savings association, shall file a notice with the OCC 60 days prior to the proposed acquisition, unless the acquisition is exempt under paragraph (c)(2) of this section.

(ii) The following persons shall be presumed to be acting in concert for purposes of this section:

(A) A company and any controlling shareholder, partner, trustee or management official of such company if both the company and the person own stock in the national bank or Federal savings association;

(B) A person and the members of the person's immediate family;

(C) Companies under common control;

(D) Persons that have made, or propose to make, a joint filing under section 13 or 14 of the Securities Exchange Act of 1934, and the rules thereunder promulgated by the Securities and Exchange Commission;

(E) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 192.2(a)(39) shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary; and

(F) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting or transfer of control of voting securities of a national bank or Federal savings association, other than through a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting.

(iii) The OCC presumes, unless rebutted, that an acquisition or other disposition of voting securities through which any person proposes to acquire ownership of, or the power to vote, ten percent or more of a class of voting securities of a national bank or Federal savings association is an acquisition by a person of the power to direct the bank's or savings association's management or policies if:

(A) The securities to be acquired or voted are subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l; or

(B) Immediately after the transaction no other person will own or have the power to vote a greater proportion of that class of voting securities.

(iv) The OCC will consider a rebuttal of the presumption of control where the person or company intends to have no more than one representative on the board of directors of the national bank or Federal savings association.

(v) The presumption of control may not be rebutted if the total equity investment by the person or company in the national bank or Federal savings association, including 15 percent or more of any class of voting securities, equals or exceeds one third of the total equity of the national bank or Federal savings association.

(vi) Other transactions resulting in a person's control of less than 25 percent

of a class of voting securities of a national bank or Federal savings association are not deemed by the OCC to result in control for purposes of this section.

(vii) If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of ten percent or more of a class of a national bank's or Federal savings association's voting securities, and either the acquisitions are of a class of securities subject to the registration requirements of section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78l, or immediately after the transaction no other shareholder of the national bank or Federal savings association would own or have the power to vote a greater percentage of the class, each of the acquiring persons shall either file a notice or rebut the presumption of control.

(viii) An acquiring person may seek to rebut a presumption established in paragraph (f)(2)(ii) or (iii) of this section by presenting relevant information in writing to the appropriate OCC Licensing office. The OCC shall respond in writing to any person that seeks to rebut the presumption of control or the presumption of concerted action. No rebuttal filing is effective unless the OCC indicates in writing that the information submitted has been found to be sufficient to rebut the presumption of control.

(3) *Filings.* (i) The OCC does not accept a notice of a change in control unless it is technically complete, i.e., the information provided is responsive to every item listed in the notice form and is accompanied by the appropriate fee.

(A) The notice must contain the information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Biographical and Financial Report. This form is available from the OCC. The OCC may waive any of the informational requirements of the notice if the OCC determines that it is in the public interest.

(B) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied with a current statement of assets and liabilities and an income summary, together with a statement of any material changes since the date of the statement or summary. However, the OCC may require additional information, if appropriate.

(ii) The OCC has 60 days from the date it declares the notice to be technically complete to review the notice.

(A) When the OCC declares a notice technically complete, the appropriate OCC licensing office sends a letter of acknowledgment to the applicant indicating the technically complete date.

(B) As set forth in paragraph (g) of this section, the applicant shall publish an announcement within 10 days of filing the notice with the OCC. The publication of the announcement triggers a 20-day public comment period. The OCC may waive or shorten the public comment period if an emergency exists. The OCC also may shorten the comment period for other good cause. The OCC may act on a proposed change in control prior to the expiration of the public comment period if the OCC makes a written determination that an emergency exists.

(C) An applicant shall notify the OCC immediately of any material changes in a notice submitted to the OCC, including changes in financial or other conditions that may affect the OCC's decision on the filing.

(iii) Within the 60-day period, the OCC may inform the applicant that the acquisition has been disapproved, has not been disapproved, or that the OCC will extend the 60-day review period for up to an additional 30 days. The period or the OCC's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if:

(A) The OCC determines that any acquiring party has not furnished all the information required under this part;

(B) In the OCC's judgment, any material information submitted is substantially inaccurate;

(C) The OCC has been unable to complete an investigation of each acquirer because of any delay caused by, or the inadequate cooperation of, such acquirer; or

(D) The OCC determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(iv) The applicant may request a hearing by the OCC within 10 days of receipt of a disapproval (see 12 CFR part 19, subpart H, for hearing initiation procedures). Following final agency action under 12 CFR part 19, further review by the courts is available. (See 12 U.S.C. 1817(j)(5))

(4) *Conditional actions.* The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

(5) *Disapproval of notice.* The OCC may disapprove a notice if it finds that any of the following factors exist:

(i) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(ii) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(iii) Either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or Federal savings association or prejudice the interests of the depositors of the bank or Federal savings association;

(iv) The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank or Federal savings association, or in the interest of the public, to permit that person to control the bank or Federal savings association;

(v) An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or

(vi) The OCC determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(6) *Disapproval notification.* If the OCC disapproves a notice, it will notify the proposed acquiring person in writing within three days after the decision containing a statement of the basis for disapproval.

(g) *Disclosure*—(1) *Announcement.* The applicant shall publish an announcement in a newspaper of general circulation in the community where the affected national bank or Federal savings association is located within ten days of filing. The OCC may authorize a delayed announcement if an immediate announcement would not be in the public interest.

(i) In addition to the information required by § 5.8(b), the announcement must include the name of the national bank or Federal savings association named in the notice and the comment period (*i.e.,* 20 days from the date of the

announcement). The announcement also must state that the public portion of the notice is available upon request.

(ii) Notwithstanding any other provisions of this paragraph (g), if the OCC determines in writing that an emergency exists and that the announcement requirements of this paragraph (g) would seriously threaten the safety and soundness of the national bank or Federal savings association to be acquired, including situations where the OCC must act immediately in order to prevent the probable failure of a national bank or Federal savings association, the OCC may waive or shorten the publication requirement.

(2) *Release of information.* (i) Upon the request of any person, the OCC releases the information provided in the public portion of the notice and makes it available for public inspection and copying as soon as possible after a notice has been filed. In certain circumstances the OCC may determine that the release of the information would not be in the public interest. In addition, the OCC makes a public announcement of a technically complete notice, the disposition of the notice, and the consummation date of the transaction, if applicable, in the OCC's ''Weekly Bulletin.''

(ii) The OCC handles requests for the non-public portion of the notice as requests under the Freedom of Information Act, 5 U.S.C. 552, and other applicable law.

(h) *Reporting requirement.* After the consummation of the change in control, the national bank or Federal savings association shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

(i) *Reporting of stock loans*—(1) *Requirements.* (i) Any foreign bank, or any affiliate thereof, shall file a consolidated report with the appropriate OCC supervisory office of the national bank or Federal savings association if the foreign bank or any affiliate thereof, has credit outstanding to any person or group of persons that, in the aggregate, is secured, directly or indirectly, by 25 percent or more of any class of voting securities of the same national bank or Federal savings association.

(ii) The foreign bank, or any affiliate thereof, shall also file a copy of the report with its appropriate OCC supervisory office if that office is different from the national bank's or Federal savings association's appropriate OCC supervisory office. If the foreign bank, or any affiliate thereof, is not supervised by the OCC, it shall file a copy of the report filed with the OCC with its appropriate Federal banking agency.

(iii) Any shares of the national bank or Federal savings association held by the foreign bank, or any affiliate thereof, as principal must be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of paragraph (h)(1)(i) of this section.

(2) *Definitions.* For purposes of this paragraph (h) of this section:

(i) *Foreign bank and affiliate* have the same meanings as in section 1 of the International Banking Act of 1978, 12 U.S.C. 3101.

(ii) *Credit outstanding* includes any loan or extension of credit; the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit; and any other type of transaction that extends credit or financing to a person or group of persons.

(iii) *Group of persons* includes any number of persons that a foreign bank, or an affiliate thereof, has reason to believe:

(A) Are acting together, in concert, or with one another to acquire or control shares of the same insured national bank or Federal savings association, including an acquisition of shares of the same national bank or Federal savings association at approximately the same time under substantially the same terms; or

(B) Have made, or propose to make, a joint filing under 15 U.S.C. 78m regarding ownership of the shares of the same depository institution.

(3) *Exceptions.* Compliance with paragraph (i)(1) of this section is not required if:

(i) The person or group of persons referred to in paragraph (h)(1) of this section has disclosed the amount borrowed and the security interest therein to the appropriate OCC licensing office in connection with a notice filed under this section or any other application filed with the appropriate OCC licensing office as a substitute for a notice under this section, such as for a national bank or Federal savings association charter; or

(ii) The transaction involves a person or group of persons that has been the owner or owners of record of the stock for a period of one year or more or, if the transaction involves stock issued by a newly chartered bank or Federal savings association, before the bank's or Federal savings association's opening.

(4) *Report requirements.* (i) The consolidated report must indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(ii) The foreign bank and all affiliates thereof shall file the consolidated report in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of voting securities of a national bank or Federal savings association.

(5) *Other reporting requirements.* A foreign bank or any affiliate thereof, supervised by the OCC and required to report credit outstanding secured by the shares of a depository institution to another Federal banking agency also shall file a copy of the report with its appropriate OCC supervisory office.

■ 30. Section 5.51 is revised to read as follows:

§ 5.51 Changes in directors and senior executive officers of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 1831i and 12 U.S.C. 5412(b)(2)(B).

(b) *Scope.* This section describes the circumstances when a national bank or a Federal savings association must notify the OCC of a change in its directors and senior executive officers, and the OCC's authority to disapprove those notices.

(c) *Definitions.* (1) *Director* means an individual who serves on the board of directors of a national bank or a Federal savings association, except:

(i) A director of a foreign bank that operates a Federal branch; and

(ii) An advisory director who does not have the authority to vote on matters before the board of directors or any committee of the board of directors and provides solely general policy advice to the board of directors or any committee.

(2) *Federal savings association* means a Federal savings association or Federal savings bank chartered under 12 U.S.C. 1464.

(3) *National bank* includes a Federal branch for purposes of this section only.

(4) *Senior executive officer* means the president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, chief investment officer, and any other individual the OCC identifies in writing to the national bank or Federal savings association who exercises significant influence over, or

participates in, major policy making decisions of the national bank or Federal savings association without regard to title, salary, or compensation. The term also includes employees of entities retained by a national bank or Federal savings association to perform such functions in lieu of directly hiring the individuals, and, with respect to a Federal branch operated by a foreign bank, the individual functioning as the chief managing official of the Federal branch.

(5) *Technically complete notice* means a notice that provides all the information requested in paragraph (e)(2) of this section, including complete explanations where material issues arise regarding the competence, experience, character, or integrity of proposed directors or senior executive officers, and any additional information that the OCC may request following a determination that the notice was not technically complete.

(6) *Technically complete notice date* means the date on which the OCC has received a technically complete notice.

(7) *Troubled condition* means a national bank or Federal savings association that

(i) Has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System (CAMELS);

(ii) Is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the OCC; or

(iii) Is informed in writing by the OCC that, based on information pertaining to such national bank or Federal savings association, it has been designated in ''troubled condition'' for purposes of this section.

(d) *Prior notice.* A national bank or Federal savings association shall provide written notice to the OCC at least 90 calendar days before adding or replacing any member of its board of directors, employing any individual as a senior executive officer of the national bank or Federal savings association, or changing the responsibilities of any senior executive officer so that the individual would assume a different senior executive officer position, if:

(1) The national bank or Federal savings association is not in compliance with minimum capital requirements applicable to such institution, as prescribed in 12 CFR part 3 or part 167, as applicable, or is otherwise in troubled condition; or

(2) The OCC determines, in writing, in connection with the review by the agency of the plan required under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), or otherwise, that such prior notice is appropriate.

(e) *Procedures*—(1) *Filing notice.* A national bank or Federal savings association shall file a notice with its appropriate supervisory office. When a national bank or Federal savings association files a notice, the individual to whom the filing pertains shall attest to the validity of the information pertaining to that individual. The 90-day review period begins on the technically complete notice date.

(2) *Content of notice.* (i) The notice must include:

(A) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer, the biographical and certification portions of the Interagency Biographical and Financial Report (''IBFR''), and unless otherwise determined by the OCC in writing, the financial portion of the IBFR. These forms are available from the OCC;

(B) Legible fingerprints of the individual, except that fingerprints are not required for any individual who, within the three years immediately preceding the initial submission date of the notice currently under review, has been the subject of a notice filed with the OCC or the OTS pursuant to 12 U.S.C. 1831i, or this section, and has previously submitted fingerprints; and

(C) Such other information required by the OCC.

(ii) *Modification of content requirements.* The OCC may require or accept other information in place of the content requirements in paragraph (e)(2)(i) of this section.

(3) *Requests for additional information.* (i) Following receipt of a technically complete notice, the OCC may request additional information. Such request must be in writing, must explain why the information is needed, and must specify a time period during which the information must be provided.

(ii) If the national bank or Federal savings association cannot provide the information requested by the OCC within the time specified in paragraph (e)(3)(i) of this section, the national bank or Federal savings association may request in writing that the OCC suspend processing of the notice. The OCC will advise the national bank or Federal savings association in writing whether the suspension request is granted and, if granted, the length of the suspension.

(iii) If the national bank or Federal savings association fails to provide the requested information within the time specified in paragraphs (e)(3)(i) or (ii) of this section, the OCC may deem the filing abandoned under § 5.13(c) or may review the notice based on the information provided.

(4) *Notice of disapproval.* The OCC may disapprove an individual proposed as a member of the board of directors or as a senior executive officer if the OCC determines on the basis of the individual's competence, experience, character, or integrity that it would not be in the best interests of the depositors of the national bank or Federal savings association or the public to permit the individual to be employed by, or associated with, the national bank or Federal savings association. The OCC must send a written notice of disapproval to both the national bank or Federal savings association and the individual stating the basis for disapproval.

(5) *Notice of intent not to disapprove.* An individual proposed as a member of the board of directors or as a senior executive officer may begin service before the expiration of the review period if the OCC notifies the individual and the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer and all other applicable legal requirements are satisfied.

(6) *Waiver of prior notice*—(i) *Waiver request.* (A) A national bank or Federal savings association may send a letter to the appropriate supervisory office requesting a waiver of the prior notice requirement.

(B) The OCC may grant the waiver if it issues a written finding that:

(*1*) Delay could adversely affect the safety and soundness of the national bank or Federal savings association;

(*2*) Delay would not be in the public interest; or

(*3*) Other extraordinary circumstances justify waiver of prior notice.

(C) The OCC will determine the length of the waiver on a case-by-case basis. All waivers that the OCC grants under this paragraph (e)(6) are subject to the condition that the national bank or Federal savings association shall file a technically complete notice under this section within the time period specified by the OCC.

(D) Subject to paragraph (e)(6)(i)(C) of this section, the proposed individual may assume the position on an interim basis until the earliest of the following events:

(*1*) The individual and the national bank or the Federal savings association receive a notice of intent not to disapprove, at which time the individual may assume the position on a permanent basis, provided all other

applicable legal requirements are satisfied;

(*2*) The individual and the national bank or the Federal savings association receive a notice of disapproval within 90 calendar days after the submission of a technically complete notice. In this event the individual shall immediately resign from the position upon receipt of the notice of disapproval and may assume the position on a permanent basis only if the notice of disapproval is reversed on appeal and all other applicable legal requirements are satisfied; or

(*3*) The OCC does not act within 90 calendar days after the submission of a technically complete notice. In this event, the individual may assume the position on a permanent basis 91 calendar days after the submission of a technically complete notice.

(E) If the technically complete notice is not filed within the time period specified in the waiver, the proposed individual shall immediately resign his or her position. Thereafter, the individual may assume the position only after a technically complete notice has been filed, all other applicable requirements are satisfied, and:

(*1*) The national bank or the Federal savings association receives a notice of intent not to disapprove;

(*2*) The review period expires; or

(*3*) A notice of disapproval has been overturned on appeal as set forth in paragraph (f) of this section.

(F) Notwithstanding the grant of a waiver, the OCC has authority to issue a notice of disapproval within 30 days of the expiration of such waiver.

(ii) *Automatic waiver.* An individual who has been elected to the board of directors of a national bank or Federal savings association may serve as a director on an interim basis before a notice has been filed under this section, provided the individual was not nominated by management, and the national bank or Federal savings association submits a notice under this section not later than seven days after the individual has been notified of the election. The individual may serve on an interim basis until the occurrence of the earliest of the events described in paragraphs (e)(6)(i)(D)(*1*), (*2*), or (*3*) of this section.

(7) *Commencement of service.* An individual proposed as a member of the board of directors or as a senior executive officer who satisfies all other applicable legal requirements may assume the office on a permanent basis:

(i) Prior to the expiration of the review period, only if the OCC notifies the national bank or Federal savings association in writing that the OCC does not disapprove the proposed director or senior executive officer pursuant to paragraph (e)(5) of this section; or

(ii) Following the expiration of the review period, unless:

(A) The OCC issues a written notice of disapproval during the review period; or

(B) The national bank or Federal savings association does not provide additional information within the time period required by the OCC pursuant to paragraph (e)(3) of this section and the OCC deems the notice to be abandoned pursuant to § 5.13(c).

(8) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13(a) through (f) do not apply to a notice for a change in directors and senior executive officers, except that § 5.13(c) shall apply to the extent provided for in paragraphs (e)(3)(iii) and (e)(7) of this section.

(f) *Appeal.* (1) If the national bank or Federal savings association, the proposed individual, or both, disagree with a disapproval, they may seek review by appealing the disapproval to the Comptroller, or an authorized delegate, within 15 days of the receipt of the notice of disapproval. The national bank or Federal savings association or the individual may appeal on the grounds that the reasons for disapproval are contrary to fact or insufficient to justify disapproval. The appellant shall submit all documents and written arguments that the appellant wishes to be considered in support of the appeal.

(2) The Comptroller, or an authorized delegate, may designate an appellate official who was not previously involved in the decision leading to the appeal at issue. The Comptroller, an authorized delegate, or the appellate official considers all information submitted with the original notice, the material before the OCC official who made the initial decision, and any information submitted by the appellant at the time of the appeal.

(3) The Comptroller, an authorized delegate, or the appellate official shall independently determine whether the reasons given for the disapproval are contrary to fact or insufficient to justify the disapproval. If either is determined to be the case, the Comptroller, an authorized delegate, or the appellate official may reverse the disapproval.

(4) Upon completion of the review, the Comptroller, an authorized delegate, or the appellate official shall notify the appellant in writing of the decision. If the original decision is reversed, the individual may assume the position in the national bank or Federal savings association for which he or she was proposed.

■ 31. Section 5.52 is revised to read as follows:

§ 5.52 Change of address of a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 161, 481, 1462a, 1463, 1464 and 5412(b)(2)(B).

(b) *Scope.* This section describes the obligation of a national bank or a Federal savings association to notify the OCC of any change in its address.

(c) *Notice process.* (1) Any national bank with a change in the address of its main office or in its post office box or a Federal savings association with a change in the address of its home office or post office box shall send a written notice to the appropriate OCC licensing office.

(2) No notice is required if the change in address results from a transaction approved under this part or if notice has been provided pursuant to § 5.40(b) with respect to the relocation of a main office or home office to a branch location in the same city, town or village.

(d) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, 5.11, and 5.13 do not apply to changes in a national bank's or Federal savings association's address.

■ 32. Section 5.53 is revised to read as follows:

§ 5.53 Substantial asset change by a national bank or Federal savings association.

(a) *Authority.* 12 U.S.C. 93a, 1818, 1462a, 1463, 1464, 1467a, and 5412(b)(2)(B).

(b) *Scope.* This section requires a national bank or a Federal savings association to obtain the approval of the OCC for a substantial asset change.

(c) *Definition*—(1) *In general.* Except as provided in paragraph (c)(2), *substantial asset change* means:

(i) The sale or other disposition of all, or substantially all, of the national bank's or Federal savings association's assets in a transaction or a series of transactions;

(ii) After having sold or disposed of all, or substantially all, of its assets, subsequent purchases or other acquisitions or other expansions of the national bank's or Federal savings association's operations;

(iii) Any other purchases, acquisitions or other expansions of operations that are part of a plan to increase the size of the national bank or Federal savings association by more than 25 percent in a one year period; or

(iv) Any other material increase or decrease in the size of the national bank

or Federal savings association or a material alteration in the composition of the types of assets or liabilities of the national bank or Federal savings association (including the entry or exit of business lines), on a case-by-case basis, as determined by the OCC.

(2) *Exceptions.* The term ''substantial asset change'' does not include, and this section does not apply, to a change in composition of all, or substantially all, of a bank's or savings association's assets:

(i) That the bank or savings association undertakes in response to direction from the OCC (*e.g.,* in an enforcement action pursuant to 12 U.S.C. 1818);

(ii) That is part of a voluntary liquidation under 12 CFR 5.48, if the bank or savings association in liquidation has obtained approval for its plan of liquidation under 12 CFR 5.48 and has stipulated in its notice of liquidation to the OCC that its liquidation will be completed, the bank or savings association dissolved and its charter returned to the OCC within one year of the date it filed the notice of liquidation, unless the OCC extends the time period;

(iii) That occurs as a result of a bank's or savings association's ordinary and ongoing business of originating and securitizing loans; or

(iv) That are subject to OCC approval under another application to the OCC.

(d) *Procedures*—(1) *Consultation.* A national bank or Federal savings association considering a transaction or series of transactions that may constitute a material change under paragraph (c)(1)(iv) of this section must consult with the appropriate OCC supervisory office for a determination whether the OCC will require an application under this section. In determining whether to require an application, the OCC considers the size and nature of the transaction and the condition of the institutions involved.

(2) *Approval requirement.* A national bank or Federal savings association must file an application and obtain the prior written approval of the OCC before engaging in a substantial asset change.

(3) *Factors*—(i) *General.* (A) In determining whether to approve an application under paragraph (d)(1) of this section, the OCC considers the following factors:

(*1*) The capital level of any resulting national bank or Federal savings association;

(*2*) The conformity of the transaction to applicable law, regulation, and supervisory policies;

(*3*) The purpose of the transaction;

(*4*) The impact of the transaction on safety and soundness of the national bank or Federal savings association; and

(*5*) The effect of the transaction on the national bank or Federal savings association's shareholders, depositors, other creditors, and customers.

(B) The OCC may deny the application if the transaction would have a negative effect in any of these respects.

(ii) *Additional factors.* The OCC's review of any substantial asset change that involves the purchase or other acquisition or other expansions of the bank's or savings association's operations will include, in addition to the foregoing factors, the factors governing the organization of a bank or savings association under § 5.20.

(e) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply with respect to applications filed pursuant to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all of the provisions of §§ 5.8, 5.10, and 5.11 apply.

■ 33. Section 5.55 is added to read as follows:

§ 5.55 Capital Distributions by a Federal Savings Association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1467a, 1831o, and 5412(b)(2)(B).

(b) *Licensing requirements.* A Federal savings association must file an application or notice before making a capital distribution, as provided in this section.

(c) *Scope.* This section applies to all capital distributions by a Federal savings association and sets forth the procedures and standards relating to a capital distribution.

(d) *Definitions.* The following definitions apply to this section:

(1) *Affiliate* means an affiliate, as defined under regulations of the Board of Governors of the Federal Reserve System regarding transactions with affiliates, 12 CFR part 223 (Regulation W).

(2) *Capital* means total capital, as computed under 12 CFR part 3 or part 167, as applicable.

(3) *Capital distribution* means:

(i) A distribution of cash or other property to owners of a Federal savings association made on account of their ownership, but excludes:

(A) Any dividend consisting only of the shares of the savings association or rights to purchase the shares; or

(B) If the savings association is a Federal mutual savings association, any payment that the savings association is required to make under the terms of a deposit instrument and any other amount paid on deposits that the OCC determines is not a distribution for the purposes of this section;

(ii) A Federal savings association's payment to repurchase, redeem, retire or otherwise acquire any of its shares or other ownership interests; any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in its total capital under 12 CFR part 3 or part 167, as applicable; and any extension of credit to finance an affiliate's acquisition of the savings association's shares or interests;

(iii) Any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring. This includes the Federal savings association's payment of cash or property to shareholders of another association or to shareholders of its holding company to acquire ownership in that association, other than by a distribution of shares;

(iv) Any other distribution charged against a Federal savings association's capital accounts if the savings association would not be well capitalized, as set forth in 12 CFR 6.4, following the distribution; and

(v) Any transaction that the OCC determines, by order or regulation, to be in substance a distribution of capital.

(4) *Net income* means a Federal savings association's net income computed in accordance with generally accepted accounting principles.

(5) *Retained net income* means a Federal savings association's net income for a specified period less total capital distributions declared in that period.

(6) *Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term ''share'' also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a capital distribution.

(e) *Filing requirements*—(1) *Application required.* A Federal savings association must file an application with the OCC if:

(i) The savings association is not an eligible savings association;

(ii) The total amount of all of the savings association's capital distributions (including the proposed capital distribution) for the applicable calendar year exceeds its net income for that year to date plus retained net income for the preceding two years;

(iii) The savings association would not be at least adequately capitalized, as set forth in 12 CFR 6.4, as applicable, following the distribution; or

(iv) The savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement between the savings association and the OCC or the OTS, or violate a condition imposed on the savings association in an application or notice approved by the OCC or the OTS.

(2) *Notice required.* Unless it is required to file an application under paragraph (e)(1) of this section, a Federal savings association that is an eligible savings association must file a notice with the OCC if:

(i) The savings association would not remain well capitalized, as set forth under 12 CFR 6.4, or would otherwise not remain an eligible savings association following the distribution;

(ii) The savings association's proposed capital distribution would reduce the amount of or retire any part of its common or preferred stock or retire any part of debt instruments such as notes or debentures included in capital under 12 CFR part 3 or part 167, as applicable, (other than regular payments required under a debt instrument approved under 5.56;

(iii) The savings association's proposed capital distribution is payable in property other than cash;

(iv) The savings association is a direct or indirect subsidiary of a mutual savings and loan holding company; or

(v) The savings association is a direct or indirect subsidiary of a company that is not a savings and loan holding company.

(3) *No prior notice required.* A Federal savings association does not need to file a notice or an application with the OCC before making a capital distribution if the Federal savings association is not required to file an application under paragraph (e)(1) or a notice under paragraph (e)(2) of this section.

(4) *Informational copy of notice required.* If the Federal savings association is a subsidiary of a savings and loan holding company that is filing a notice with the Board of Governors of the Federal Reserve System (Board) for a dividend solely under 12 U.S.C. 1467a(f) and not also under 12 U.S.C. 1467a(o)(11), and neither an application under paragraph (e)(1) nor a notice under paragraph (e)(2) is required, then the savings association must provide an informational copy to the OCC of the notice filed with the Board, at the same time the notice is filed with the Board.

(f) *Filing format*—(1) *Contents.* The notice or application must:

(i) Be in narrative form;

(ii) Include all relevant information concerning the proposed capital distribution, including the amount, timing, and type of distribution; and

(iii) Demonstrate compliance with § 5.55(h).

(2) *Schedules.* The notice or application may include a schedule proposing capital distributions over a specified period, not to exceed 12 months.

(3) *Combined filings.* A Federal savings association may combine the notice or application required under § 5.55(e) with any other notice or application, if the capital distribution is a part of, or is proposed in connection with, another transaction requiring a notice or application under this chapter. If submitting a combined filing, the Federal savings association must state that the related notice or application is intended to serve as a notice or application under this section.

(g) *Filing procedures*—(1) *Application.* When a Federal savings association is required to file an application under paragraph (e)(1) of this section, it must file the application at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The Federal savings association shall not effect the proposed declaration of dividend or approval of the proposed capital distribution unless it has received prior written approval of the OCC.

(2) *Prior notice with expedited review.* A Federal savings association that is an eligible savings association and that is required to file a notice under paragraph (e)(2) must file the notice at least 30 days before the proposed declaration of dividend or approval of the proposed capital distribution by its board of directors. The notice is deemed approved by the OCC upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that:

(i) Additional information is required to supplement the notice;

(ii) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under 5.13(a)(2); or

(iii) The notice is disapproved.

(h) *OCC review of capital distributions.* The OCC reviews applications and notices submitted pursuant to paragraphs (g)(1) and (g)(2) of this section. The OCC may disapprove the notice or deny the application in whole or in part, if it makes any of the following determinations:

(1) The Federal savings association will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in 12 CFR 6.4, as applicable, following the capital distribution. If so, the OCC will determine if the capital distribution is permitted under 12 U.S.C. 1831o(d)(1)(B).

(2) The proposed capital distribution raises safety or soundness concerns.

(3) The proposed capital distribution violates a prohibition contained in any statute, regulation, agreement between the Federal savings association and the OCC or the OTS, or a condition imposed on the Federal savings association in an application or notice approved by the OCC or the OTS. If so, the OCC will determine whether it may permit the capital distribution notwithstanding the prohibition or condition.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to capital distributions made by Federal savings associations.

■ 34. Section 5.56 is added to read as follows:

§ 5.56 Inclusion of subordinated debt securities and mandatorily redeemable preferred stock as Federal savings association supplementary (tier 2) capital.

(a) *Applicability and scope*—(1) *Applicability.* (i) For purposes of this section, an advanced approaches savings association means a Federal savings association that is subject to 12 CFR part 3, subpart E, and a non-advanced approaches savings association means a Federal savings association that is not subject to 12 CFR part 3, subpart E.

(ii) An advanced approaches savings association, beginning on March 31, 2014, must comply with paragraphs (h) through (q) of this section.

(iii) A non-advanced approaches savings association, prior to January 1, 2015, must comply with paragraphs (a) through (g) of this section. Beginning on January 1, 2015, a non-advanced approaches savings association must comply with paragraphs (h) through (q) of this section.

(2) *Scope.* Prior to January 1, 2015, a non-advanced approaches savings association must comply with paragraphs (a) through (g) of this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') in supplementary capital (tier 2 capital) under part 167 of this chapter. If a savings association does not include covered securities in supplementary

capital, it is not required to comply with this section. Covered securities not included in tier 2 capital are subject to the requirements of § 163.80.

(b) *Application and notice procedures*—(1) *Application.* Unless a Federal savings association is an eligible savings association filing a notice under paragraph (b)(2) of this section, it must file an application seeking the OCC's approval of the inclusion of covered securities in supplementary capital. The savings association may file its application before or after it issues covered securities, but may not include covered securities in supplementary capital until the OCC approves the application.

(2) *Notice with expedited review.* An eligible savings association must file a notice seeking the OCC's approval of the inclusion of covered securities in supplementary capital. The savings association may file its notice before or after it issues covered securities, but may not include covered securities in supplementary capital until the OCC approves the notice. The OCC is deemed to have approved the notice upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that:

(i) Additional information is required to supplement the notice;

(ii) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under § 5.13(a)(2); or

(iii) The OCC denies the notice.

(3) *Securities offering rules.* A savings association must also comply with the securities offering rules at 12 CFR part 197 by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(c) *Securities requirements.* To be included in supplementary capital, covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: ''This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;''

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's assets or the assets of any affiliate of the savings association. An affiliate means any person or company that controls, is controlled by, or is under common control with the savings association;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h), 12 CFR 3.11, and any other relevant restrictions;

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) State or refer to a document stating that the savings association must obtain OCC's approval before the voluntary prepayment of principal on subordinated debt securities, the acceleration of payment of principal on subordinated debt securities, or the voluntary redemption of mandatorily redeemable preferred stock (other than scheduled redemptions), if the savings association is undercapitalized, significantly undercapitalized, or critically undercapitalized as described in § 6.4 of this chapter, fails to meet the regulatory capital requirements at 12 CFR part 167, or would fail to meet any of these standards following the payment.

(ii) A Federal savings association must include such additional statements as the OCC may prescribe for certificates, purchase agreements, indentures, and other related documents.

(2) *Maturity requirements.* Covered securities must have an original weighted average maturity or original weighted average period to required redemption of at least five years.

(3) *Mandatory prepayment.* Subordinated debt securities and related documents may not provide events of default or contain other provisions that could result in a mandatory prepayment of principal, other than events of default that:

(i) Arise from the Federal savings association's failure to make timely payment of interest or principal;

(ii) Arise from its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures for publicly offered debt securities; or

(iii) Relate to bankruptcy, insolvency, receivership, or similar events.

(4) *Indenture.* (i) Except as provided in paragraph (c)(4)(ii) of this section, a Federal savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 197.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined in paragraph (c)(1)(i)(C) of this section) and for collective enforcement of the security holders' rights and remedies.

(ii) A Federal savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (c)(4)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(d) *Review by the OCC.* (1) In reviewing notices and applications under this section, the OCC will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws.

(ii) The savings association is at least adequately capitalized under § 6.4 of this chapter and meets the regulatory capital requirements at part 167 of this chapter.

(iii) The savings association is or will be able to service the covered securities.

(iv) The covered securities are consistent with the requirements of this section.

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund.

(vi) The OCC has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(2) The OCC's approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to the OCC. The OCC may impose such additional requirements or

conditions as it may deem necessary to protect purchasers, the savings association, the OCC, or the Deposit Insurance Fund.

(e) *Amendments.* If a Federal savings association amends the covered securities or related documents following the completion of the OCC's review, it must obtain the OCC's approval or non-objection under this section before it may include the amended securities in supplementary capital.

(f) *Sale of covered securities.* The Federal savings association must complete the sale of covered securities within one year after the OCC's approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with the OCC. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(g) *Reports.* A Federal savings association must file the following information with the OCC within 30 days after the savings association completes the sale of covered securities includable as supplementary capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as supplementary capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

(h) *Scope.* (1) Beginning March 14, 2014, an advanced approaches savings association must comply with paragraphs (h) through (q) of this section in order to include subordinated debt securities or mandatorily redeemable preferred stock (''covered securities'') in tier 2 capital under 12 CFR 3.20(d) and to prepay covered securities included in tier 2 capital.

(2) Beginning January 1, 2015, a non-advanced approaches savings association must comply with paragraphs (h) through (q) of this section in order to include covered securities in tier 2 capital under 12 CFR 3.20(d) and to prepay covered securities included in tier 2 capital. A Federal savings association that does not include covered securities in tier 2 capital is not required to comply with this section. Covered securities not included in tier 2 capital are subject to the requirements of § 163.80.

(3) For purposes of this section, mandatorily redeemable preferred stock means mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Federal Home Loan Bank Board and approved in writing by the Federal Savings and Loan Insurance Corporation for inclusion as regulatory capital before or after issuance.

(i) [Reserved]

(j) *Application and notice procedures*—(1) *Application or notice to include covered securities in tier 2 capital*—(i) *Application.* Unless a Federal savings association is an eligible savings association filing a notice under paragraph (j)(ii) of this section, it must file an application seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its application before or after it issues covered securities, but may not include covered securities in tier 2 capital until the OCC approves the application.

(ii) *Notice with expedited review.* An eligible savings association must file a notice seeking the OCC's approval of the inclusion of covered securities in tier 2 capital. The savings association may file its notice before or after it issues covered securities, but may not include covered securities in tier capital until the OCC approves the notice. The OCC is deemed to have approved the notice upon the expiration of 30 days after the filing date of the notice unless, before the expiration of that time period, the OCC notifies the Federal savings association that

(A) Additional information is required to supplement the notice;

(B) The notice is not eligible for expedited review, or the expedited reviewed process is extended, under § 5.13(a)(2); or

(C) The OCC denies the notice.

(iii) *Securities offering rules.* A savings association also must comply with the securities offering rules at 12 CFR part 197 by filing an offering circular for a proposed issuance of covered securities, unless the offering qualifies for an exemption under that part.

(2) *Application required to prepay covered securities included in tier 2 capital*—(i) *General.* A Federal savings association must file an application to, and receive prior approval from, the OCC before prepaying covered securities included in tier 2 capital. For purposes of this requirement, prepayment includes acceleration of a covered security, repurchase of a covered security, redemption of a covered security prior to maturity, and exercising a call option in connection with a covered security.

(ii) *Prepayment in the form of a call option.* (A) If the prepayment will be in the form of a call option, the application must include:

(*1*) A statement explaining why the Federal savings association believes that following the proposed prepayment the savings association would continue to hold an amount of capital commensurate with its risk; or

(*2*) A description of the replacement capital instrument that meets the criteria for tier 1 or tier 2 capital under 12 CFR 3.20, including the amount of such instrument, and the time frame for issuance.

(B) Notwithstanding paragraph (j)(1)(ii) of this section, if the OCC conditions approval of prepayment in the form of a call option on a requirement that a Federal savings association must replace the covered security with a covered security of an equivalent amount that satisfies the requirements for a tier 1 or tier 2 instrument, the savings association must file an application to issue the replacement covered security and must receive prior OCC approval.

(k) *General requirements.* A covered security issued under this section must satisfy the requirements for tier 2 capital in 12 CFR 3.20(d).

(l) *Securities requirements for inclusion in tier 2 capital.* To be included in tier 2 capital, covered securities must satisfy the requirements in 12 CFR 3.20(d). In addition, such covered securities must meet the following requirements:

(1) *Form.* (i) Each certificate evidencing a covered security must:

(A) Bear the following legend on its face, in bold type: ''This security is *not* a savings account or deposit and it is *not* insured by the United States or any agency or fund of the United States;''

(B) State that the security is subordinated on liquidation, as to principal, interest, and premium, to all claims against the savings association that have the same priority as savings accounts or a higher priority;

(C) State that the security is not secured by the savings association's

assets or the assets of any affiliate of the savings association. An affiliate means any person or company that controls, is controlled by, or is under common control with the savings association;

(D) State that the security is not eligible collateral for a loan by the savings association;

(E) State the prohibition on the payment of dividends or interest at 12 U.S.C. 1828(b) and, in the case of subordinated debt securities, state the prohibition on the payment of principal and interest at 12 U.S.C. 1831o(h), 12 CFR 3.11, and any other relevant restrictions;

(F) For subordinated debt securities, state or refer to a document stating the terms under which the savings association may prepay the obligation; and

(G) Where applicable, state or refer to a document stating that the savings association must obtain OCC's prior approval before the acceleration of payment of principal or interest on subordinated debt securities, redemption of subordinated debt securities prior to maturity, repurchase of subordinated debt securities, or exercising a call option in connection with a subordinated debt security.

(ii) A Federal savings association must include such additional statements as the OCC may prescribe for certificates, purchase agreements, indentures, and other related documents.

(2) *Indenture.* (i) Except as provided in paragraph (c)(4)(ii) of this section, a Federal savings association must use an indenture for subordinated debt securities. If the aggregate amount of subordinated debt securities publicly offered (excluding sales in a non-public offering as defined in 12 CFR 197.4) and sold in any consecutive 12-month or 36-month period exceeds $5,000,000 or $10,000,000 respectively (or such lesser amount that the Securities and Exchange Commission shall establish by rule or regulation under 15 U.S.C. 77ddd), the indenture must provide for the appointment of a trustee other than the savings association or an affiliate of the savings association (as defined in paragraph (c)(1)(i)(C) of this section) and for collective enforcement of the security holders' rights and remedies.

(ii) A Federal savings association is not required to use an indenture if the subordinated debt securities are sold only to accredited investors, as that term is defined in 15 U.S.C. 77d(6). A savings association must have an indenture that meets the requirements of paragraph (c)(4)(i) of this section in place before any debt securities for which an exemption from the indenture requirement is claimed, are transferred to any non-accredited investor. If a savings association relies on this exemption from the indenture requirement, it must place a legend on the debt securities indicating that an indenture must be in place before the debt securities are transferred to any non-accredited investor.

(m) *Review by the OCC.* (1) In reviewing notices and applications under this section, the OCC will consider whether:

(i) The issuance of the covered securities is authorized under applicable laws and regulations and is consistent with the savings association's charter and bylaws;

(ii) The savings association is at least adequately capitalized under § 6.4 of this chapter and meets the regulatory capital requirements at 12 CFR 3.10;

(iii) The savings association is or will be able to service the covered securities;

(iv) The covered securities are consistent with the requirements of this section;

(v) The covered securities and related transactions sufficiently transfer risk from the Deposit Insurance Fund; and

(vi) The OCC has no objection to the issuance based on the savings association's overall policies, condition, and operations.

(2) The OCC's approval or non-objection is conditioned upon no material changes to the information disclosed in the application or notice submitted to the OCC. The OCC may impose such additional requirements or conditions as it may deem necessary to protect purchasers, the savings association, the OCC, or the Deposit Insurance Fund.

(n) *Amendments.* If a Federal savings association amends the covered securities or related documents following the completion of the OCC's review, it must obtain the OCC's approval or non-objection under this section before it may include the amended securities in tier 2 capital.

(o) *Sale of covered securities.* The Federal savings association must complete the sale of covered securities within one year after the OCC's approval or non-objection under this section. A savings association may request an extension of the offering period by filing a written request with the OCC. The savings association must demonstrate good cause for the extension and file the request at least 30 days before the expiration of the offering period or any extension of the offering period.

(p) *Issuance of a replacement regulatory capital instrument in connection with exercising a call option.* Pursuant to 12 CFR 3.20(d)(1)(v)(C), the OCC may require a Federal savings association seeking prior approval to exercise a call option in connection with a covered security included in tier 2 capital to issue a replacement covered security of an equivalent amount that qualifies as tier 1 or tier 2 capital under 12 CFR 3.20. If the OCC imposes such a requirement, the savings association must complete the sale of such covered prior to, or immediately after, the prepayment.[4]

(q) *Reports.* A Federal savings association must file the following information with the OCC within 30 days after the savings association completes the sale of covered securities includable as tier 2 capital. If the savings association filed its application or notice following the completion of the sale, it must submit this information with its application or notice:

(1) A written report indicating the number of purchasers, the total dollar amount of securities sold, the net proceeds received by the savings association from the issuance, and the amount of covered securities, net of all expenses, to be included as tier 2 capital;

(2) Three copies of an executed form of the securities and a copy of any related documents governing the issuance or administration of the securities; and

(3) A certification by the appropriate executive officer indicating that the savings association complied with all applicable laws and regulations in connection with the offering, issuance, and sale of the securities.

■ 35. Section 5.58 is added to read as follows:

§ 5.58 Pass-through investments by a Federal savings association.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) *Scope.* Federal savings associations are permitted to make various types of equity investments pursuant to 12 U.S.C. 1464 and other statutes, including pass-through investments authorized under 12 CFR 160.32(a). These investments are in addition to those subject to §§ 5.35, 5.37, 5.38, and 5.59. This section describes the procedure governing the filing of the application or notice that the OCC requires in connection with certain of these investments. The OCC may review other permissible equity investments on a case-by-case basis.

(c) *Licensing requirements.* A Federal savings association must file a notice or

[4] A Federal savings association may replace tier 2 capital instruments concurrent with the redemption of existing tier 2 capital instruments.

application as prescribed in this section to make a pass-through investment authorized under 12 CFR 160.32(a).

(d) *Definitions.* For purposes of this § 5.58:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4.

(3) *Well managed* has the meaning set forth in § 5.38(d)(2) for Federal savings associations.

(e) *Pass-through investments; notice procedure.* A Federal savings association may make a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The Federal savings association must file this written notice with the appropriate OCC licensing office no later than 10 days after making the investment. The written notice must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the Federal savings association is investing. To the extent the notice relates to the initial affiliation of the Federal savings association with a company engaged in insurance activities, the savings association should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The Federal savings association must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State (i) which paragraphs of § 5.38(e)(5)(v) describe the activity or (ii) state that, and describe how, the activity is substantively the same as that contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, state that the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the Federal savings association is well managed and well capitalized at the time of the investment;

(4) Describe how the Federal savings association has the ability to prevent the enterprise from engaging in an activity that is not set forth in § 5.38(e)(5)(v) or not contained in published OCC precedent for Federal savings associations, including published former OTS precedent, approving a pass-through investment by a Federal savings association or its operating subsidiary, or how the savings association otherwise has the ability to withdraw its investment;

(5) Describe how the investment is convenient and useful to the Federal savings association in carrying out its business and not a mere passive investment unrelated to the savings association's banking business;

(6) Certify that the Federal savings association's loss exposure is limited as a legal matter and that the savings association does not have unlimited liability for the obligations of the enterprise; and

(7) Certify that the enterprise in which the Federal savings association is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(f) *Pass-through investments; application procedure*—(1) *Investments not qualifying for notice procedure.* A Federal savings association must file an application and obtain prior approval before making or acquiring, either directly or through an operating subsidiary, a pass-through investment in an enterprise if the pass-through investment does not qualify for the notice procedure set forth in paragraph (e) of this section because the savings association is unable to make the representation required by paragraph (e)(2) or the certification required by paragraph (e)(3) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, as appropriate. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association's application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(2) *Investments requiring a filing under 12 U.S.C. 1828(m).* Notwithstanding any other provision in this section, if an enterprise in which a Federal savings association proposes to invest would be a subsidiary of the Federal savings association for purposes of 12 U.S.C. 1828(m) and the enterprise would not be an operating subsidiary or a service corporation, the Federal savings association must file an application with the OCC under this paragraph (f)(2) at least 30 days prior to making the investment and obtain prior approval from the OCC before making the investment. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and paragraphs (e)(2) or (e)(3) of this section, if applicable. If the Federal savings association is unable to make the representation set forth in paragraph (e)(2) of this section, the savings association's application must explain why the activity in which the enterprise engages is a permissible activity for a Federal savings association and why the applicant should be permitted to hold a pass-through investment in an enterprise engaged in that activity. A Federal savings association may not make a pass-through investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) *Pass-through investments in entities holding assets in satisfaction of debts previously contracted.* Certain pass-through investments may be eligible for expedited treatment where the Federal savings association's investment is in an entity holding assets in satisfaction of debts previously contracted or the savings association acquires shares of a company in satisfaction of debts previously contracted.

(1) *Notice required.* A Federal savings association that is well capitalized and well managed may acquire a pass-through investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent savings association through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(1)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a Federal savings association. The Federal savings association must file the written notice with the appropriate OCC licensing office no later than 10 days after making

the pass-through investment. This notice must include a complete description of the Federal savings association's investment in the enterprise and the activities conducted, a description of how the savings association plans to divest the pass-through investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the savings association will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any Federal savings association receiving approval under this paragraph (g)(1)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required.* A Federal savings association is not required to file a notice or application under this § 5.58 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

(h) *Additional exception to filing requirement.* A Federal savings association may make a pass-through investment without filing a notice or application to the OCC if all of the following conditions are met:

(1) The investment is in an investment company the portfolio of which consists exclusively of assets that the Federal savings association may hold directly;

(2) The Federal savings association is not investing more than 10% of its total capital in one company;

(3) The book value of the Federal savings association's aggregate non-controlling investments does not exceed 25% of its total capital after making the investment;

(4) The investment would not give Federal savings association direct or indirect control of the company; and

(5) The Federal savings association's liability is limited to the amount of its investment.

(i) *Exceptions to rules of general applicability.* Sections 5.8, 5.9, 5.10, and 5.11 of this part do not apply to filings for pass-through investments.

■ 36. Section 5.59 is added to read as follows:

§ 5.59 Service corporations of Federal savings associations.

(a) *Authority.* 12 U.S.C. 1462a, 1463, 1464, 1828, 5412(b)(2)(B).

(b) *Licensing requirements.* When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application as prescribed in this section to:

(1) Acquire or establish a service corporation; or

(2) Commence a new activity in an existing service corporation subsidiary.

(c) *Scope.* This section sets forth the OCC's requirements regarding service corporations of Federal savings associations, and sets forth procedures governing OCC review and approval of filings by Federal savings associations to establish or acquire service corporations and filings by Federal savings associations to conduct new activities in existing service corporation subsidiaries, pursuant to the authority provided in section 5(c)(4)(B) of the Home Owners' Loan Act, 12 U.S.C. 1464(c)(4)(B).

(d) *Definitions.* (1) *Control* has the meaning set forth at 12 U.S.C. 1841 and the Federal Reserve Board's regulations thereunder, at 12 CFR part 225.

(2) *GAAP-consolidated subsidiary* means a service corporation in which a Federal savings association has a direct or indirect ownership interest and whose assets are consolidated with those of the savings association for purposes of reporting under Generally Accepted Accounting Principles (''GAAP'').

(3) *Ownership interest* means any equity interest in a business organization, including stock, limited or general partnership interests, or shares in a limited liability company.

(4) *Service corporation* means any entity that satisfies all of the requirements for service corporations in 12 U.S.C. 1464(c)(4)(B) and this part, and that is designated by the investing Federal savings association as a service corporation pursuant to this section. A service corporation may be a first-tier service corporation of a Federal savings association or may be a lower-tier service corporation.

(5) *Service corporation subsidiary* means a service corporation of a Federal savings association that is controlled by that savings association.

(e) *Standards and requirements.*—(1) *Ownership.* Only Federal or state-chartered savings associations with home offices in the state where the relevant Federal savings association has its home office may have an ownership interest in a first-tier service corporation. A Federal savings association need not have any minimum percentage ownership interest or have control of a service corporation in order to designate an entity as a service corporation.

(2) *Geographic restrictions.* A first-tier service corporation must be organized under the laws of the state where the relevant Federal savings association's home office is located.

(3) *Authorized activities.* A service corporation may engage in any of the designated permissible service corporation activities listed in paragraph (f) of this section, subject to any applicable filing requirement under paragraph (h) of this section. In addition, a Federal savings association may request OCC approval for a service corporation to engage in any other activity reasonably related to the activities of financial institutions.

(4) *Investment limitations.* A Federal savings association's investment in service corporations is subject to the limitations set forth in paragraph (g) of this section. The assets of a Federal savings association's service corporations are not subject to the investment limitations applicable to the savings association under section 5(c) of the HOLA.

(5) *Form of organization.* A service corporation may be organized as a corporation, or may be organized in any other organizational form that provides the same protections as the corporate form of organization, including limited liability.

(6) *Qualified thrift lender test.* In accordance with 12 U.S.C. 1467a(m)(5), a Federal savings association may determine whether to consolidate the assets of a particular service corporation for purposes of calculating qualified thrift investments. If a service corporation's assets are not consolidated with the assets of the Federal savings association for that purpose, the savings association's investment in the service corporation will be considered in calculating the savings association's qualified thrift investments.

(7) *Supervisory, legal or safety or soundness considerations.* (i) Each service corporation must be well managed and operate safely and soundly. In addition, each service corporation must pursue financial policies that are safe and consistent with the purposes of savings associations. Each service corporation must maintain sufficient liquidity to ensure its safe and sound operation.

(ii) The OCC may, at any time, limit a Federal savings association's investment in a service corporation, or limit or refuse to permit any activity of a service corporation, for supervisory, legal, or safety or soundness reasons.

(8) *Separate corporate identity.* Federal savings associations and service corporations thereof must be operated in a manner that demonstrates to the public that each maintains a separate

corporate existence. Each must operate so that:

(i) Their respective business transactions, accounts, and records are not intermingled;

(ii) Each observes the formalities of their separate corporate procedures;

(iii) Each is held out to the public as a separate enterprise; and

(iv) Unless the parent Federal savings association has guaranteed a loan to the service corporation, all borrowings by the service corporation indicate that the savings association is not liable.

(9) *Issuances of securities by service corporations.* A service corporation shall not state or imply that the securities it issues are covered by Federal deposit insurance. A service corporation subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that the controlling Federal savings association is insolvent or has been placed into receivership. For as long as any securities are outstanding, the controlling Federal savings association must maintain all records generated through each securities issuance in the ordinary course of business, including but not limited to a copy of the prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by the OCC.

(f) *Authorized service corporation activities.* Subject to the prior filing requirements set forth in paragraph (h) of this section and the provisions of paragraph (e)(3) of this section, a service corporation may engage in the following activities:

(1) *Any activity that all Federal savings associations may conduct directly.*

(2) *Business and professional services.* Service corporations may engage in the following activities only when such activities are limited to financial documents or financial clients or are generally finance-related:

(i) Accounting or internal audit;

(ii) Advertising, market research and other marketing;

(iii) Clerical;

(iv) Consulting;

(v) Courier;

(vi) Data processing;

(vii) Data storage facilities operation and related services;

(viii) Office supplies, furniture, and equipment purchasing and distribution;

(ix) Personnel benefit program development or administration;

(x) Printing and selling forms that require Magnetic Ink Character Recognition (MICR) encoding;

(xi) Relocation of personnel;

(xii) Research studies and surveys;

(xiii) Software development and systems integration; and

(xiv) Remote service unit operation, leasing, ownership or establishment.

(3) *Credit-related activities.* (i) Abstracting;

(ii) Acquiring and leasing personal property;

(iii) Appraising;

(iv) Collection agency;

(v) Credit analysis;

(vi) Check or credit card guaranty and verification;

(vii) Escrow agent or trustee (under deeds of trust, including executing and delivery of conveyances, reconveyances and transfers of title); and

(viii) Loan inspection.

(4) *Consumer services.* (i) Financial advice or consulting;

(ii) Foreign currency exchange;

(iii) Home ownership counseling;

(iv) Income tax return preparation;

(v) Postal services;

(vi) Stored value instrument sales;

(vii) Welfare benefit distribution;

(viii) Check printing and related services; and

(ix) Remote service unit operation, leasing, ownership, or establishment.

(5) *Real estate related services.* (i) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites, in accordance with a prudent program of property development;

(ii) Acquiring improved real estate or manufactured homes to be held for rental or resale, for remodeling, renovating or demolishing and rebuilding for resale or rental, or to be used for offices and related facilities of a stockholder of the service corporation;

(iii) Maintaining and managing real estate; and

(iv) Real estate brokerage for property owned by a savings association that owns capital stock of the service corporation, or a lower-tier service corporation in which the service corporation invests.

(6) *Securities activities, liquidity management, and coins.* (i) Execution of transactions in securities on an agency or riskless principal basis solely upon the order and for the account of customers or the provision of investment advice. The service corporation must register with the Securities and Exchange Commission and state securities regulators, as required by applicable Federal and state law and regulations;

(ii) Liquidity management;

(iii) Issuing notes, bonds, debentures, or other obligations or securities;

(iv) Purchase or sale of coins issued by the U.S. Treasury.

(7) *Investments.* (i) Tax-exempt bonds used to finance residential real property for family units;

(ii) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(iii) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(iv) Rural business investment companies; and

(v) Investing in savings accounts of an investing thrift.

(8) *Community development investments.* Community development investments that are permissible under part 24 of this Chapter.

(9) *Charitable activities.* Establishing or acquiring a corporation that is recognized by the Internal Revenue Service as organized for charitable purposes under 26 U.S.C. 501(c)(3) of the Internal Revenue Code and making a reasonable contribution to capitalize it, *provided* that the corporation engages exclusively in activities designed to promote the well-being of communities in which the owners of the service corporation operate.

(10) *Activities conducted as agent.* Activities conducted on behalf of a customer on other than an ''as principal'' basis.

(11) *Incidental activities.* Activities reasonably incident to those listed in paragraphs (f)(1) through (f)(10) of this section if the service corporation engages in those activities.

(g) *Limitations on investments in service corporations*—(1) *General.* Under the authority of section 5(c)(4)(B) of the HOLA, a Federal savings association may invest up to 3 percent of its assets in the capital stock, obligations, and other securities of service corporations. Any investment that would cause a Federal savings association's investment in service corporations, in the aggregate, to exceed 2 percent of assets, or made while the savings association's investments in service corporations exceeds 2 percent of assets, must serve primarily community, inner city, or community development purposes consistent with § 24.6. A Federal savings association must designate the investments serving those purposes.

(2) *Loans.* In addition to the amounts that a Federal savings association may invest under paragraph (g)(1), and to the extent that a Federal savings association has authority under other provisions of section 5(c) of the HOLA and OCC regulations thereunder, and available

capacity within any applicable investment limits, a Federal savings association may make loans to any service corporation subject to the following conditions:

(i) Loans to service corporations other than a GAAP-consolidated subsidiary are subject to the lending limits in part 32 of this chapter.

(ii) The OCC may limit the amount of loans to any service corporation where safety and soundness considerations warrant such action.

(3) *Definition.* For purposes of this paragraph, the terms ''loans'' and ''obligations'' include all loans and other debt instruments (except accounts payable incurred in the ordinary course of business and paid within 60 days) and all guarantees or take-out commitments of such loans or debt instruments.

(4) *GAAP-consolidated subsidiaries.* Both debt and equity investments in service corporations that are GAAP-consolidated subsidiaries are considered investments in subsidiaries for purposes of the capital regulations applicable to Federal savings associations.

(h) *Filing requirements*—(1) *Application.* (i) When required by section 18(m) of the Federal Deposit Insurance Act, a Federal savings association must file an application at least 30 days before: (A) Acquiring or establishing a service corporation; or (B) commencing a new activity in an existing service corporation subsidiary.

(ii) The application must include a complete description of the savings association's investment in the service corporation, the proposed activities of the service corporation, the organizational structure and management of the service corporation, the relations between the savings association and the service corporation, and other information necessary to adequately describe the proposal. If the service corporation proposes to engage in insurance activities, the savings association must describe the type of insurance activity in which the service corporation proposes to engage. The savings association must also list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the service corporation holds a resident license or charter, as applicable. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC. Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(2) *Expedited review.* (i) An application to establish or acquire a service corporation, or to perform a new activity in an existing service corporation subsidiary, that meets the requirements of this paragraph is deemed approved by the OCC as of the 30th day after the filing is received by the OCC, unless the OCC notifies the applicant prior to that date that the filing is not eligible for expedited review under 5.13(a)(2). Any savings association receiving approval under this paragraph is deemed to have agreed that the service corporation will conduct the activity in a manner consistent with published OCC guidance.

(ii) An application is eligible for expedited review if the following requirements are met:

(A) The savings association is ''well capitalized'' and ''well managed''; and

(B) The service corporation engages only in one or more of the preapproved activities listed in § 5.59(f).

(3) *OCC review and approval.* The OCC reviews a Federal savings association's application to determine whether the proposal is legally permissible and to ensure that the proposal is consistent with the requirements of this section, safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent Federal savings association. As part of this process, the OCC may request additional information and analysis from the applicant.

(4) *Redesignation.* A Federal savings association that proposes to redesignate an operating subsidiary as a service corporation must submit a notification to the OCC at least 30 days prior to the redesignation date. The notification must include a description of how the redesignated entity will meet all of the requirements of this section, a resolution of the savings association's board of directors approving the redesignation, and the proposed effective date of the redesignation. The savings association may effect the redesignation on the proposed date unless the OCC notifies the savings association otherwise prior to that date. The OCC may require an application if the redesignation presents policy, supervisory, or legal issues.

(5) *Exception to rules of general applicability.* Sections 5.8, 5.10 and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant or novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(i) *Exercise of salvage powers through service corporations.*—(1) In accordance with this section, a Federal savings association may exercise its salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to a service corporation (''salvage investment'') that exceeds the maximum amount otherwise permitted under law or regulation. A Federal savings association must notify the appropriate supervisory office at least 30 days before making such a salvage investment. The notification must demonstrate:

(i) The salvage investment protects the savings association's interest in the service corporation;

(ii) The salvage investment is consistent with safety and soundness; and

(iii) The savings association considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (i)(1)(i) and (ii) of this section.

(2) If the OCC notifies the Federal savings association within 30 days of the filing of the notification that the notification presents supervisory concerns, or raises significant issues of law or policy, the Federal savings association must apply for and receive the OCC's prior written approval before making the salvage investment.

(3) If a service corporation is a GAAP-consolidated subsidiary, the salvage investment will be considered an investment in a subsidiary for purposes of 12 CFR part 3 or part 167, as applicable.

(j) *Failure to comply with the requirements applicable to service corporations.* If a service corporation fails to meet any of the requirements of this section, the Federal savings association must notify the appropriate OCC licensing office. Unless the Federal savings association is otherwise advised by the OCC, if the service corporation cannot comply with the requirements of this section within 90 days of failing to meet such requirements, or otherwise resolve such failure to comply with this section, the Federal savings association must promptly dispose of its investment in the service corporation.

(k) *Annual Report on Service Corporations* (1) *Filing requirement.* Each Federal savings association shall prepare and file with the OCC an Annual Report on Service Corporations containing the information set forth in paragraph (k)(2) of this section for each

of its service corporation subsidiaries that: (i) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(ii) Does business directly with consumers in the United States. For purposes of this paragraph, a service corporation does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(2) *Information required.* The Annual Report on Service Corporations must contain the following information for each covered service corporation subsidiary listed: (i) The name and charter number of the parent Federal savings association; (ii) The name (include any ''dba'' (doing business as), abbreviated names, or trade names used to identify the service corporation when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), email address (if any), and telephone number of the service corporation; (iii) The principal place of business of the service corporation; (iv) The lines of business in which the service corporation is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Web site at *www.occ.gov.* If the service corporation is engaged in an activity not set forth in this list, a Federal savings association shall report the code 0000 and provide a brief description of the activity; and (v) The nature of the Federal savings association's ownership interest in the service corporation.

(3) *Filing time frames and availability of information.* Each Federal savings association's Annual Report on Service Corporations shall contain information current as of December 31st for the year prior to the date the report is filed. The Federal savings association shall submit its first Annual Report on Service Corporations (for information as of December 31, 201x) to the OCC on or before January 31, 201x, and on or before January 31st each year thereafter. The Federal savings association may submit the Annual Report on Service Corporations electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual Report on Service Corporations on its Web site at *www.occ.gov.*

■ 37. The heading of subpart E of part 5 is revised to read as follows:

Subpart E—Payment of Dividends by National Banks

§ 5.64 [Amended]

■ 38. Paragraph (c)(3) of § 5.64 is amended by removing the phrase ''the appropriate district office'' and inserting in its place the phrase ''the appropriate OCC supervisory office''.

PART 7—ACTIVITIES AND OPERATIONS

■ 39. The authority citation for part 7 is revised as set forth below.

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29(First), 71, 71a, 92, 92a, 93, 93a, 371d, 481, 484, 1818, 1464(a), 1464(c)(4)(B), 1828(m), and 5412(b)(2)(B).

■ 40. The heading of part 7 is revised to read as set forth above.

■ 41. The heading of subpart A to part 7 is revised to read as follows:

Subpart A—National Bank and Federal Savings Association Powers

* * * * *

■ 42. Section 7.1000 is revised to read as follows:

§ 7.1000 National bank or Federal savings association ownership of property.

(a) *Investment in real estate necessary for the transaction of business*—(1) *General.* A national bank or Federal savings association may invest in real estate that is necessary for the transaction of its business.

(2) *Type of real estate.* Real estate investments permissible under this section include:

(i) Premises that are owned and occupied (or to be occupied, if under construction) by the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(ii) Real estate acquired and intended, in good faith, for use in future expansion;

(iii) Parking facilities that are used by customers or employees of the national bank or Federal savings association, or its respective branches or consolidated subsidiaries;

(iv) Residential property for the use of officers or employees of the national bank or Federal savings association who are:

(A) Located in remote areas where suitable housing at a reasonable price is not readily available; or

(B) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(v) Property for the use of national bank or Federal savings association officers, employees, or customers, or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, provided that the purchase and operation of the property qualifies as a deductible business expense for Federal tax purposes.

(3) *Permissible means of holding.* (i) A national bank or Federal savings association may acquire and hold real estate under this paragraph (a) by any reasonable and prudent means, including ownership in fee, a leasehold estate, or in an interest in a cooperative. The national bank or Federal savings association may hold this real estate directly or through one or more subsidiaries. The national bank or Federal savings association may organize a banking premises subsidiary as a corporation, partnership, or similar entity (*e.g.,* a limited liability company).

(ii) A Federal savings association also may acquire and hold banking premises through a service corporation in accordance with 12 CFR 5.59.

(b) *Fixed assets.* A national bank or Federal savings association may own fixed assets necessary for the transaction of its business, such as fixtures, furniture, and data processing equipment.

(c) *Investment in banking premises*—(1) *Investment limitation.* Twelve CFR 5.37(d)(1)(i) and (d)(3)(i) provide quantitative investment limitations that govern when OCC approval is required for a national bank or Federal savings association to invest in banking premises.

(2) *Premises approval.* (i) A national bank or Federal savings association shall seek approval from the OCC in accordance with 12 CFR 5.37(d).

(ii) A Federal savings association that invests in banking premises through a service corporation shall comply with the quantitative limitations in 12 CFR 5.37(d) and, to the extent applicable, 12 CFR 5.59.

(3) *Option to purchase.* An unexercised option to purchase banking premises or stock in a corporation holding banking premises is not an investment in banking premises. However, a national bank or Federal savings association seeking to exercise such an option must comply with the requirements in 12 CFR 5.37(d).

(d) *Future national bank or Federal savings association expansion.* A national bank or Federal savings association normally should use real estate acquired for future national bank

or Federal savings association expansion within five years. After holding such real estate for one year, the national bank or Federal savings association shall state, by resolution of its board of directors or an appropriately authorized bank or savings association official or subcommittee of the board, definite plans for its use. The resolution or other official action must be available for inspection by OCC examiners.

(e) *Transition.* If, on June 10, 2014, a Federal savings association holds an investment in real estate, fixed assets, banking premises, or other real property that complies with the legal requirements in effect prior to June 10, 2014, but would violate any provision of this section or § 5.37, the savings association may continue to hold such investment in accordance with the prior legal requirements. However, a Federal savings association that holds such an investment shall not modify, expand or improve this investment, except for routine maintenance, without the prior approval of the appropriate OCC supervisory office.

■ 43. The section heading for § 7.1003 is revised to read as follows:

§ 7.1003 Money lent by a national bank at banking offices or at facilities other than banking offices.

* * * * *

■ 44. The section heading for § 7.1004 is revised to read as follows:

§ 7.1004 Loans originating at facilities other than banking offices of a national bank.

* * * * *

■ 45. The section heading for § 7.1005 is revised to read as follows:

§ 7.1005 Credit decisions at other than banking offices of a national bank.

* * * * *

■ 46. The section heading for § 7.1006 is revised to read as follows:

§ 7.1006 Loan agreement providing for a national bank share in profits, income, or earnings or for stock warrants.

* * * * *

■ 47. The section heading for § 7.1007 is revised to read as follows:

§ 7.1007 National Bank Acceptances.

* * * * *

■ 48. The section heading for § 7.1008 is revised to read as follows:

§ 7.1008 Preparation by a national bank of income tax returns for customers or public.

* * * * *

■ 49. The section heading for § 7.1012 is revised to read as follows:

§ 7.1012 Establishment, operation or use of a messenger service by a national bank.

* * * * *

■ 50. The section heading for § 7.1014 is revised to read as follows:

§ 7.1014 Sale money orders at nonbanking outlets by a national bank.

* * * * *

■ 51. The section heading for § 7.1015 is revised to read as follows:

§ 7.1015 National bank receipt of stock from a small business investment company.

* * * * *

■ 52. The section heading for § 7.1016 is revised to read as follows:

§ 7.1016 Independent undertakings issued by a national bank to pay against documents.

* * * * *

■ 53. The section heading for § 7.1018 is revised to read as follows:

§ 7.1018 National bank automatic payment plan accounts.

* * * * *

■ 54. The section heading for § 7.1020 is revised to read as follows:

§ 7.1020 Purchase of open accounts by a national bank.

* * * * *

■ 55. The title of subpart B of part 7 is revised to read as follows:

Subpart B—National Bank Corporate Practices

* * * * *

■ 56. The title of subpart C of part 7 is revised to read as follows:

Subpart C—Operations

* * * * *

■ 57. The section heading for § 7.3000 is revised to read as follows:

§ 7.3000 National bank hours and closings.

* * * * *

■ 58. Section 7.3001 is revised to read as follows:

§ 7.3001 Sharing national bank or Federal association space and employees.

(a) *Sharing space.* A national bank or Federal savings association may:

(1) Lease excess space on national bank or Federal savings association premises to one or more other businesses (including other financial institutions);

(2) Share space jointly held with one or more other businesses; or

(3) Offer its services in space owned by or leased to other businesses.

(b) *Sharing employees.* When sharing space with other businesses as described in paragraph (a) of this section, a national bank or Federal savings association may provide, under one or more written agreements between the national bank or Federal savings association, the other businesses, and their employees, that:

(1) A national bank or Federal savings association employee may act as agent for the other business; or

(2) An employee of the other business may act as agent for the national bank or Federal savings association.

(c) *Supervisory conditions.* When a national bank or Federal savings association engages in arrangements of the types listed in paragraphs (a) and (b) of this section, the national bank or Federal savings association shall ensure that:

(1) The other business is conspicuously, accurately, and separately identified;

(2) Shared employees clearly and fully disclose the nature of their agency relationship to customers of the national bank or Federal savings association and of the other businesses so that customers will know the identity of the national bank, Federal savings association, or other business that is providing the product or service;

(3) The arrangement does not constitute a joint venture or partnership with the other business under applicable state law;

(4) All aspects of the relationship between the national bank or Federal savings association and the other business are conducted at arm's length, unless a special arrangement is warranted because the other business is a subsidiary of the national bank or Federal savings association;

(5) Security issues arising from the activities of the other business on the premises are addressed;

(6) The activities of the other business do not adversely affect the safety and soundness of the national bank or Federal savings association;

(7) The shared employees or the entity for which they perform services are duly licensed or meet qualification requirements of applicable statutes and regulations pertaining to agents or employees of such other business; and

(8) The assets and records of the parties are segregated.

(d) *Other legal requirements.* When entering into arrangements of the types described in paragraphs (a) and (b) of this section, and in conducting operations pursuant to those arrangements, a national bank or Federal savings association must ensure that each arrangement complies with all applicable laws and regulations. If the arrangement involves an affiliate or a shareholder, director, officer or

employee of the national bank or Federal savings association:

(1) The national bank or Federal savings association must ensure compliance with all applicable statutory and regulatory provisions governing national bank or Federal savings association transactions with these persons or entities;

(2) The parties must comply with all applicable fiduciary duties; and

(3) The parties, if they are in competition with each other, must consider limitations, if any, imposed by applicable antitrust laws.

(e) *Transition.* If, on June 10, 2014, a Federal savings association shares space or employees with another business under an agreement that complies with the legal requirements that were in effect prior to June 10, 2014 but which would violate any provision of this section, the Federal savings association may continue sharing under the existing agreement but it may not amend, renew, or extend the agreement without prior approval of the appropriate OCC supervisory office.

■ 59. The section heading for § 7.4000 is revised to read as follows:

§ 7.4000 Visitorial powers with respect to national banks.

* * * * *

■ 60. The section heading for § 7.4001 is revised to read as follows:

§ 7.4001 Charging interest by national banks at rates permitted competing institutions; charging interest to corporate borrowers.

* * * * *

§ 7.4003 [Amended]

■ 61. Section 7.4003 is amended by:

■ a. Removing the word ''and'' before the phrase ''automated device for receiving deposits''; and

■ b. Adding the phrase '', personal computer, telephone, and other similar electronic devices'' after the phrase ''automated device for receiving deposits''.

■ 62. The section heading for § 7.4005 is revised to read as follows:

§ 7.4005 Combination of national bank loan production office, deposit production office, and remote service unit.

* * * * *

■ 63. The section heading for § 7.4007 is revised to read as follows:

§ 7.4007 Deposit-taking by national banks.

* * * * *

■ 64. The section heading for § 7.4008 is revised to read as follows:

§ 7.4008 Lending by national banks.

* * * * *

■ 65. The heading of subpart E to part 7 is revised to read as follows:

Subpart E—National Bank Electronic Activities

* * * * *

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

■ 66. The authority citation for part 14 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 92, 93a, 1462a, 1463, 1464, 1818, 1831x, and 5412(b)(2)(B).

■ 67. Section 14.10(b) is amended by removing the phrase ''§ 159.3(h) of this chapter'' and adding in its place the phrase ''§ 5.38(e)(3) of this chapter''.

PART 32—LENDING LIMITS

§ 32.1 Authority, purpose and scope.

■ 68. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), and 5412(b)(2)(B).

■ 69. Section 32.3(d)(2) is revised to read as follows:

§ 32.3 Lending limits.

* * * * *

(d) * * *

(2) *Loans by savings associations to develop domestic residential housing units.* (i) Subject to paragraph (d)(2)(ii) of this section, a savings association may make loans to one borrower to develop domestic residential housing units, not to exceed the lesser of $30,000,000 or 30 percent of the savings association's unimpaired capital and unimpaired surplus, including all loans and extensions of credit subject to paragraph (a) of this section, *provided that:*

(A) The savings association is, and continues to be, in compliance with 12 CFR part 3, part 167, part 390, subpart Z, or part 324, as applicable;

(B) Upon application by a savings association under paragraph (d)(2)(iv) of this section, the appropriate Federal banking agency permits, subject to conditions it may impose, the savings association to use the higher limit set forth under this paragraph (d)(2)(i);

(C) The loans and extensions of credit made under this paragraph (d)(2)(i) of this section to all borrowers do not, in aggregate, exceed 150 percent of the savings association's unimpaired capital and unimpaired surplus; and

(D) The loans and extensions of credit made under paragraph (d)(2)(i) of this section comply with the applicable loan-to-value requirements.

(ii) The authority of a savings association to make a loan or extension of credit under the exception in paragraph (d)(2)(i) of this section ceases immediately upon the association's failure to comply with any one of the requirements set forth in paragraph (d)(2)(i) of this section or any condition(s) set forth in an order issued by the appropriate Federal banking agency under paragraphs (d)(2)(i)(B) and (d)(2)(iv) of this section.

(iii) As used in this section, the term ''*to develop*'' includes each of the various phases necessary to produce housing units as an end product, such as acquisition, development and construction; development and construction; construction; rehabilitation; and conversion; and the term ''*domestic*'' includes units within the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Pacific Islands;

(iv) *Procedures*—(A) *Federal savings associations*—(*1*) *Application.* A Federal savings association must submit an application to, and receive approval from, the appropriate OCC supervisory office before using the higher limit set forth under paragraph (d)(2)(i) of this section. The supervisory office may approve a completed application if it finds that approval is consistent with safety and soundness. To be deemed complete, the application must include:

(*i*) If applicable, certification that the savings association is an ''eligible savings association'';

(*ii*) A demonstration that the savings association meets the requirements of paragraphs (d)(2)(i)(A), (C), and (D) of this section;

(*iii*) A copy of a written resolution by a majority of the savings association's board of directors approving the use of the limits provided in paragraphs (d)(2)(i) of this section, and confirming the terms and conditions for use of this lending authority; and

(*iv*) A description of how the board will exercise its continuing responsibility to oversee the use of this lending authority.

(*2*) *Expedited review.* An application by an eligible savings association is deemed approved as of the 30th day after the application is received by the OCC, unless before that date the OCC informs the savings association it must obtain prior written approval from the OCC.

(B) *State savings associations.* A state savings association shall seek approval to use the higher limit set forth under paragraph (d)(2)(i) of this section from its appropriate Federal banking agency, under the rules and procedures

established by the appropriate Federal banking agency.

* * * * *

■ 70. Section 32.7(b) is amended by removing the phrase ''An eligible bank or eligible savings association'' and inserting in its place the phrase ''An eligible national bank or eligible savings association''.

PART 34—REAL ESTATE LENDING AND APPRAISALS

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

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1463, 1464, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* 5412(b)(2)(B) and 15 U.S.C. 1639h.

§ 34.84 [Removed]

■ 72. Section 34.84 is removed.

PART 100—RULES APPLICABLE TO SAVINGS ASSOCIATIONS

■ 73. The authority citation for part 100 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 5412(b)(2)(B), 5414(b)(2).

§ 100.1 [Amended]

■ 74. Section 100.1 is amended by removing the phrase ''The regulations set forth in parts 100 through 197 of this chapter'' and adding in its place the phrase ''The regulations set forth in parts 1 through 197 of this chapter, as applicable, with respect to savings associations''.

§ 100.2 [Amended]

■ 75. Section 100.2 is amended by removing the phrase ''any provision of parts 100 through 197'' and adding in its place the phrase ''any provision of parts 1 through 197 of this chapter, as applicable, with respect to Federal savings associations''.

PART 116—[REMOVED]

■ 76. Part 116 is removed.

PART 143—FEDERAL SAVINGS ASSOCIATIONS—GRANDFATHERED AUTHORITY

■ 77. The authority citation for part 143 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B).

■ 78. The heading of part 143 is revised as set forth above.

143.1 through 143.11 and 143.14 [Removed]

■ 79. Sections 143.1 through 143.11 and 143.14 are removed.

PART 144—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—COMMUNICATION BETWEEN MEMBERS

■ 80. The authority citation for part 144 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B).

■ 81. The heading of part 144 is revised to read as set forth above.

§§ 144.1 through 144.7 [Removed]

■ 82. Sections 144.1 through 144.7 are removed.

PART 145—FEDERAL SAVINGS ASSOCIATIONS—OPERATIONS

■ 83. The authority citation for part 145 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828. 5412(b)(2)(B).

§ 145.91 and §§ 145.93 through 145.96 [Removed]

■ 84. Sections 145.91 and 145.93 through 145.96 are removed.

§ 145.92 [Amended]

■ 85. Section 145.92(b) is amended by removing the phrase ''at §§ 145.93 and 145.95 of this chapter'' and adding in its place the phrase ''at § 5.31 of this chapter''.

PART 146—[REMOVED]

■ 86. Part 146 is removed.

PART 150—FIDUCIARY POWERS OF FEDERAL SAVINGS ASSOCIATIONS

■ 87. The authority citation for part 150 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

■ 88. Section 150.70 is revised to read as follows:

§ 150.70 Must I obtain OCC approval or file a notice before I exercise fiduciary powers?

Except for fiduciary activities subject solely to subpart E, you should refer to 12 CFR 5.26 to determine if you must obtain OCC approval or file a notice with the OCC before you exercise fiduciary powers. A Federal savings association may not exercise fiduciary powers unless it obtains prior approval from the OCC to the extent required under 12 CFR 5.26.

§§ 150.80 through 150.125 [Removed]

■ 89. Sections 150.80 through 150.125 are removed.

§ 150.130 [Amended]

■ 90. Paragraph (a) of § 150.130 is amended by removing the phrase ''in subpart A of this part'' and adding in its place the phrase ''in § 5.26 of this chapter''.

PART 152—[REMOVED]

■ 91. Part 152 is removed.

PART 159—[REMOVED]

■ 92. Part 159 is removed.

PART 160—LENDING AND INVESTMENT

■ 93. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.30 [Amended]

■ 94. Footnote 16 to § 160.30 is amended by removing the phrase ''part 159 of this chapter'' and adding in its place ''§ 5.59 of this chapter''.

■ 95. Section 160.32 is amended by:

■ a. Revising paragraph (b); and

■ b. Removing paragraph (c).

The revision reads as follows:

§ 160.32 Pass-through investments.

* * * * *

(b) Your pass-through investments are subject to the requirements and filing procedures of 12 CFR 5.36.

■ 96. Section 160.35(d)(3) is amended by revising the second sentence to read as follows:

§ 160.35 Adjustments to home loans.

* * * * *

(d) * * *

(3) * * * If the OCC provides such notice to the Federal savings association, the Federal savings association may not use that index unless it applies for and receives the OCC's prior written approval.

§ 160.37 [Removed]

■ 97. Section 160.37 is removed.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

■ 98. The authority citation for part 161 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

§ 161.45 [Amended]

■ 99. Section 161.45 is amended by removing the phrase ''under part 159 of this chapter'' and adding in its place ''under § 5.59 of this chapter''.

PART 162—REGULATORY REPORTING STANDARDS

■ 100. The authority citation for part 162 continues to read as follows:

Authority: 12 U.S.C. 1463, 5412(b)(2)(B).

§ 162.4 [Amended]

■ 101. Section 162.4(b) is amended by removing the phrase '', as defined at § 116.5(c) of this chapter'' and adding in its place the phrase ''under the Uniform Financial Institutions Rating System''.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 102. The authority citation for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.,* 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.1 [Removed]

■ 103. Section 163.1 is removed.

§ 163.22 [Removed]

■ 104. Section 163.22 is removed.

§ 163.81 [Removed]

■ 105. Section 163.81 is removed.

Part 163, Subpart E [Removed]

■ 106. Subpart E of part 163 is removed.

Part 163, Subpart H [Removed]

■ 107. Subpart H of part 163, consisting of §§ 163.550 through 163.590, is removed.

PART 174—[REMOVED]

■ 108. Part 174 is removed.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 109. The authority citation for part 192 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901, 5412(b)(2)(B); 15 U.S.C. 78c, 78*l,* 78m, 78n, 78w.

■ 110. Section 192.25 is amended by:

■ a. Revising the definition of *Acting in concert;* and

■ b. Amending the definition of *Control* by removing the phrase ''in part 174 of this chapter'' and adding in its place the phrase ''in § 5.50 of this chapter''.

The revision reads as follows:

§ 192.25 What definitions apply to this part?

* * * * *

Acting in concert has the same meaning as in § 5.50(d)(2) of this chapter. The rebuttable presumptions of § 5.50(f)(2) of this chapter, other than § 5.50(f)(2)(ii)(A) and (B) of this chapter, apply to the share purchase limitations at §§ 192.355 through 192.395.

* * * * *

§ 192.180 [Amended]

■ 111. Section § 192.180 is amended in paragraph (a) by removing the phrase ''in subpart B of part 116 of this chapter'' and adding in its place ''in § 5.8 of this chapter''.

§ 192.185 [Amended]

■ 112. Section 192.185 is amended by removing the phrase ''in subpart C of part 116 of this chapter'' and adding in its place ''in § 5.10 of this chapter''.

§ 192.430 [Amended]

■ 113. Section 192.430 is amended in paragraphs (a) and (c) by:

■ a. Removing the phrase ''part 152 of this chapter'' and adding in its place ''§ 5.22 of this chapter''; and

■ b. Removing the sentence ''*See* 12 CFR 152.4(b)(8).'' and adding in its place ''*See* § 5.22(g)(7).''.

§ 192.510 [Amended]

■ 114. Paragraph (c)(1) of § 192.510, is amended by removing the phrase ''at part 163, subpart E of this chapter'' and adding in its place ''at § 5.55 of this chapter''.

§ 192.520 [Amended]

■ 115. Paragraph (c) of § 192.520, is amended by removing the phrase ''under part 163, subpart E of this chapter'' and adding in its place ''under § 5.55 of this chapter''.

§ 192.525 [Amended]

■ 116. Section 192.525 is amended by:

■ a. In paragraph (b), removing the phrase ''under §§ 174.4(a) and (b) of this chapter'' and adding in its place ''under § 5.50 of this chapter''; and

■ b. In paragraph (c)(5), removing the phrase ''under part 174 of this chapter'' and adding in its place ''under § 5.50 of this chapter''.

§ 192.660 [Amended]

■ 117. Paragraph (g)(2) of § 192.660 is amended by removing the phrase ''under part 174 of this chapter'' and adding in its place ''under § 5.50 of this chapter''.

PART 193—ACCOUNTING REQUIREMENTS

■ 118. The authority citation for part 193 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B); 15 U.S.C. 78c(b), 78m, 78n, 78w.

§ 193.101 [Amended]

■ 119. In paragraph (c) of § 193.101, remove the phrase ''and § 163.81 of this chapter'' and add in its place the phrase ''and § 5.56 of this chapter''.

Dated: May 13, 2014.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2014–11473 Filed 6–9–14; 8:45 am]

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Part III

Postal Regulatory Commission

39 CFR Part 3001
Revisions to Procedural Rules; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2012–4; Order No. 2080]

Revisions to Procedural Rules

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a set of final rules concerning the procedures related to Postal Service requests for an advisory opinion from the Commission on a change in the nature of service. Adoption of the rules follows a review of comments on proposed rules. After consideration of comments received, some proposed rules were modified, clarified, or corrected. Adoption of these rules will expedite the issuance of advisory opinions.

DATES: *Effective* July 10, 2014.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: Regulatory History:

77 FR 23176 (April 18, 2012)
78 FR 35812 (June 14, 2013)

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I. Introduction

In this Order, the Commission adopts new procedures for nature of service proceedings (N-cases). These new procedures replace the rules set forth in 39 CFR part 3001, subpart D, and are intended to address the need for more timely completion of N-cases. Under the new procedures, the Commission would provide an advisory opinion within 90 days of the date on which the Postal Service files its request under 39 U.S.C. 3661.

The Commission first solicited comments on this issue in an advance notice of proposed rulemaking.[1] Eight parties filed comments on matters such as whether changes to existing rules and procedures were warranted and if so, what the changes should be.[2]

In response to those comments, the Commission issued a notice of proposed rulemaking setting forth proposed regulations for modifying the N-case procedures.[3] Order No. 1738 solicited comments on the proposed rules. After careful consideration of the comments submitted, the Commission is adopting the proposed rules with several minor modifications, clarifications, and corrections.

II. Comments

In response to Order No. 1738, the following parties submitted comments: David B. Popkin (Popkin),[4] the Greeting Card Association (GCA),[5] the National Newspaper Association, Inc. (NNA),[6] the Public Representative,[7] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively, Valpak),[8] and the Postal Service.[9]

Reply comments were submitted by GCA,[10] Valpak,[11] the Public Representative,[12] and the Postal Service.[13]

III. Changes to Proposed Rules

The following proposed regulations have been modified from Order No. 1738:

- 39 CFR 3001.20—Formal intervention
- 39 CFR 3001.81—Pre-filing requirements
- 39 CFR 3001.83—Contents of formal requests
- 39 CFR 3001.87—Interrogatories
- 39 CFR 3001.88—Production of documents or things
- 39 CFR 3001.89—Admissions
- 39 CFR 3001.92—Hearings
- 39 CFR 3001.93—Initial and reply briefs.

The following proposed regulations are being enacted with the language proposed in Order No. 1738, except, in some instances, for minor editorial changes not intended to change the content of the rule:

- 39 CFR 3001.71—Applicability
- 39 CFR 3001.72—Advisory opinion and special studies
- 39 CFR 3001.73—Computation of time
- 39 CFR 3001.74—Service by the Postal Service
- 39 CFR 3001.75—Motions
- 39 CFR 3001.80—Procedural schedule
- 39 CFR 3001.82—Filing of formal requests
- 39 CFR 3001.84—Filing of prepared direct evidence
- 39 CFR 3001.85—Mandatory technical conference
- 39 CFR 3001.86—Discovery—in general
- 39 CFR 3001.90—Rebuttal testimony
- 39 CFR 3001.91—Surrebuttal testimony.

IV. Discussion

A. Background

The statutory basis for N-cases was enacted as part of the Postal Reorganization Act of 1970, Public Law 91–375, 84 Stat. 719, 39 U.S.C. 101 *et seq.* (PRA) and is codified at 39 U.S.C. 3661. Section 3661 requires the Postal Service to seek an advisory opinion from the Commission whenever it determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis. The Commission cannot issue an opinion on any proposal until it first provides the Postal Service, users of the mail, and the Commission's Public Representative an opportunity for hearing on the record under sections 556 and 557 of the Administrative Procedure Act (APA).

Procedural rules governing N-cases are contained in 39 CFR part 3001, subpart D. N-cases are also subject to procedural rules of general applicability set forth in 39 CFR part 3001, subpart A. 39 CFR 3001.71. Under these rules, the Commission has historically conducted N-case hearings as formal, trial-type proceedings.

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[1] Advance Notice of Proposed Rulemaking on Modern Rules of Procedure for Nature of Service Cases Under 39 U.S.C. 3661, April 10, 2012 (Order No. 1309).

[2] The Appendix to Order No. 1738 identifies initial and reply comments to Order No. 1309.

[3] Notice of Proposed Rulemaking Regarding Modern Rules of Procedure for Nature of Service Cases Under 39 U.S.C. 3661, May 31, 2013 (Order No. 1738).

[4] Comments of David B. Popkin, July 29, 2013 (Popkin Comments).

[5] Initial Comments of the Greeting Card Association, July 29, 2013 (GCA Comments).

[6] Comments of National Newspaper Association, July 29, 2013 (NNA Comments).

[7] Public Representative's Comments, July 29, 2013 (PR Comments).

[8] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Initial Comments on Notice of Proposed Rulemaking, July 29, 2013 (Valpak Comments).

[9] United States Postal Service Initial Comments, July 29, 2013 (Postal Service Comments).

[10] Reply Comments of the Greeting Card Association, August 28, 2013 (GCA Reply Comments).

[11] Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments on Notice of Proposed Rulemaking, August 28, 2013 (Valpak Reply Comments).

[12] Public Representative's Reply Comments, August 28, 2013 (PR Reply Comments).

[13] United States Postal Service Reply Comments, August 28, 2013 (Postal Service Reply Comments).

Since the enactment of the Postal Accountability and Enhancement Act (PAEA) in 2006, the frequency of Postal Service requests for advisory opinions under section 3661 has increased significantly. Order No. 1738 at 2. Between 1970 and 2006, the Postal Service initiated five N-cases. *Id.* at 1–2. In the last seven years, the Postal Service has filed six additional N-cases.[14] As the frequency of N-cases has increased, so has their complexity and duration. Of the last six N-cases, three have required eight months or more to complete.[15] The longest of those cases (Docket No. N2010–1) took almost a full year to complete. *Id.*

As its financial situation has worsened, the Postal Service has called for more expeditious resolution of its N-case proposals. Congress has taken notice of the Postal Service's calls for expedition and is considering the imposition of a 90-day deadline for the issuance of all N-case advisory opinions.[16] Mailers and others oppose a fixed deadline for the completion of N-cases. See, *e.g.,* Valpak Comments at 3. They base their opposition on existing legal requirements and on practical considerations, such as the need to conduct discovery of Postal Service information which, they assert, is needed to analyze and evaluate N-case proposals. *Id.* at 9–11.

The Commission has attempted to respond to Postal Service calls for expedition and N-case participant demands for an opportunity to explore and contest Postal Service proposals by balancing the interests of both in the procedural schedules it adopts in individual N-cases. While it understands the Postal Service's desire for more prompt issuance of advisory opinions, the Commission has not always been able to accommodate Postal Service requests for expedition. The tension between the rights of participants and the rights of the Postal Service in N-cases was discussed in a 2012 Commission order denying a Postal Service request for reconsideration of a procedural schedule:

> Before the Commission is permitted to issue an advisory opinion, it is required to provide an opportunity for hearing on the record. . . . Participants [in the proceeding have] justified requests for hearings on the record. The Commission has procedures in place, both by precedent and rule, to implement these [statutory] requirements, which provide due process to all participants. The procedures are flexible enough to accommodate various complexities of cases, and levels of controversy, but also include procedural steps that once triggered require somewhat rigid increments of time. . . . A reasonable amount of time, consistent with the complexity of the case, must be provided for each step to ensure due process.[17]

Given the increasing frequency and the varied complexity of N-cases and the Postal Service's continuing expressions of the need for expediting these cases, among other reasons, on April 10, 2012, the Commission issued an advance notice of proposed rulemaking in which it solicited comments on: (1) Whether changes to the current N-case procedures and regulations are warranted; (2) if so, what those changes would be; and (3) such other relevant subjects commenters might wish to address.[18] Comments were filed by the Postal Service and seven other persons.[19]

After reviewing these comments, on May 31, 2013, the Commission issued Order No. 1738 in this docket, in which it presented a comprehensive proposal for restructuring and streamlining N-case procedures. The objective of the Commission's proposal was to establish a procedural framework in which advisory opinions could be issued within 90 days of the filing of a Postal Service request.

The issuance of an advisory opinion within 90 days requires a number of inter-related changes to the Commission's existing N-case procedures. The principal changes include:

- The establishment of a pre-filing phase intended to inform interested persons of the Postal Service's proposal and to provide the Postal Service with feedback useful in preparing a final proposal less likely to require substantial revisions after commencement of formal Commission proceedings;
- The adoption of a pro forma procedural schedule that provides for issuance of an advisory opinion within 90 days;
- A limitation on the scope of the proceeding to the Postal Service's proposal with an opportunity for participants to explore related subjects by means of special Commission studies or public inquiry proceedings;
- The adoption of expedited deadlines for filing and responding to motions;
- The adoption of new discovery procedures that provide for a mandatory technical conference and a limitation on the number of written interrogatories;
- Expedited filing of rebuttal and surrebuttal testimony, if any;
- Revised hearing procedures that provide for back-to-back hearings on the Postal Service's direct case; rebuttal testimony, if any; and surrebuttal testimony, if any;
- An expedited briefing schedule and limitations on the length of initial and reply briefs; and
- Adoption of a policy of issuing advisory opinions targeted to the Postal Service's proposal and, when appropriate, the institution of special studies or a public inquiry proceeding to explore related subjects.

Order No. 1738 at 9–10.

No single procedural change, by itself, is capable of significantly reducing the duration of N-cases. It is only in combination that these changes have the potential for achieving the objective of issuing an advisory opinion within 90 days of the date of the Postal Service's filing.

B. Legal Basis for Changes

39 U.S.C. 3661(c) sets forth the Commission's legal authority to issue advisory opinions. Subsection 3661(c) requires the Commission to provide the Postal Service, users of the mail, and the Commission's Public Representative an opportunity for a hearing on the record.

The Commission has historically interpreted section 3661's prohibition on the issuance of an advisory opinion ''until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded'' to require formal, trial-type proceedings. See Order No. 1183. Notwithstanding this interpretation, section 3661 does not prohibit the Postal Service from implementing proposed changes in postal services prior to the conclusion of Commission proceedings. Nor does section 3661 prohibit the Postal Service from implementing proposed changes in postal services found by the Commission in its advisory opinion to be inappropriate or unwise. In other words, advisory opinions issued under section 3661 are advisory in nature.

Additionally, the Commission's evaluation of N-cases is conducted

[14] In addition to the five N-cases identified on page 2 of Order No. 1738, one additional N-case has been filed and concluded. See Docket No. N2014–1, Advisory Opinion on Service Changes Associated with Standard Mail Load Leveling, March 26, 2014.

[15] See ''Survey of N-cases'' attached to APWU Reply Comments to Advance Notice of Proposed Rulemaking on Modern Rules of Procedure for Nature of Service Cases Under 39 U.S.C. 3661, July 17, 2012.

[16] Postal Reform Act of 2014, S. 1486, 113th Cong., 2d. Sess. section 206 (as reported by S. Comm. on Homeland Security and Governmental Affairs on February 6, 2014) (S. 1486).

[17] Docket No. N2012–1, Order Denying Motion for Reconsideration of Ruling Establishing Procedural Schedule, January 31, 2012, at 2–3 (Order No. 1183).

[18] See Order No. 1309.

[19] Order No. 1738, Appendix.

according to procedures set forth in 39 CFR part 3001, subpart D. Procedural rules of general applicability in 39 CFR part 3001, subpart A also apply.

C. The 90-Day Schedule/Pro Forma Scheduling Order

In Order No. 1738, the Commission proposed a ''deadline for issuance of an advisory opinion, which is 90 days from the date of filing [of the Postal Service's request].'' Order No. 1738 at 13. See also *id.* at 29 (proposed § 3001.72(a)); *id.* at 33 (proposed § 3001.80 (a)(12)). The 90-day deadline was part of a pro forma N-case procedural schedule that the Commission proposed to add to its part 3001, subpart D procedural regulations in CFR title 39. *Id.* at 50. That pro forma procedural schedule was based upon, and incorporated, the other changes in N-case procedures proposed by the Commission to expedite the issuance of advisory opinions. See *id.* at 13. The pro forma procedural schedule was, in turn, to provide the basis for scheduling orders in individual N-cases. See *id.* at 13–14. Accompanying the 90-day deadline was a provision that permitted changes in the procedural schedule for ''good cause.'' *Id.* at 33 (proposed § 3001.80(b)).

Responses to the 90-day deadline range from apparent acquiescence by GCA to clear opposition by Valpak.[20] Comments by NNA, the Postal Service, and the Public Representative either accept or support the proposed 90-day deadline, subject to potential exceptions or clarifications that could impact whether the deadline is extended.[21]

In its comments, GCA states that it ''does not disagree with the general thrust of the proposed rules,'' although it believes that the completion of complex or highly controversial cases in 90 days ''will be a challenging task.'' GCA Comments at 9.

Although NNA does not express per se opposition to the 90-day deadline, it does express concern over ''the effect a shortened review period would have upon the time available for field hearings.'' NNA Comments at 1. It therefore proposes that the N-case procedural schedule ''adopt a 120- to 180-day expectation'' if ''participants persuasively argue or the Commission's own analysis determines that citizens across the country should have the opportunity to be heard at [field] hearings. . . .'' *Id.* at 5. The issue of field hearings was raised by various participants and will be discussed in more detail in section IV.J., *infra.* Until a decision is made to hold field hearings, there is no way to estimate what impact such hearings would have on the deadline for issuing an advisory opinion. Accordingly, it would, at best, be premature for the Commission to adopt NNA's proposal.

Valpak challenges the 90-day deadline as an ''effort to cut short intervenor participation.'' Valpak Comments at 2. It also asserts that ''[a] fixed, 90-day timeline for Advisory Opinions is unreasonable (and thus unlawful). . . .'' Valpak Reply Comments at 7. The Commission disagrees with both propositions.

The Commission's objective is not to ''cut short'' participation by interested parties. Rather, its objective is to focus intervenor participation on the Postal Service's proposal, as opposed to potential alternatives, and thereby accelerate the issuance of the requested advisory opinion.

The history of N-cases demonstrates that participants frequently seek to challenge the Postal Service's case by establishing the feasibility of one or more alternatives that they argue would be preferable.[22] In furtherance of such efforts, participants have engaged in discovery in an effort to establish a factual basis to support their alternative(s). The exploration of alternatives can add significantly to the time required to issue an advisory opinion.

In some cases, the Commission has found the alternatives, or aspects of the alternatives, proposed by participants to be preferable to the Postal Service's proposals.[23] In other cases, the presentations by participants appear to have caused the Postal Service to have modified its proposal during the course of the N-case. See, *e.g.,* Evolutionary Network Development Proposal at 88, ¶ 7019. Given the potential value of participant-identified alternatives, the Commission does not intend to preclude participants from endorsing such alternatives. Rather, the Commission seeks to redirect such efforts into either the pre-filing conferences that will be required under the new regulations or into special studies or public inquiry proceedings.

In adopting this approach, the Commission emphasizes that participants may identify or advocate alternatives to the Postal Service's proposal during the course of an N-case. However, the manner and the degree to which an alternative can be pursued in the N-case proper will be restricted. This issue is discussed further in later sections of this Order.

The Commission also disagrees with Valpak's assertion that the 90-day deadline is unlawful. Notwithstanding the Commission's use of the term ''deadline,'' the 90-day period is not immutable as Valpak seems to suggest. Valpak Comments at 3. The Commission has expressly reserved the right in §§ 3001.71 and 3001.80(b) to extend the deadline for ''good cause.'' Indeed, the Postal Service has cited the possibility of a ''good cause'' extension as the basis for concern that the 90-day deadline may prove to be merely aspirational. Postal Service Comments at 25–27. The ''good cause'' basis for an extension of the 90-day deadline is discussed below.

In its comments, the Postal Service presents an affirmative case for the 90-day deadline. For the reasons that follow, the Commission does not rely upon the reasons offered by the Postal Service in support of a 90-day deadline. The Commission does, however, conclude that a 90-day deadline is appropriate as part of the comprehensive package of procedural changes adopted by this Order. The reasons for that conclusion are also set forth below.

The Postal Service argues that the Commission already operates under a 90-day deadline in both the Annual Compliance Determination (ACD) proceedings conducted under 39 U.S.C. 3653(b) and exigent rate cases conducted under 39 U.S.C. 3622(d)(1)(E). In both types of proceedings, the result is a binding Commission directive or order. By contrast, N-cases result in the issuance of a non-binding advisory opinion. *Id.* at 4.

While the Postal Service is correct in distinguishing between the legal effect of these types of proceedings, what the Postal Service fails to note is that statutorily required procedures for ACD proceedings and exigent rate cases are less demanding than the statutorily required procedures for N-cases. Thus, 39 U.S.C. 3653(a) requires only that the Commission ''provide an opportunity for comment'' on the Postal Service's Annual Compliance Report that will be the subject of the Commission's ACD. The opportunity that the Commission provides for filing written comments satisfies this requirement.

Similarly, the provisions of 39 U.S.C. 3622(d)(1)(E) governing exigent rate cases require only that the Commission

[20] See GCA Comments at 6–8; Valpak Comments at 2; Valpak Reply Comments at 6–9.

[21] NNA Comments at 5; Postal Service Comments at 2–4; Postal Service Reply Comments at 1–2; PR Comments at 13–14.

[22] See, *e.g.,* Docket No. N2006–1, Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services, December 19, 2006, at 84–85 (Evolutionary Network Development Proposal).

[23] Docket No. N2011–1, Advisory Opinion on Retail Access Optimization Initiative, December 23, 2011, at 64–81.

provide an ''opportunity for a public hearing and comment. . . .'' The Commission satisfies this requirement by affording participants the opportunity to file written comments and to propose questions that Commissioners can consider posing to Postal Service witnesses at public hearings. By contrast, the provisions of 39 U.S.C. 3661 governing N-cases prohibit the Commission from issuing its advisory opinion ''until an opportunity for hearing on the record under sections 556 and 557 of title 5 [*i.e.,* the APA]. . . .'' The requirement to provide an opportunity for a ''hearing on the record'' obligates the Commission to afford interested persons procedural rights that go beyond those afforded in ACD proceedings and exigent rate cases. This obligation to provide an opportunity for a ''hearing on the record'' places practical limitations on the Commission's ability to expedite N-case proceedings. The objective of this rulemaking proceeding is to minimize unnecessary delays that can flow from practical limitations produced by the existing legal standards the Commission must observe.

Second, the Postal Service cites the abbreviated 20- to 90-day timeframes observed by other federal agencies in issuing binding advisory opinions to suggest that Commission N-case proceedings that produce non-binding advisory opinions are ''unnecessarily drawn out.'' [24] However, none of the six agencies identified by the Postal Service is required to provide an ''opportunity for hearing on the record under sections 556 and 557 [of the APA]'' as is the Commission. Indeed, it appears from the regulations cited by the Postal Service that five of the six agencies are authorized to issue advisory opinions on an ex parte basis without any input whatsoever from third parties.[25] The remaining agency limits interested persons to the submission of written comments only.[26] The Commission is not authorized to issue ex parte advisory opinions, nor is it categorically authorized to limit participation by interested persons to the submission of written comments. The Commission concludes that the comparisons offered by the Postal Service are misplaced.

Third, the Postal Service cites Senate passage of S. 1486 and comments filed in response to Order No. 1309 by Senator Carper for the proposition that ''the Commission's advisory opinion process can and should be subject to a 90-day time limit.'' Postal Service Comments at 4. While it appreciates the sentiments cited by the Postal Service, the Commission must conduct N-cases under section 3661 as it exists. The provisions of S. 1486 cited by the Postal Service omit any requirement for a ''hearing on the record'' and limits participants to the filing of written comments.[27] Pending enactment of provisions like those contained in S. 1486, the Commission's attempts to expedite N-cases must satisfy the existing legal requirements of section 3661.

The Commission nevertheless concludes that it is appropriate to prescribe a 90-day deadline for N-cases. It bases that conclusion on the consideration of several factors, including: (1) The increased importance of issuing advisory opinions more promptly given the Postal Service's financial difficulties; (2) the incentive that a 90-day deadline will provide to expedite N-case proceedings; (3) the potential that other structural and procedural changes adopted by this Order have for enabling the Commission to meet the 90-day deadline; and (4) the right retained by the Commission to extend the 90-day deadline if necessary and appropriate.

The Postal Service's precarious financial situation is widely known and has in recent years led to an increase in the frequency of N-case proposals. The Postal Service states that its ''unsustainable financial position has even impelled it to initiate service changes about which it has sought the Commission's advice before the conclusion of the [N-case] review process that will generate that advice.'' Postal Service Comments at 3. It states further that ''timelier proceedings can offer greater relevance for the Postal Service's ultimate decisions.'' *Id.* The Commission agrees that the situation confronting the Postal Service militates in favor of expediting N-cases under existing statutory authority.

The Postal Service also supports the Commission's proposal to complete N-cases within 90 days of the submission of an advisory opinion request. *Id.* at 2. The Commission agrees with the Postal Service's assertion that ''[a] commitment to a 90-day process will make N-case procedures more effective. . . .'' *Id.* at 2–3.

In two of the most recent N-cases, the Commission has issued advisory opinions within 90 days of the filing of the Postal Service's request.[28] Opponents of a 90-day deadline argue that such cases were atypical and cannot be considered representative of all N-cases, many of which are far more complex. Valpak Comments at 2. The Commission recognizes the potential for differences in N-case complexity and does not mean to suggest that all N-cases will present the same (or even nearly the same) level of complexity. In these more recent instances, the Postal Service's pre-filing outreach to affected stakeholders gave it an early understanding of the proposals and facilitated issuance of the advisory opinion within 90 days.[29] This experience demonstrates that a 90-day deadline can be an attainable goal, particularly when stakeholders cooperate in the formulation and presentation of a proposal, as anticipated by the pre-filing requirements adopted herein. To be sure, while the circumstances surrounding each request for advisory opinion may vary, the safeguards incorporated into the procedures are designed to accommodate those variations.

The Commission also believes that the adoption of a 90-day deadline will provide an appropriate incentive for timely issuance of advisory opinions. The Postal Service, interested participants, and the Commission will each have responsibilities for meeting the 90-day deadline. For example, at the pre-filing stage discussed in section IV.E., *infra,* it will be necessary for the Postal Service to engage interested persons in a discussion of its proposal. Participants must, among other things, meet expedited procedural deadlines in pursuing discovery, submitting testimony, and making other filings. The Commission will be required to issue prompt rulings, to place appropriate limitations on the scope of the proceedings, and otherwise to facilitate

[24] Postal Service Comments at 4, n.6 (citing United States Postal Service Comments, June 18, 2012, at 7, n.13 in response to Order No. 1309 (Postal Service Response to Order No. 1309)).

[25] See Postal Service Response to Order No. 1309 at 7, n.13 (regulations of the Federal Reserve Board of Governors; Department of Commerce, Bureau of Industry and Security; Office of the Special Master for TARP Executive Compensation; Centers for Medicare and Medicaid Services; and Office of the Inspector General for Health and Human Services).

[26] *Id.* (regulations of the Federal Election Commission).

[27] See S. 1486, section 206(b)(2)(A) (''Advisory Opinion.—Upon receipt of a proposal [to make a change in the nature of postal services], the Postal Regulatory Commission shall . . . provide notice and an opportunity for public comment. . . .'').

[28] Docket No. N2012–2, Advisory Opinion on Post Office Structure Plan, August 23, 2012 (POStPlan Opinion); and Docket No. N2014–1, Advisory Opinion on Service Changes Associated with Standard Mail Load Leveling, March 26, 2014 (Standard Mail Load Leveling Opinion).

[29] See POStPlan Opinion at 5 (''The POStPlan represents a more fully realized Postal Service effort to optimize its retail network . . . The POStPlan incorporates many of the recommendations the Commission made in its RAOI Advisory Opinion.'').

the timely completion of the proceeding.

Adoption of a 90-day deadline is also facilitated by the restructuring of N-case proceedings and by the procedural changes being adopted by this Order. These changes, each of which is discussed below, include limitation of the scope of a proceeding; adoption of a pre-filing conference requirement; revisions to filing requirements; adoption of a mandatory technical conference requirement; shortened procedural deadlines; revised discovery procedures; revised procedures for the filing of testimony; revised hearing procedures; revised briefing requirements; and the adoption of procedures for conducting special studies of issues beyond the scope of the Postal Service's specific N-case proposal.

Finally, the Commission concludes that the adoption of a 90-day deadline must include provisions for an extension of that deadline in appropriate cases. In adopting the new N-case rules, the Commission seeks to balance the interest of the Postal Service in obtaining more timely advisory opinions and the interest of all participants in being accorded due process. This balance must be achieved under the statute as it exists. Although the exercise is challenging, the Commission is committed to providing both more timely opinions and due process. Nevertheless, cases may be presented in which it is not possible to issue an opinion within 90 days. For that reason, a safety valve must be available to permit extension of the deadline. That being said, however, the Commission does not intend to invoke its right to extend a 90-day deadline without good cause first being established.

The Postal Service and the Public Representative both request the Commission to clarify what situations or circumstances might constitute ''good cause'' under proposed § 3001.80(b) for extending the 90-day deadline. Postal Service Comments at 25–27; PR Comments at 14. In a related request, Valpak asks the Commission to amend proposed § 3001.80(c) to provide for the automatic reset of the 90-day clock to zero in any cases in which the Postal Service changes its proposal as the case progresses. Valpak Comments at 5.

The Commission does not believe that it is either necessary or advisable at this stage to specify what situations or circumstances would justify a ''good cause'' extension. That standard is intended to be flexible and dependent upon specific factual circumstances. It is for the proponent of an extension to articulate a ''good cause'' basis for an extension.

D. Limited Scope of Proceeding

Section 3001.72, as proposed, would require the Commission to issue an advisory opinion no later than 90 days following the filing of the Postal Service's request for an advisory opinion, absent a determination of good cause for extension. Proposed § 3001.72(a). It would also be limited in scope to the specific changes proposed by the Postal Service in its request. Proposed § 3001.72(b). Any alternatives or issues tangentially related to the proposed changes may be evaluated by the Commission in a separate special study or public inquiry proceeding within the discretion of the Commission. Order No. 1738 at 23.

GCA opines that the limitation of scope may be the most significant change to the N-case proceedings. GCA Comments at 6. It observes that ''since the Postal Service must have the same procedural rights and opportunities as other parties, the presentation of alternatives could extend the case well past the Commission's 90-day limit.'' *Id.* However, it contends proposed § 3001.72 does not exploit the possibilities of a special study or public inquiry as fully as it should. Because briefs, hearings, rebuttal, and surrebuttal cases are limited to the Postal Service's proposal by §§ 3001.93(b)(3), 92(e)(1) and (f)(3), and 90(a) and (b) respectively, it states that it is unclear how the discussion of alternatives could arise in N-cases. *Id.* at 6–7. It proposes the Commission reinforce its regulations by providing for a special procedure whereby a participant could petition for institution of a special study public inquiry. *Id.* at 7.

The Public Representative supports the proposed rule, so long as participants may request exploration of alternatives in special studies or public inquiry proceedings. PR Comments at 31.

The Postal Service agrees with the principle that participants be allowed to file a petition for public inquiry for alternative proposals. Postal Service Reply Comments at 4. However, it states that specific language creating procedures for them to do so is unnecessary, as any participant may request the Commission open a public inquiry at any time, even without an explicit provision in the Commission's rules. *Id.*

Valpak opposes the limitation of scope and maintains that the consideration of alternatives is integral to the development of a quality and informed advisory opinion. Valpak Comments at 10. It contends that any after-the-fact studies of alternative proposals after an advisory opinion has been issued would be ''well nigh impossible.'' Valpak Reply Comments at 3.

The Commission does not believe that its proposed restructuring of N-cases will preclude the issuance of informed advisory opinions or the careful review of worthy alternatives. Rather, it believes that its approach preserves a balance between the efficacy and meaningfulness of a 90-day review of a specific Postal Service proposal and the Commission's ability to give thorough consideration to the range and complexity of alternatives proposed by participants. The Commission notes that participants may, if they wish, raise alternative proposals in their briefs and even list reasons why those alternatives would be superior to the Postal Service's proposal. The Commission would view such discussion as critique of the Postal Service's current proposal. It would not, however, evaluate or opine on the merits of the alternative proposal in the advisory opinion.

The Postal Service correctly notes that any party may petition the Commission to open a rulemaking or public inquiry at any time. As such, modification of the proposed rule to create a special procedure for such requests is unnecessary. The Commission will not set forth specific requirements in this section for such requests. It does so with the intent of giving participants who wish to file alternative proposals the ability to do so in the form that they deem most appropriate.

E. Pre-Filing Conference/Revised Filing Requirements

Pre-filing conference. As a condition for issuance of an advisory opinion within 90 days of filing, proposed § 3001.81 would require the Postal Service to conduct a pre-filing conference with interested persons prior to filing a request for an advisory opinion. It sets forth certain parameters regarding the purpose of the pre-filing conference, the notice to be given for the benefit of interested parties, and specifies the informal and off the record nature of pre-filing conferences. See proposed § 3001. 81. The Commission believes that a formal pre-filing process will both aid the Postal Service in developing its proposal before formally requesting an advisory opinion and expedite the Commission's review of the proposal once it is filed. Order No. 1738 at 12.

Certain commenters question the value of a pre-filing phase. Popkin expresses concern that an intelligent

discussion may not be possible when participants have not seen or fully evaluated the pending proposal. Popkin Comments at 2. Valpak doubts that the pre-filing phase will do anything to shorten the time required to issue an advisory opinion. Valpak Comments at 7. It states that some Postal Service filings are based on incomplete and developing information and the Postal Service often takes the position that nothing is final until approved by the Governors. As such, it asserts ''there is little reason to believe that the Postal Service will be in a position to disclose material information about the nature of a proposal before it is finalized and filed.'' *Id.*

Many commenters suggest refinements and improvements to the pre-filing phase. NNA recommends the Commission require the Postal Service to make a policy or ''road-map'' witness available in the pre-filing conference. NNA Comments at 7. The Public Representative proposes that the Commission modify the notice requirements to require the Postal Service to notify all participants in the past five N-cases and all participants in a certain number of rate and complaint cases in order to ensure that all potentially affected persons may be reached. PR Comments at 8. She also opines that it would be useful for the rules to state explicitly that the prohibition on ex parte communications in § 3001.735–501 in the Commission's Standard of Conduct for employees also applies in the pre-filing stage. *Id.* at 8–9. Finally, she proposes to re-cast the filing phase as a ''conditional acceptance'' phase to allow for active Commission involvement during this stage of the proceedings. *Id.* at 10.

The Postal Service does not oppose creating a formal pre-filing process so long as it ''is not significantly more burdensome than the pre-filing activities that the Postal Service undertakes under current practice.'' Postal Service Comments at 7. It suggests that in order to ensure participants do not use the pre-filing phase to delay N-case proceedings, the Commission should indicate that alleged nonconformity with pre-filing rules does not provide a basis for extending the 90-day procedural schedule. *Id.*

The Commission emphasizes that the pre-filing stage is not intended to be overly burdensome to either the parties or the Postal Service. However, it does envision the pre-filing conference as a step above and beyond the current discussions conducted by the Postal Service with key customer segments before it files a request for an advisory opinion. In the most recent advisory opinion, the Commission recommended that the Postal Service conduct more meaningful customer outreach prior to submitting an N-case proposal to the Commission.[30] The Commission views the formal pre-filing conference as one of several potential means to ameliorate the current gaps in customer outreach prior to implementation of a service change. To that end, the Commission is adopting several changes suggested by commenters as clarification in its final rule.

As NNA suggests, the final rules include a requirement that the Postal Service make a representative available at the pre-filing conference who can explain the policy rationale behind the proposal to participants in the pre-filing conference.

The language in the final rule has also been modified to make clear that the Commission may, in its discretion, consider an extension to the procedural schedule if the Postal Service's failure to satisfy the requirements of the pre-filing conference is established by any participant. The intent of this modification is not to be punitive, but rather to provide an incentive for the Postal Service to be prepared to engage in productive and meaningful dialogue with its customers during the pre-filing conference. The Commission will allow the Postal Service ample discretion to conduct the pre-filing conference in the manner it deems most appropriate. The Commission views the formal pre-filing process as a prerequisite for adoption of an expedited procedural schedule. It is intended to aid the Postal Service in developing its proposal and to afford interested stakeholders an opportunity to learn about and possibly shape the Postal Service's plans prior to the Postal Service filing a request for an advisory opinion.

Revised filing requirements. Section 3001.83 sets forth the information that must be included in the Postal Service's request for an advisory opinion. Order No. 1738 at 13.

The Public Representative expresses concern that the requirement for the Postal Service to provide a summary of pre-filing discussions in its request for an advisory opinion will have a chilling effect on these discussions. PR Comments at 12–13. She suggests elimination of this requirement as well as the requirement that the Postal Service explain how it made a good faith effort to address criticisms and suggestions made by interested persons. She asserts that both of these requirements defeat the purpose of ''off the record'' discussions—namely, that the matters discussed will not be disclosed in a manner that affects participants. She also maintains that the likelihood of the pre-filing phase becoming a case unto itself would increase if a summary and certification were required. *Id.*

The Commission seeks to foster an open and productive exchange of information at the pre-filing conference. It is persuaded by the Public Representative's assertion that such an exchange may be chilled if the Postal Service is required to provide the Commission with a summary of the conference. However, it does not believe that the certification of good faith by the Postal Service will create a similarly chilling effect on pre-filing discussions. The final rule will eliminate the requirement for the Postal Service to provide a summary of the pre-filing conference but maintain and clarify the Postal Service's obligation to certify that it made a good faith effort to address critiques of the proposal by participants to the pre-filing conference.

F. Mandatory Technical Conference

Section 3001.85 requires the Postal Service to make witnesses available for a mandatory technical conference with Commission staff and interested participants. The purpose of the conference is to clarify various technical aspects of the Postal Service's proposal and to allow attendees to identify and request relevant information. The technical conference will be conducted off the record, but information obtained from the conference may be used to seek additional information through formal discovery procedures. Order No. 1738 at 18.

NNA, the Public Representative, and the Postal Service all support inclusion of a mandatory technical conference in the final rules. NNA Comments at 7; PR Comments at 18; Postal Service Comments at 6–7. Valpak opposes the technical conference because it doubts the utility to participants. Valpak Comments at 8.

Despite its support for the concept of a mandatory technical conference, the Postal Service maintains that the requirement obligating all witnesses who submit direct testimony to attend is unnecessarily burdensome and does not advance the objective of open information exchange. Postal Service Comments at 28. It proposes several alternatives to the proposed rule. The first alternative would require only witnesses whose testimony contains technical information to attend the

[30] Docket No. N2014–1, Advisory Opinion on Service Changes Associated with Standard Mail Load Leveling, March 26, 2014, at 50–52.

technical conference. The second alternative would allow the Public Representative to determine which, if any, witnesses' testimony contains technical information. Only those witnesses would be required to attend. *Id.* at 28–29.

GCA contends that neither of these alternatives improves the proposed rule. It states that not all participants will agree with either the Postal Service or the Public Representative's definition of what constitutes technical information. Lack of an objective definition may lead to more motions practice as participants request the Postal Service provide witnesses not initially determined to be technical witnesses. It proposes the proposed rule remain unchanged or that the Commission allow the Postal Service to move that certain witnesses be excused from attendance upon a demonstration that the witnesses' testimony neither presents nor uses technical information. GCA Reply Comments at 10–11.

The Commission regards the technical conference as an important procedural safeguard to ensure that participants and Commission staff are able to obtain necessary information about the Postal Service's proposal. Although the Commission's intent is not to create an undue burden on the Postal Service, GCA underscores the difficulty with achieving a consensus definition on technical or technically-based testimony. The Commission notes that this conference is the first opportunity within the formal procedural schedule for participants or Commission staff to clarify important and potentially complex aspects of the Postal Service's proposal. The utility of a mandatory technical conference may be significantly impaired if all necessary witnesses were not present. To that end, the Commission has determined to maintain the language of the proposed rules as-is, keeping in mind that the conference is an opportunity to ask witnesses questions of a technical nature. If the Postal Service seeks for one of its witnesses to be excused from the conference, it may file a motion with its proposal along with supporting justification for why the witness is not testifying or relying on any technical information.

G. Shortened Procedural Deadlines/ Procedures Generally

In order to issue an advisory opinion by the 90-day target deadline and meet the intermediate procedural deadlines of the pro forma schedule, the Commission shortened the procedural deadlines for: Oppositions to notices of intervention (proposed § 3001.20(d)); the Commission's motions practice (proposed § 3001.75); discovery procedures (*e.g.,* proposed §§ 3001.87, 3001.88, and 3001.89); and procedures for designating evidence from other Commission dockets (proposed §§ 3001.31(e) and 3001.31(k)(4)). The Commission included Saturdays, Sundays, and holidays in calculating deadlines (proposed §§ 3001.73 and 3001.15). Finally, the Commission proposed elimination of the ''limited participator'' status in N-cases (see proposed § 3001.20a).

Commenters express a number of concerns regarding these changes. Mr. Popkin and NNA expressed general concern that smaller participants may be disadvantaged because of a lack of internet access and because of an undue burden that smaller participants will experience in attempting to comply with shorter deadlines. Popkin Comments at 2–3; NNA Comments at 6. Mr. Popkin also objects to the possibility that proposed § 3001.73 will make filings due before 4:30 p.m. on days when the Commission is only open for part of the day. Popkin Comments at 3. NNA argues that 2-day deadlines (*e.g.,* proposed § 3001.75's deadline for answers to motions) could toll over a long weekend. NNA Comments at 6.

The Commission acknowledges that shortened procedural deadlines may require more intensive participation by participants in N-cases. However, small participants will not be the only ones who confront challenges under the new procedures. Everyone involved in the process, including the Commission, which will be responsible for issuing prompt rulings on motions and other filings made during the course of the proceeding and for issuing an advisory opinion within 90 days, will be required to increase their efforts to meet the expedited procedural deadlines. While different participants may encounter various challenges, all participants and the Commission will have increased responsibilities. Nor is the Commission convinced that a lack of access to the internet is so pervasive that it will adversely impact a significant number of potential smaller participants. Problems that may arise because of a lack of internet access will be dealt with in specific cases.

Nor do the alleged problems identified by Mr. Popkin and NNA with respect to specific regulations preclude the establishment of shortened deadlines. Mr. Popkin objects to the possibility that proposed § 3001.73 could make filings due before 4:30 p.m. on days, such as snow days, when the Commission closes early. Popkin Comments at 3. However, this possibility already exists under the Commission's current regulations. See 39 CFR 3001.15. NNA's concern that a 2-day deadline could toll over a weekend is obviated by the fact that the Commission does not propose changing the second sentence in the current version of § 3001.15 which extends the deadline to the next business day. See proposed change in § 3001.15 (replacing the third sentence and leaving the first two sentences unchanged).

In addition to assertions that the shortened deadlines will be more burdensome, both the Postal Service and the Public Representative argue that compliance with these deadlines will not be feasible and that motions for extensions of time will become routine. Postal Service Comments at 48–49; PR Comments at 17–18; Postal Service Reply Comments at 2–3; PR Reply Comments at 9. The Postal Service asserts that the preferable alternative is to abandon ''Participant Discovery'' and adopt ''Commission-Led Discovery.'' Postal Service Comments at 8–12.

The single biggest challenge to the expedition of N-cases is the discovery of information needed to provide ''an opportunity for hearing on the record'' as required by section 3661(c). While the Postal Service prefers the adoption of Commission-Led Discovery to the continuation of Participant Discovery, the Commission concludes that, under the existing statutory scheme and in light of its experience in conducting N-cases, Participant Discovery should be retained. See section IV.H.1.a., *infra.* To meet the challenge presented by discovery in N-cases, the Commission has proposed an array of changes. It has restructured the N-case process by, for example, creating a pre-filing conference process, narrowing the scope of the proceeding to the Postal Service's proposal, and deferring consideration of alternatives to public inquiry proceedings or special Commission studies. Within the framework thus created, a number of non-structural procedural changes are essential if the Commission is to issue advisory opinions within 90 days. The adoption of shortened procedural deadlines is such an essential procedural change.

The Commission appreciates that practice under the shortened procedural deadlines it has proposed will require an adjustment on the part of participants. It remains to be seen whether the Postal Service and the Public Representative are correct in suggesting that the shortened procedural deadlines proposed by the Commission will be beyond the ability of participants to comply. In the meantime, the Commission believes that

the approach it is adopting is needed, and can be managed successfully.

Finally, the Commission concludes that the status of ''limited participator'' should no longer be available to participants in N-cases. A number of participants agree with that conclusion. NNA Comments at 6; Valpak Comments at 7. The Public Representative urges the Commission to defer decision on the continued availability of the limited participator status in N-cases. PR Comments at 16–17. Aside from the Public Representative's assertions that the continued availability of the limited participator status is unlikely to have an adverse impact on N-cases, the Commission sees no affirmative value in, or need for, that special status in N-cases. Accordingly, the Commission is adopting the proposed changes in its regulations that will eliminate the limited participator status in N-cases.

H. Discovery

Historically, a significant portion of N-cases has been devoted to discovery. In the discovery rules adopted by this Order, the Commission seeks to reduce the time and effort that will be spent on formal discovery by the Postal Service, other N-case participants, and by the Commission. The objective is to facilitate the more timely issuance of advisory opinions while, at the same time, providing for the development of an adequate record for decision.

By instituting a pre-filing conference procedure, the Commission seeks to encourage the voluntary exchange of information that would be directly related to the proposal filed by the Postal Service. By requiring a mandatory technical conference, the Commission seeks to afford participants an opportunity to inform themselves further regarding information relevant to the proposal after its filing. By requiring the Postal Service to make policy and institutional information available at the pre-filing and technical conference and to provide testimony, the Commission seeks to reduce the need for formal discovery to elicit such information. By limiting the scope of N-cases to a review of the Postal Service's proposal, the Commission seeks to eliminate the need for discovery by participants of information for use in supporting alternatives to the Postal Service's proposal, as well as the need for discovery by the Postal Service and participants of information regarding alternatives proposed by others. By eliminating the need to litigate the feasibility and appropriateness of alternatives in the N-case itself,[31] the Commission seeks to eliminate or to reduce the possible need for Postal Service discovery of other participants.

Supplementing its attempt to reduce the need for formal discovery, the Commission is placing limits on the number of interrogatories that can be served on the Postal Service without express authorization. Participants will continue to be able to request the production of documents and to request the admission by the Postal Service of relevant facts.

The Commission also seeks to expedite formal discovery by adopting stricter discovery deadlines, such as deadlines for serving and answering discovery requests.

Finally, the Commission is establishing a new procedure by which the Postal Service can seek to avoid answering particular discovery requests through the filing of a motion to be excused from answering. This procedure replaces the filing of discovery objections followed by motions to compel and answers to motions to compel.

1. Discovery–Generally

a. ''Participant Discovery'' vs. ''Commission-Led Discovery''

Under the Commission's existing N-case rules, parties seek discovery of relevant facts from each other without prior Commission authorization by means of interrogatories, requests for production of documents or things, and requests for admission. See 39 CFR 3001.26, 3001.27, and 3001.28. The Commission's role in discovery is to resolve discovery disputes presented to it by the parties. This discovery method has been referred to by commenters in this proceeding as ''Participant Discovery'' to distinguish it from an alternate method referred to as ''Commission-Led Discovery.'' This latter method is employed by the Commission in other regulatory contexts, such as ACD proceedings and rate cases, including, most notably, exigent rate cases.

Participant Discovery is not available to participants in these types of proceedings. Instead, by motion, participants request the Commission to issue specific information requests (interrogatories). After review, the Commission or presiding officer will issue an information request containing participants' questions found to be appropriate. The Commission is neither obligated to present a proposed discovery request to another participant, nor is it required to present a request as formulated by the proponent of the request.

The Postal Service urges the Commission to adopt Commission-Led Discovery in lieu of Participant Discovery. Postal Service Comments at 8–18.[32] The Public Representative suggests that Commission-Led Discovery can be consistent with the public interest, provided participants have a realistic opportunity to pursue legitimate avenues of inquiry. PR Reply Comments at 8. GCA and Valpak both oppose the Postal Service's proposal. GCA Reply Comments at 1–9; Valpak Reply Comments at 10–11.

In support of its proposal, the Postal Service argues that the Commission's practice in ACD proceedings, exigent rate cases, and other rate proceedings demonstrates that Commission-Led Discovery is the most efficient form of fact-finding. Postal Service Comments at 12–14. In a related argument, it asserts that sections 556 and 557 of the APA, although applicable to N-cases by virtue of section 3661, do not give participants discovery rights. *Id.* at 14.

Valpak responds by arguing that N-cases are more complex than ACD proceedings, which involve after-the-fact review and are more suitable for Commission-Led Discovery. Valpak Reply Comments at 7–8. GCA adds that Commission-Led Discovery would not further the goal of expediting N-cases because it transfers the burden of performing discovery to the Commission. GCA Reply Comments at 2–5. Both GCA and Valpak argue that the adoption of Commission-Led Discovery would, in effect, unlawfully deprive participants of the opportunity for a hearing on the record as provided in section 3661(c). They base their argument on the fact that responses to interrogatories are used as written cross-examination in N-Case hearings and that a denial of Participant Discovery would effectively deny them the right ''to conduct such cross-examination as may be required for a full and true disclosure of the facts'' as guaranteed by APA section 556(d). GCA Reply Comments at 5–9; Valpak Reply Comments at 10–11. The Commission concludes that the successful use of Commission-Led Discovery in other proceedings, such as ACD proceedings and exigent rate cases, does not justify its use in N-cases. As discussed previously in this Order, the

[31] As discussed elsewhere in this Order, alternatives worthy of consideration could be evaluated in public inquiry proceedings or in special Commission studies.

[32] Attached to the Postal Service's comments is an appendix that contains a copy of the Commission's pro forma procedural schedule revised to reflect the effect of Commission-Led Discovery.

statutory authorization in section 3661 is significantly different from the statutory authorizations for these other types of proceedings. The opportunity for hearing accorded in N-cases is an opportunity for hearing ''on the record'' as that term has been used in the APA.

Although courts have recognized, as the Postal Service correctly points out, that APA hearings on the record do not grant an express right of discovery, they have acknowledged that, in some cases, discovery may be necessary to afford participants a meaningful opportunity for hearing. *Citizens Awareness,* 391 F.3d 338, 350 (1st Cir. 2004), *citing U.S. Lines, Inc.* v. *Fed. Maritime Comm'n,* 584 F.2d 519, 540 (D.C. Cir. 1978) (''. . . the requirement of a hearing to determine the public interest means, at a very minimum, that an opportunity must be afforded for meaningful public participation.'').

Based upon its N-case experiences, the Commission finds that discovery in N-cases is necessary to permit meaningful public participation. Despite what the Commission assumes are the Postal Service's best good faith efforts, proposals sometimes come before the Commission without enough information to assess the merits of the proposal. Valpak Comments at 7 (noting ''some Postal Service filings have been made based on incomplete and developing information. . . .''); Docket No. N2012–1, Advisory Opinion on Mail Processing Network Rationalization Service Changes, September 28, 2012, at 13 (''When the Postal Service provided its proposal to the Commission, it had not fully completed its analysis of the plan.''). In such cases, discovery has been necessary for participants to assess and comment on the Postal Service's proposal. Discovery by participants has also been an important aid to the Commission in developing an adequate record for decision.

Moreover, as GCA and Valpak have argued, discovery responses are used as written cross-examination in N-case hearings. Written cross-examination has proved to be a relatively efficient means whereby participants develop evidence to support their positions. The use of discovery responses as written cross-examination also aids in the ''full and true disclosure of the facts'' consistent with the requirements of APA section 556.

Nor is the Commission persuaded by the Postal Service's arguments that Commission-Led Discovery would be more efficient and would more effectively expedite the issuance of advisory opinions than would Participant Discovery.

The Postal Service begins by questioning the Commission's proposals to shorten discovery and other procedural deadlines: ''The mere establishment of tighter response deadlines, without substantial reduction in the scope of discovery, simply means that deadlines will be harder to meet and that more deadlines will be missed.'' Postal Service Comments at 8–9 (footnote omitted).

What the Postal Service overlooks is that other elements of the Commission's proposed rules do, indeed, seek to achieve a ''substantial reduction in the scope of discovery'':

> The pre-filing conference seeks to engage the Postal Service in a constructive dialogue which, among other things, will improve understanding of its proposal, identify areas of agreement and disagreement, and narrow the need for discovery by enabling the Postal Service to file a well-supported proposal that reduces the scope of needed discovery.
>
> The Commission is limiting the scope of the N-case to a consideration of the Postal Service's proposal and by referring potentially viable alternatives to public inquiry proceedings or by conducting special studies of such proposals. This limitation is also intended to contribute to a ''substantial reduction in the scope of discovery.''
>
> The Commission is limiting the number of interrogatories that participants may serve on the Postal Service and, elsewhere in this Order, is taking steps to eliminate opportunities to circumvent the limitation on interrogatories. See sections IV.H.2.a. and IV.H.2.b.(1)(c), *infra.*

Although the Commission declines to place limits on requests for production and requests for admission, it is providing the Postal Service with a streamlined procedural mechanism (the motion to be excused from answering) that will allow it to oppose requests that are not well-grounded. See section IV.H.1.d., *infra.*

For these reasons, the Commission believes that its proposals have the potential for producing the ''substantial reduction in discovery'' that the Postal Service asserts is a necessary condition for expediting discovery and the issuance of advisory opinions.

The Postal Service's suggestion that Commission-Led Discovery would be a preferable alternative to the revised Participant Discovery adopted by this Order is not persuasive. First, as GCA points out, Commission-Led Discovery will not reduce the number of discovery requests made by participants. It will only transfer responsibility for the initial review of those requests from the Postal Service to the Commission. GCA Reply Comments at 2–5.

Second, between the Commission and the Postal Service, it is the Postal Service that is in the best position initially to assess the nature of the request, the likelihood that the requested information exists, the potential relevance or irrelevance of the requested information to the Postal Service's proposal, and the potential of the request for being unduly burdensome.

Third, the Postal Service does not appear to relinquish the right to oppose a proposed discovery request submitted to the Commission by a participant for adoption as a Commission information request. See Postal Service Comments at 13, n.16. An objection by the Postal Service would, of course, require an opportunity to respond be given to the proponent of the request, as well as an opportunity for the Commission to decide whether to issue an information request.[33] The failure of the Postal Service to account for these additional steps results in a significant understatement of the potential amount of time needed to obtain information by means of Commission-Led Discovery.[34]

For these reasons, the Commission is not adopting the Postal Service's proposal to substitute Commission-Led Discovery for Participant Discovery.

b. Discovery by the Postal Service

The pro forma procedural schedule proposed in Order No. 1738 omits dates for discovery by the Postal Service or any supporters of participant rebuttal cases. See Order No. 1738 at 50 (Proposed Appendix A to Part 3001, subpart D, Pro Forma N-case Procedural Schedule). In its comments, the Postal

[33] In addition to possible objections to the issuance of Commission information requests, the Postal Service raises the further possibility that the failure to make such an objection ''should not waive or otherwise prejudice any rights that a responding party has with respect to how it answers (or declines to answer) any resulting Commission information request.'' *Id.*

[34] Under the Postal Service's proposal, one round of Commission-Led Discovery would require 10 days to complete. See Postal Service Comments, Appendix I at 23 (Pro-Forma N-Case Procedural Schedule). Deadlines for applications for issuance of Commission Information Requests would be due by Day 14; information requests would be issued by Day 17; and responses to information requests would be due by Day 24. If a motion for leave to object were filed within a day of the application for issuance of an information request (as would be permitted under the Postal Service's proposal), followed by an answer to the motion within 5 days (proposed § 3001.75(a)(2)), an additional 6 days or more would be added to the 10 days required for a single round of Commission-Led Discovery. Moreover, additional time would be needed to complete the process if the respondent did not answer fully or unambiguously, as the Postal Service suggests might occur. See note 33, *supra.* By contrast, a single round of Commission-proposed Participant Discovery would take 11 days, including resolution of a respondent's motion to be excused from answering, assuming the Commission were to act on the motion within 3 days of receipt of the answer to the motion. See proposed § 3001.75.

Service states that it or other participants ''may have need to propound discovery upon a party offering the rebuttal testimony.'' Postal Service Comments at 35–36. It therefore requests the Commission to revise the proposed discovery regulations to make those rules ''party neutral'' and to revise the proposed pro forma schedule to include dates for discovery on rebuttal cases. *Id.* at 18–22; 35–37. The Public Representative supports giving the Postal Service the right to conduct discovery. PR Comments at 24.

The Commission does not intend categorically to deny the Postal Service or other participants the opportunity to conduct discovery of participant rebuttal cases. However, it is not persuaded that such discovery will necessarily be required in N-cases as restructured. Under the new N-case procedures, the scope of the proceeding is being limited to the Postal Service's proposal. Participants will no longer be permitted to present and attempt to support alternatives. Moreover, with the increased opportunity for dialogue between the Postal Service and interested persons, beginning with the pre-filing consultations required under the revised procedures, the Postal Service should be better able to anticipate and address possible objections to its proposal when it files its direct case. These changes reduce the likelihood of the need for discovery of rebuttal cases by the Postal Service and others.

Should the need for such discovery nevertheless arise, the Postal Service and others may request an opportunity to propound discovery. Appropriate requests will be granted. Accordingly, although the Commission is not revising the pro forma schedule, it is revising the text of its proposed N-case discovery rules to make those rules ''party neutral'' for use in the event discovery by the Postal Service or others becomes necessary.

c. Stricter Discovery Deadlines

Stricter discovery deadlines include shortened deadlines for conducting discovery, expedited deadlines for contesting and resolving discovery disputes, and stricter deadlines for providing responses to discovery requests. The stricter deadlines applicable to discovery are consistent with the shortening of all deadlines in N-cases in order to facilitate the issuance of an advisory opinion within 90 days of filing. As noted in section IV.G., *supra,* shortened procedural deadlines within the new N-case framework are essential if the Commission is to meet the 90-day target for advisory opinions. Stricter discovery deadlines are no exception.

d. New Procedures for Contesting Discovery Requests

In Order No. 1738, the Commission proposed to replace the method traditionally used by recipients of discovery requests to contest specific requests. That method typically involved four steps: (1) Service of an objection on the proponent of the request by the recipient of the request; (2) filing and service of a motion to compel by the proponent of the request; (3) filing and service of an answer by the recipient of the request; and (4) issuance by the Commission or a presiding officer of an order granting or denying (in whole or in part) the motion to compel.

Under the new procedure, set forth in proposed § 3001.75, the process would be reduced to three steps: (1) Filing by the recipient of a discovery request of a motion to be excused from answering; (2) filing by the proponent of the request of an answer in support of its request; and (3) issuance by the Commission or a presiding officer of an order granting or denying (in whole or in part) the motion to be excused from answering. See proposed § 3001.75(b). In addition to eliminating objections to discovery requests as an antecedent condition to the filing of a motion, the new section would set a short deadline for the filing of the motion to be excused from answering (*i.e.,* within 3 days of the filing of the discovery request. *Id.* at 3001.75(b)(1). Answers to the motion would be due within 2 days. *Id.* at 3001.75(b)(2). Answers to the discovery request would be due within 3 days of the denial of a motion to be excused from answering. *Id.* at 3001.75(b)(3).

The Postal Service opposes these changes on essentially two grounds. Postal Service Comments at 29–31. First, it restates its preference for Commission-Led Discovery. *Id.* at 31. Second, the Postal Service argues that the new process ''could paradoxically *increase* the burden on party and Commission resources and the time spent in discovery.'' *Id.* at 29 (emphasis in the original).

The Commission is not persuaded by either of the grounds offered for rejecting the new procedure. For the reasons previously given, the Commission is not adopting the Postal Service's proposal for Commission-Led Discovery. See section IV.H.1.a., *supra.* Nor does the Commission accept the Postal Service's assertion that the new procedure can be expected to increase the burdens of, or time required for, discovery.

The Postal Service predicates the alleged increased discovery burdens and time requirements on the assumption that ''the Commission proposes to do away with the role of party discretion and to subject every objectionable discovery request—even those that a proponent would not otherwise have contested—to an adversarial dispute resolution process as a matter of course.'' *Id.* at 30. That is not the case. Although the Postal Service is correct that under the current procedural rules discovery disputes can be resolved informally and summarily when a proponent of a request acquiesces in an objection, the Postal Service errs in assuming that such an informal and summary resolution would not be possible under the new procedure. Thus, for example, upon receipt of a discovery request to which it objects, the recipient of the request can informally contest the request and seek to have it withdrawn before it files a motion to be excused from answering. The participant proposing the discovery request can agree to withdraw the request as it can currently do in response to a formal objection. Alternatively, if a motion to be excused from answering has already been filed, the proponent of the request can acquiesce in the motion formally by answer or informally by not answering. In either event, the most that would be required of the Commission or presiding officer would be a one-page order granting the motion to be excused.

2. Discovery–Interrogatories

All six commenters address the Commission's proposed N-case interrogatory rule contained in § 3001.87. The centerpiece of that rule is a limit on the number of interrogatories that a participant may serve on the Postal Service. Commenters raise essentially three questions:

(1) Should there be a limit on the number of interrogatories that a participant may serve?

(2) If limited, is the proposed 25-interrogatory limit appropriate?

(3) Can the limit on interrogatories be expected to be effective in expediting the proceeding and permit the development of an adequate record for decision?

Each of these questions, and the issues they raise, is discussed below.

a. Should there be a limit on the number of interrogatories?

Barring the adoption of its Commission-Led Discovery proposal, the Postal Service supports the imposition of a limit on the number of interrogatories that participants may

serve. Postal Service Comments at 32–35, 39–40. The Public Representative also acknowledges the need for numerical limits on interrogatories. PR Comments at 19 (''[i]f expedition of N-cases is to be achieved, it seems that numerical limits on interrogatories directed to the Postal Service are inevitable, notwithstanding legitimate concerns about the difficulty of capturing the qualitative aspects of a case in such a finite fashion.''). Other participants acquiesce in the Commission's proposed limit on the number of interrogatories, subject to certain additions and modifications to the proposed interrogatory rule. GCA Comments at 1; NNA Comments at 6.

The only commenter that expressly opposes limits on the number of interrogatories is Valpak. Valpak Comments at 5–9. Valpak takes the position that unless limits are placed on the scope of any one N-case and the length of the Postal Service's filing, there ''should be no limitation on the number of written interrogatories. . . .'' *Id.* at 8. Valpak bases its position on its right to ''a hearing on the record under sections 556 and 557'' of title 5 of the United States Code and upon general claims of its right to due process. See *id.* at 5–6. Valpak challenges as ''utopian'' any expectation that the Postal Service will be forthcoming about its proposal during a pre-filing period and a pre-filing technical conference. *Id.* at 8. Valpak therefore dismisses such expectation as a rationale for limiting discovery. *Id.*

Unlike Valpak, most participants recognize that some numerical limits must be imposed as part of an attempt to issue advisory opinions more promptly. Neither the statutory requirements of a ''hearing on the record'' under sections 556 and 557, nor constitutional requirements of due process preclude the imposition of such limits. Indeed, the imposition of such limits is commonplace, as evidenced by the numerical limits imposed by the Federal Rules of Civil Procedure (FRCP) on interrogatories in civil actions. See Fed. R. Civ. P. 33. Like the limits imposed by FRCP Rule 33, the limits proposed by the Commission in § 3001.87 can, upon an adequate showing, be increased. See *id.*

The proposed numerical limit on interrogatories, like the 90-day limit on the duration of N-cases, is predicated, in part, upon good faith efforts by the Postal Service to make relevant information available to participants outside the context of formal discovery. The expectation of good faith voluntary production of information is not, as Valpak suggests, ''utopian,'' since it is in the Postal Service's self-interest to produce relevant information voluntarily in order to obtain an advisory opinion by the 90-day target deadline. Furthermore, as discussed below, formal interrogatories will not be the only means whereby participants can obtain relevant information for use in an N-case.

The alternative suggested by Valpak that a limitation on the number of interrogatories should require ''a corresponding limit on the scope of any one N-docket and the length of the filing of the Postal Service'' is not explained. It remains unclear exactly what ''corresponding limit'' Valpak has in mind.

Valpak's skepticism regarding the efficacy of pre-filing disclosures does not persuade the Commission that it should refrain from imposing a limit on the number of interrogatories that participants may serve on the Postal Service. The Commission concludes that a limit on interrogatories subject to an opportunity to seek Commission permission to serve additional interrogatories is the preferable procedure.

b. If limited, is the proposed 25-interrogatory limit an appropriate limit?

In Order No. 1738, the Commission proposed to limit each N-case participant to the service of 25 interrogatories on the Postal Service. Proposed § 3001.87(a). Included within that limit would be the combined total of each participant's initial and follow-up interrogatories for all witnesses, as well as institutional interrogatories directed to the Postal Service. Although the Commission did not state the basis for its selection of 25 as the appropriate limit, several commenters correctly infer that the Commission used as the model for its proposal the limit in FRCP Rule 33 that applies to federal courts in civil litigation. See Postal Service Comments at 32; PR Comments at 19.

GCA and NNA either implicitly accept the Commission's proposed limit or conditionally accept that limit, subject to additions or modifications to the interrogatory rule.[35] Valpak agrees with GCA's and NNA's assertions regarding alleged problems with a limit of 25 on the number of interrogatories that each participant could serve on the Postal Service. Valpak Reply Comments at 1–4. It does not, however, agree with their proposed solutions. *Id.* Mr. Popkin suggests that by limiting the number of interrogatories to 25, the Commission will precipitate an increase in the number of discovery motions. Popkin Comments at 3. The Public Representative notes the commenters' concerns and urges the Commission ''to revisit its proposed across-the-board numerical limit on interrogatories, especially as this limit affects followup interrogatories and applies case wide, rather than by witness.'' PR Reply Comments at 9.

The Postal Service takes the position that 25 interrogatories per participant is far too large. See Postal Service Comments at 10–11 (discussing hypothetical discovery scenario in which five participants serve a total of 1,250 interrogatory questions (including subparts), 150 requests for production, and 250 requests for admission, thereby placing an ''insurmountable strain'' on Postal Service resources).

Several factors influence the selection of an appropriate limit on the number of interrogatories. These include: (1) The availability to participants of relevant information through means other than the service of formal interrogatories; (2) the narrowed scope of the proceeding; (3) the manner in which the limit is to be applied; and (4) the availability of opportunities to exceed the limit.

The availability of relevant information by means other than interrogatories. Participants will have access to relevant information by means other than formal interrogatories, including: information submitted by the Postal Service in other proceedings or in reports filed with the Commission; information made available in pre-filing conferences; information contained in the Postal Service's request for an advisory opinion; policy and institutional information provided by Postal Service representatives at pre- and post-filing conferences; information contained in documents produced under § 3001.88; and responses to requests for admission made under § 3001.89. The availability of relevant information from these other sources should reduce the relative need for discovery by interrogatories.

These same alternative sources should reduce the potential discovery burdens hypothesized by the Postal Service. See Postal Service Comments at 10–11. If the Postal Service provides relevant information voluntarily during the various stages of an N-case (including

[35] GCA does not expressly challenge the limit of 25 interrogatories, but questions whether that number of interrogatories will be adequate in suggesting that, upon motion, participants be given an opportunity to serve follow-up interrogatories for supplementation or clarification. GCA Comments at 2. NNA takes a similar position by accepting a limit of 25 on initial interrogatories, but urging the Commission to authorize ''at least one set of follow up interrogatories without limitation by a discovery cap.'' NNA Comments at 6. These comments are addressed in section IV.H.2.b.(1)(a), *infra.*

the pre-filing stage) the need for formal discovery requests should be reduced.

The narrowed scope of the proceeding. An equally important factor bearing upon the appropriate limit on the number of interrogatories is the narrowed scope of the N-case proceeding. To date, N-case proceedings have encompassed consideration of both the Postal Service's proposal and participant alternatives. To develop and support their alternatives, participants have asserted a need to engage in sometimes extensive discovery of the Postal Service. This participant discovery adds to the length of the N-case proceeding.

As discussed earlier, the Commission has decided to restructure N-cases by narrowing their scope to consideration of the Postal Service's proposal and by deferring consideration of potential alternatives to other contexts, such as special Commission studies or public inquiry proceedings. This reduction in the scope of N-case proceedings should reduce the need for discovery generally and for interrogatories, in particular. This limitation on the scope of the N-case will not only limit participants' needs for discovery, including discovery by means of interrogatories, it will also limit the potential discovery burdens on the Postal Service.

(1) The manner in which the 25-interrogatory limit will operate. Commenters address several issues regarding the scope and application of the 25-interrogatory limit. Those issues concern: (1) The intended scope of the limit; (2) the criteria for determining whether subparts of interrogatories are to be counted toward the limit; (3) potential circumvention of the limit; and (4) the effect of the limit on the opportunity to serve institutional interrogatories on the Postal Service.

(a) *Scope of the limit.* Both GCA and NNA suggest that the 25-interrogatory limit should be applied only to initial interrogatories. GCA Comments at 2; NNA Comments at 6. GCA would make all follow-up interrogatories subject to presiding officer approval upon motion by the participant establishing that the answers to the initial interrogatory were incomplete, non-responsive, or ambiguous and that the follow-up interrogatories did not exceed the scope of the initial interrogatories. GCA Comments at 2. NNA would permit ''one set'' of follow-up interrogatories without any numerical limit. NNA Comments at 6. These proposed changes are allegedly needed to ensure that participants get responsive answers to the 25 interrogatories they would be entitled to serve on the Postal Service. See GCA Comments at 2; NNA Comments at 6. In its reply comments, Valpak agrees with GCA's and NNA's assertions that Postal Service responses to interrogatories are not always complete or responsive. Valpak Reply Comments at 2. Valpak also warns that the proposed 25-interrogatory limit could create an incentive for the Postal Service ''to divide presentation of its case among more witnesses'' thereby limiting the number of interrogatories that could be directed to each witness. *Id.*[36]

In its reply comments, the Postal Service warns that the proposals by both GCA and NNA would seriously undermine the potential effectiveness of the 25-interrogatory limit and ''move N-cases even farther from the goal of a predictable 90-day framework.'' Postal Service Reply Comments at 10–11. The Postal Service finds NNA's suggestion least acceptable because it would permit an unlimited number of follow-up interrogatories without any need for justification or Commission approval. *Id.* at 11, n.10. The Postal Service objects to GCA's proposal because the proposed process for approval of additional interrogatories would consume additional time in an already tight procedural schedule and thereby enhance the risk that the 90-day target deadline could not be met. *Id.* at 11–12.

As proposed, the 25-interrogatory limit would apply to both initial and follow-up interrogatories. The participant would decide how many of its 25 interrogatories should be served as initial interrogatories, with the remainder available to be served as follow-up interrogatories. If the participant felt additional interrogatories were necessary, it would be required to obtain Commission approval for such interrogatories before serving them on the Postal Service. The Postal Service would have an opportunity to oppose any request for additional interrogatories.

The Commission is not persuaded that the proposals by GCA and NNA should be adopted. Their proposals address a potential problem—non-responsive, incomplete, or ambiguous Postal Service answers to interrogatories—that has a remedy other than follow-up interrogatories. That remedy is to seek an order compelling responsive, complete, and clear answers. Such remedy avoids an unnecessary use of follow-up interrogatories, thereby permitting the participant to take full advantage of the 25 interrogatories that it can serve as a matter of right. In seeking such a remedy, the participant could, if appropriate in the circumstances presented, request that any follow-up requests that it reserved would not have to be served until the Postal Service complies with the initial request. Assuming a motion to compel is filed in good faith, an order denying a motion to compel would also establish a deadline for service of any remaining follow-up requests that the participant was eligible to serve.

In no event will a participant be able to serve more than 25 interrogatories without prior Commission approval. That prohibition applies regardless of whether the interrogatory is an initial or a follow-up interrogatory. The Commission agrees with the Postal Service that NNA's proposal to permit one set of an unlimited number of follow-up interrogatories as a matter of right could frustrate the objective of completing N-cases within 90 days.

(b) *Criteria for counting subparts as separate requests.* The Commission's proposed interrogatory rule provides that an interrogatory with subparts that are logically and factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. Proposed § 3001.87(a). The purpose of this provision is to prevent the 25-interrogatory limit from unfairly restricting the ability of participants to engage in discovery. Without this provision, all parts of a multi-part interrogatory would be counted as individual interrogatories. For example, without this provision, an interrogatory that asked for a witness's (a) name; (b) address; (c) telephone number; and (d) email address, would count as four interrogatories toward the 25-interrogatory limit. This result would be patently unfair and contrary to the result intended by the 25-interrogatory limit.

While GCA agrees with the salutary intent of this provision, it points to certain potential uncertainties and difficulties with the language used by the Commission. It notes that a literal application of the requirement that subparts be both logically ''and'' factually subsumed with an interrogatory would be unduly restrictive. GCA Comments at 3–4. It also argues that use of the word ''necessarily'' could cause similar

[36] In the example presented by Valpak, the 25-interrogatory limit could restrict a participant to one initial and one follow-up interrogatory per witness in N-cases like the Docket No. N2010–1 and Docket No. N2012–1 proceedings in which the Postal Service presented 11 and 13 witnesses, respectively. Although the Commission will not assume fragmentation by the Postal Service of witnesses' testimony, it will entertain requests to exceed the 25-interrogatory limit, if, for any reason, the large number of witnesses unfairly hampers the ability of participants to obtain discovery by means of interrogatories.

problems. *Id.* at 4. Finally, it asserts that the term ''primary question'' requires clarification. To remedy these alleged deficiencies, GCA proposes specific modifications to proposed § 3001.87(a). *Id.* at 4–5.

In its comments, the Postal Service suggests that the Commission explicitly state that Rule 33(a)(1) of the FRCP is the source of the standard for determining whether subparts of interrogatories are to be considered separate requests. Postal Service Comments at 40. The Postal Service asserts that such explicit recognition will provide ''transparency about the standards and precedents that may be brought to bear on matters concerning the 25-interrogatory limit.'' *Id.*

In her reply comments, the Public Representative encourages the Commission to consider GCA's suggested alternative for ''the proposed 'logically and factually' related premise for subparts to primary interrogatories.'' PR Reply Comments at 10.

The Commission agrees with GCA and the Public Representative that the ''logically and factually'' related premise is too restrictive and should be changed to a ''logically or factually'' related premise. However, the Commission does not agree that the word ''necessarily'' or the term ''primary question'' requires modification or further clarification in the proposed rule. As revised, § 3001.87(a) will provide that an interrogatory with subparts that are logically or factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. As urged by the Postal Service, this formulation will adopt the practice of federal courts which operate under Rule 33 of the FRCP. *Trevino* v. *ACB Am., Inc.,* 232 F.R.D. 612, 614 (N.D. Cal. 2006) (noting ''courts generally agree that 'interrogatory subparts are to be counted as one interrogatory . . . if they are logically or factually subsumed within and necessarily related to the primary question.' [citations omitted].'').

(c) *Restrictions on circumvention of the limit.* The Postal Service seeks to prevent participants from circumventing the limit on the number of interrogatories by fragmenting their participation. Postal Service Comments at 32–35. An example of such a potential circumvention would be a national union which seeks to participate though multiple union locals, each of which would ostensibly be able to serve up to 25 interrogatories, thereby circumventing the intended limitation. Similar opportunities would appear to be available to trade associations and other formal or informal groups of participants. The Postal Service's proposed cure would be to amend rule 20(e) of the Commission's generally applicable rules of practice (which are expressly made applicable to the N-case rules being adopted by this Order) to add discovery to the list of activities that the Commission or a presiding officer may require be undertaken jointly with another participant. GCA endorses this proposal. GCA Reply Comments at 10 n.16 and accompanying text. The Commission agrees with the Postal Service that such circumvention is to be prohibited and therefore grants the suggested modification to rule 20(e) of the rules of practice.

(d) *The opportunity to serve institutional interrogatories on the Postal Service.* In its comments, GCA expresses concern over the reference in § 3001.87(a) to ''sequentially numbered interrogatories, by witness[.]'' GCA Comments at 5. It cites the usefulness of institutional interrogatories in past proceedings and seeks clarification that the reference to interrogatories ''by witness'' will not preclude the future ability to serve institutional interrogatories. It also seeks advice regarding the form in which such interrogatories should be directed to the Postal Service. *Id.* The Postal Service does not believe GCA's concerns are well-founded, but offers a proposed clarification to the language of § 3001.87(a) as a means of allaying those concerns. Postal Service Reply Comments at 27. The Commission interprets the clarification proposed by the Postal Service as responsive to GCA's concerns and adopts that clarification to confirm the continued availability of institutional interrogatories as a formal discovery mechanism.

The availability of opportunities to exceed the limit. The adoption of any limit on the number of interrogatories a participant may serve on the Postal Service creates the possibility, noted by Mr. Popkin, that there will be an increase in the number of discovery motions. Popkin Comments at 3. By itself, that possibility does not preclude adoption of a limit on the number of interrogatories, particularly when there appears to be a general recognition that such a limit is a reasonable tradeoff balancing the interests of the parties and taking into account the other safeguards built into the new rules. See section IV.H.2.b., *supra.* It remains to be seen in particular cases whether the 25-interrogatory limit will produce an unacceptably high increase in the number of discovery motions. Should that be the case, the Commission will address the problem either by rulings in specific cases or by revisiting the 25-interrogatory limit as a general matter. In the meantime, the Commission is not persuaded that the possibility of an increase in the number of discovery motions precludes adoption of the 25-interrogatory limit.

c. Can the limit on interrogatories expedite N-cases and permit development of an adequate record?

Generally, the most time-consuming phase of N-cases has been the discovery phase. Any changes that reduce the amount of discovery can be expected to shorten the time needed to complete an N-case. Nevertheless, in the context of advocating the adoption of Commission-Led Discovery, the Postal Service argues that the proposed 25-interrogatory limit will be ineffective. Postal Service Comments at 10–12. To support its claim, the Postal Service hypothesizes a case in which five participants each propound 25 interrogatories, as well as document production requests and requests for admission. The resulting discovery burden, it asserts, will effectively undermine the goal of completing an N-case within 90 days. *Id.* at 8. Although GCA views the Postal Service's hypothetical as ''somewhat extreme,'' it accepts the hypothetical on the grounds that ''procedural rules should be robust enough to deal with extreme as well as routine cases.'' GCA Reply Comments at 4. GCA nevertheless proceeds to assert that the alternative proposed by the Postal Service, *i.e.,* Commission-Led Discovery, has equally, if not more, serious practical and legal shortcomings. *Id.* at 4–9.

The Commission concludes that a 25-interrogatory limit can contribute to the expedition of N-cases. It reaches that conclusion notwithstanding the possibility that in at least in some cases, the 25-interrogatory limit will not preclude service of a substantial number of interrogatories on the Postal Service. With the limit, participants will have a clear incentive to limit the number of interrogatories they serve. Without the limit, there is little incentive, if any, to pare back the number of interrogatories they propound.

Of equal importance is the need to develop an adequate record for decision. While the 25-interrogatory limit will be challenging, it will not preclude the development of an adequate record. The scope of N-cases is being narrowed and the need for information to support alternative proposals eliminated. Moreover, interrogatories are not the only means for assembling relevant information for use as evidence.

Participants will have access to information by means of pre-filing conferences; the Postal Service's request; technical conferences; and other discovery mechanisms, such as requests for production and requests for admission. Finally, the utility of interrogatories is being preserved by permitting interrogatories to contain appropriate subparts that do not count against the 25-interrogatory limit and by permitting participants to request the opportunity to serve more than 25 interrogatories.

For the interrogatory limit to achieve the dual objectives of expediting the issuance of advisory opinions while, at the same time, permitting the development of an adequate record, it will be necessary for the Commission to participate even more actively in managing N-case discovery. The Commission is prepared to accept that burden in order to ensure that both objectives are achieved.

3. Discovery–Requests for Production

Proposed § 3001.88 authorizes participants to request the production of documents or things.[37] This section is patterned largely on sections (a) and (b) of existing § 3001.27. See 39 CFR 3001.27(a) and (b). The differences are that proposed § 3001.88: (1) Applies only to requests for production from the Postal Service; (2) the time period for answering is shortened; and (3) the mechanism authorizing objections, motions to compel, and compelled answers is replaced by the new procedure called a motion to be excused from answering. Compare § 3001.27(c), (d), and (e) with proposed § 3001.88(b)(2) and (c). Neither existing § 3001.27, nor proposed § 3001.88, places any numerical limits on requests for production.

As already noted, *supra,* the Commission is amending proposed § 3001.88 to apply to requests for production directed to any participant, not just the Postal Service. The proposed time period for answering and the new procedure for seeking to avoid production (the motion to be excused from answering) are being approved as proposed.

[37] The Public Representative notes that although the body of the proposed rule provides for the production of both ''documents'' and ''things,'' the rule's heading refers only to ''documents.'' To avoid future confusion over the intended scope of the rule, the heading will be revised to include a reference to ''things.'' The Commission is also correcting section (b)(1) of § 3001.88 to provide for the filing of answers within 7 days of a request for production. This change is necessary for consistency with the discovery rules for interrogatories and requests for admissions. See proposed §§ 3001.87(b)(4) and 3001.89(b)(1).

In her comments, the Public Representative raises essentially two points. First, the Public Representative states that although procedures for requesting the production of documents or things are of long standing, they ''have seen relatively little use at the Commission'' (except, perhaps, in complaint proceedings) and should therefore not be used as justification for limiting the number of interrogatories. PR Comments at 21. Second, the Public Representative asserts that the Commission has confused requests for production of documents with interrogatories that request the production of data. *Id.* at 21–24. The Public Representative's proposed remedy would be to consider creation of a new ''hybrid'' discovery request outside the scope of this rulemaking proceeding. *Id.* at 23.

The Postal Service responds to the latter contention by arguing that participants have an obligation to designate their discovery requests properly as either interrogatories or requests for production. See Postal Service Reply Comments at 14. The Postal Service states further that the courts routinely deal with ambiguous or improperly designated discovery requests using established legal principles. *Id.* at 14–15.

Regardless of whether requests for production have been widely used at the Commission, that discovery mechanism is well-established and will remain available to participants in N-cases. It is therefore proper for the Commission to rely on the availability of that discovery mechanism, as well as other potential avenues of discovery, as justification for limiting the number of interrogatories.

With respect to the Public Representative's second point, the Commission agrees with the Postal Service that a new ''hybrid'' discovery device is unnecessary. Instead, the Commission will continue to observe the discovery principles embodied in the FRCP as interpreted and applied by the courts. This includes the principles for dealing with ambiguous or improperly designated discovery requests.

4. Discovery—Requests for Admission

Proposed § 3001.89 authorizes participants to request the admission of facts. This section, like proposed § 3001.88, is patterned largely on an existing Commission rule of practice. In this case, the model is found in sections (a) and (b) of existing § 3001.28. See 39 CFR 3001.28(a) and (b). The differences are that proposed § 3001.89: (1) Applies only to requests for production from the Postal Service; (2) the time period for answering is shortened; and (3) the mechanism authorizing objections, motions to compel, and compelled answers is replaced by the new procedure called a motion to be excused from answering. Compare § 3001.28(c), (d), and (e) with proposed § 3001.89(b)(3) and (c). Neither existing § 3001.28, nor proposed § 3001.89, places any numerical limits on requests for production.

As already noted, *supra,* the Commission is amending proposed § 3001.89 to apply to requests for admission directed to any participant, not just the Postal Service. The proposed time period for answering and the new procedure for seeking to avoid production (the motion to be excused from answering) are being approved as proposed.

As she argued with respect to proposed § 3001.88 dealing with requests for production of documents or things, the Public Representative argues that the opportunity to request admissions has not been widely used and therefore should not be used as justification for limiting the number of interrogatories. PR Comments at 21.

Once again, the Commission concludes that the opportunity to request the admission of relevant facts is an appropriate justification, at least in part, for placing a limit on the number of interrogatories. It is a well-established discovery mechanism whether or not participants have used it extensively.

While requests for admission are an appropriate complement to written interrogatories, the Commission would caution participants that requests for admission and interrogatories ''are not interchangeable procedures'' and that ''interrogatories disguised as requests for admissions in an attempt to circumvent a . . . rule limiting the number of interrogatories is an abuse of the discovery process.'' *In re Olympia Holding Corp.* v. *Belt Concepts of Am., Inc.,* 189 B.R. 846, 853 (Bankr. M.D. Fla. 1995) (citations omitted).

I. Testimony

Rebuttal testimony. The proposed rules limit the scope of participant rebuttal testimony to the Postal Service's proposal. Rebuttal cases proposing or seeking to address alternatives to the Postal Service's proposal would no longer be permitted. Order No. 1738 at 20.

Valpak asserts that the limitation in scope is a violation of the APA. It maintains that the Commission does not have the authority under the APA to tell mailers what information can be included in their rebuttal testimony.

According to Valpak, any effort to limit the scope of rebuttal testimony in previous N-cases would have impaired the Commission's work and led to a less meaningful advisory opinion. Valpak Comments at 9–10. Valpak also contends that expedited deadlines for rebuttal testimony will reduce the quality of such testimony because participants will not have sufficient time to analyze the Postal Service's case. It suggests that the Commission modify the rules to provide that if the Postal Service requests to file surrebuttal testimony, the Commission suspend the 90-day rule for as long as it takes to receive and evaluate that testimony. *Id.* at 10–11.

The Commission does not intend the proposed scope limitation to prevent participants from criticizing the merits of the Postal Service's proposal or from identifying alternatives to the change in the nature of services. The Commission does, however, draw a distinction between the identification of potential alternatives and the presentation of a full case as to why the alternative proposals are superior. The latter scenario is best evaluated by the Commission in a special study or public inquiry, as such proceedings will continue to have no time limits and permit more thorough analysis. The final rules will be clarified to reflect this distinction.

The shortened deadlines in the procedural schedule may be challenging for all participants, as well as for the Commission. Notwithstanding, the expedited deadlines in and of themselves are expected neither to deprive participants of their ability to analyze the Postal Service's proposal nor the Postal Service and its supporters of their ability to respond to rebuttal cases. The Commission is persuaded that other informal information exchanges built into the procedural schedule, such as the pre-filing conference and the mandatory technical conference, will allow participants to begin crafting their rebuttal cases earlier in the process.

The Public Representative suggests that participants who do not intend to file rebuttal or surrebuttal testimony be required to file notice with the Commission to that effect. PR Comments at 27. She also recommends that the following additional information be included in every notice of intent to file rebuttal testimony: (1) The number of pieces of testimony (clarifying that ''testimony'' may be more than one); (2) the subject matter of the testimony; (3) whether the testimony will be accompanied by supporting library references or exhibits, to the extent known; (4) the name and position or title of the witness; and (5) confirmation of witness availability. *Id.* The need for additional information in participants' notice of intent to file rebuttal testimony has not been clearly established. The Commission will retain the language of the proposed rule and not include additional filing requirements.

Surrebuttal testimony. The filing of surrebuttal testimony would only be permitted if participants file a formal request, and if the Commission determines that exceptional circumstances warrant such a filing. Surrebuttal testimony will be limited in scope to the Postal Service's proposal and the relevant rebuttal testimony. Order No. 1738 at 20–21.

The Public Representative does not support the exceptional circumstances standard because she states that this may impose undue constraints on the Postal Service, as a participant offering surrebuttal testimony presumably deems it essential to his or her case. PR Comments at 28. The Postal Service agrees with the Public Representative. Postal Service Reply Comments at 5. It states that surrebuttal is its opportunity to correct inaccurate or misleading aspects of testimony by critics of its proposal, and limiting this information could deprive the Commission of important insight about its service change proposal as well as hinder the Postal Service's ability to shoulder its burden of proof. *Id.*

The Commission recognizes that the exceptional circumstances standard presents a higher standard for the Postal Service to overcome in order to present surrebuttal testimony than the good cause standard required of participants requesting to extend the procedural schedule. However, because the Postal Service also is the proponent for expediency in N-cases, it would be held to a higher standard than mere good cause for requesting to file surrebuttal testimony. The Commission notes that briefs and reply briefs may also be used to correct misleading or inaccurate information about the Postal Service's proposal. Similarly, if meaningful customer feedback is obtained from these informal information exchanges, the Postal Service should be able to anticipate whether it will need to file a surrebuttal case well in advance of the deadline set forth in the procedural schedule.

J. Hearings

Back-to-back hearings. In Order No. 1738, the Commission proposed a back-to-back hearing process for N-cases. Hearings would be scheduled continuously in the following order: (1) Hearings on the Postal Service's direct case; (2) hearings on participant rebuttal testimony, if any; and (3) hearings on surrebuttal testimony, if any. Order No. 1738 at 21. The pro forma schedule presents several options for the commencement of hearings depending on whether rebuttal and surrebuttal cases are requested. *Id.*

Valpak believes that the back-to-back hearing model is unworkable because ''it is highly likely a participant would not have a full understanding of the Postal Service case until the end of cross-examination, with no time to prepare and file a rebuttal case, if rules provide for back-to-back hearings.'' Valpak Comments at 11. The Postal Service suggests that the Commission scale back further and require an affirmative showing of need before allowing oral hearings. Postal Service Comments at 23. The Public Representative points out that serial hearings are likely to ''tax the resources of the Postal Service, the Commission, and all other participants'' but ''defers to the Commission and the Postal Service on the advisability of this provision, as they stand to be most affected by its introduction, especially in terms of insuring [sic] availability.'' PR Comments at 29.

As with other steps in the procedural schedule, the Commission recognizes and acknowledges the difficulties inherent in preparation for and attendance of back-to-back hearings. However, when taken in conjunction with the other procedural steps intended to provide participants with ample opportunity for obtaining information early in the process, the Commission believes that the sequential hearing process will be workable for all parties.

The Commission's current rule on oral argument—39 CFR 3001.37—remains unchanged. The Commission will clarify that oral argument has not historically been part of N-cases and, although parties may request oral argument under the procedures set forth in § 3001.37, the Commission would only grant such requests upon an appropriate showing of need by the presenting party.

Field hearings. The proposed rules call for the elimination of field hearings in most instances. Order No. 1738 at 10. Commenter reaction was mixed on this point.

NNA asserts that field hearings are essential in many cases to provide a better understanding of how communities are impacted by a nature of service change. It states that these hearings are more convenient, less

intimidating, and more approachable to participants outside the Washington, DC area and reflect a recognition by the Commission that policy deliberations not be confined to the DC area. NNA Comments at 3.

GCA does not disagree with the proposed rules because they leave open the possibility that field hearings may still be held when genuinely useful. It suggests that, in the event that field hearings are found to be useful in a particular case, the Commission not require the Commissioners to preside at them *en banc.* Because field hearings do not produce record evidence, GCA proposes the Commission delegate a Commission staff member to preside in order to satisfy the APA provision. GCA Comments at 9.

Valpak notes that it proposed abolition of field hearings in its comments in response to Order No. 1309. It asserts that in Docket No. N2011–1, field hearings prolonged the docket without creating useful record evidence for the Commission. Valpak Comments at 11.

The Postal Service reiterates its contention that field hearings are inappropriate for most N-cases, causing expense and delay that is not commensurate to the non-evidentiary information obtained from conducting them. It recommends the Commission formalize its intentions to eliminate the use of field hearings in most cases by including a rule that prescribes the conditions for their use in exceptional cases. It also suggests the Commission clarify in its rules that statements in field hearings possess the status of informal comments and not record evidence. Postal Service Comments at 41.

The Commission appreciates commenter input about the value of field hearings in past N-cases. However, it is persuaded that, in all but the most exceptional cases, their value does not outweigh the expense and delay inherent in conducting them. With the advent of recent technological advances, interested parties at some distance from Washington, DC now have the option of teleconferencing or videoconferencing into live hearings. It is amending proposed § 3001.92 to state that, upon showing of exceptional need or utility for a field hearing, the Commission may consider modifying the procedural schedule to provide for such hearings.

K. Briefs

In Order No. 1738, the Commission proposed a 14,000 word limit for initial briefs, to be filed 7 days following the conclusion of hearings. Reply briefs would be limited to 7,000 words and are due no later than 7 days after the date initial briefs are filed. Order No. 1738 at 22.

Valpak asserts that the rule unfairly impacts mailers because the Postal Service has an unlimited amount of words to explain and describe its initial proposal. Valpak Comments at 12. The Postal Service argues that a uniform word limit is inherently unfair because the Postal Service is tasked with replying to all participants' critiques. It states that the Commission should expect that briefs from the Postal Service should require more words than briefs from other participants. Postal Service Comments at 44. The Public Representative does not oppose word limits on briefs but urges the Commission to excuse the Postal Service from adhering to those limits as the proponent of the proposed change. PR Comments at 30.

The Public Representative also proposes allowing any intervenor to file a Statement of Position to provide a means for interested parties to submit their comments to the Commission in a less formal and technical manner than is required by the proposed rules. The Postal Service disagrees with the Public Representative's proposal, contending that if the Commission were to provide for this alternative, ''there would be little to stop all N-case participants from choosing the easier path, no matter how much more difficult it might make the Commission's task of evaluating the record.'' Postal Service Reply Comments at 24.

The Commission believes that the word limitations on briefs would not adversely impact participants' rights to present their arguments to the Commission. In specific cases, the Commission may adjust word limitations by request of a participant or on its own motion. It will also modify the final rule to increase the word limit on the Postal Service's briefs to 21,000 words and 10,500 words for the initial and reply briefs, respectively. The final rule will also clarify that tables of cases, tables of citations, and appendices are not considered part of the word count for purposes of the limitation.

Additionally, the Commission will incorporate the Public Representative's suggestion for including a less formal filing option for parties who may not be familiar or able to comply with the Commission's briefing rules. Such participants may file a Statement of Position, which will allow them to express their views about the Postal Service's proposal and point to those parts of the existing record that support their position. Only ''participants'' (*i.e.,* parties to the proceeding) will be eligible to file Statements of Position. Statements of Position are intended to provide less experienced participants with an opportunity to file an ''informal brief'' that need not comply with the technical requirements of a formal legal brief. Statements of Position will not be exempt from the scope limitations of initial and reply briefs and should be limited to the issues raised on the record concerning the Postal Service's proposal. Statements of Position will not be a permissible avenue for a participant to attempt to introduce new evidentiary material into the record.

V. Section-by-Section Analysis of the Rules

Part 3001, subpart D, of title 39, Code of Federal Regulations is deleted and replaced in its entirety with new procedural rules applicable to Postal Service requests for advisory opinions on proposed changes in the nature of postal services.

Section 3001.71 replaces current § 3001.71. New § 3001.71 makes the rules in subpart D applicable to requests by the Postal Service pursuant to 39 U.S.C. 3661 for Commission advisory opinions on proposed changes in the nature of postal services.

Section 3001.72 is a new section that provides that, in the absence of a determination of good cause, advisory opinions in nature of service proceedings will be issued not later than 90 days following the filing of the Postal Service's request for an advisory opinion. Section 3001.72 also provides for Commission authorization of special studies of issues arising out of nature of service proceedings.

Section 3001.73 is a new section that provides for the use of calendar days in computing time periods under subpart D.

Section 3001.74 replaces current § 3001.75. New § 3001.74 concerns service of the Postal Service's request for an advisory opinion.

Section 3001.75 is a new section that establishes shortened deadlines for the filing of motions and answers to motions in N-cases. This section also establishes a procedure for filing motions to be excused from answering discovery requests and a procedure for requesting leave to file surrebuttal.

Section 3001.80 is a new section that describes the contents of the notice and scheduling order to be issued by the Commission after the Postal Service files a request for an advisory opinion on proposed changes in the nature of postal services.

Section 3001.81 is a new section containing pre-filing requirements. New § 3001.81 requires the Postal Service to

engage in discussions with potentially affected persons before filing a request for an advisory opinion on proposed changes in the nature of postal services.

Section 3001.82 replaces current § 3001.72. New § 3001.82 establishes requirements for the filing of Postal Service requests for advisory opinions in N-cases.

Section 3001.83 replaces current § 3001.74. New § 3001.83 establishes requirements for the contents of requests for advisory opinions.

Section 3001.84 replaces current § 3001.73. New § 3001.84 establishes requirements for the filing by the Postal Service of prepared direct testimony with requests for advisory opinions.

Section 3001.85 establishes a mandatory technical conference and the requirements for such conference.

Sections 3001.86 through 3001.89 are new sections that establish expedited discovery procedures in N-cases.

Section 3001.90 is a new section governing the filing of participant rebuttal cases that respond to the Postal Service's direct case.

Section 3001.91 is a new section governing the filing of surrebuttal testimony that responds to rebuttal testimony filed under § 3001.90.

Section 3001.92 is a new section that prescribes procedures for hearings on the record in nature of service proceedings that differ from the procedures prescribed in § 3001.30.

Section 3001.93 is a new section that establishes page limitations for initial and reply briefs and provides for expedited briefing in nature of service proceedings.

Appendix A to subpart D of part 3001, Pro Forma N-case Procedural Schedule is a new appendix to N-case rules that provides a template for use in establishing procedural schedules in individual cases.

Section 3001.3 is amended to reflect the exclusion by § 3001.71 of specific subpart A rules of practice from use in N-cases.

Section 3001.5(h) is amended to eliminate the distinction between participants and limited participators in N-cases.

Section 3001.15 is amended to reflect that the computation of time periods of 5 days or less in proceedings conducted under subpart D includes Saturdays, Sundays, and Federal holidays.

Section 3001.17 is amended to require the inclusion in notices of nature of service proceedings conducted under 39 CFR part 3001, subpart D of the procedural schedule required by 39 CFR 3001.80.

Section 3001.20(d) is amended to shorten the time period for filing oppositions to notices of intervention that are submitted in nature of service proceedings conducted under 39 CFR part 3001, subpart D.

Section 3001.20(e) is amended to include discovery among the activities that the Commission or presiding officer may require be conducted jointly by two or more intervenors. The last sentence of this rule is also modified to clarify the text from the previous version and improve readability.

Section 3001.20a is amended to preclude participation in N-cases as a limited participator.

Section 3001.31(e) is amended to shorten the period for designating evidence received in other Commission proceedings for entry into the N-case record. The amended subsection also shortens the period for objecting to designations.

Section 3001.31(k)(4) is amended to shorten the time periods for requesting entry into an N-case record of evidence received in another Commission proceeding and for expending responses to requests made pursuant to this section.

VI. Effective date

The revisions to 39 CFR part 3001 set out below the Secretary's signature shall take effect 30 days following publication in the **Federal Register**.

VII. Ordering Paragraphs

It is ordered:

1. The Commission hereby amends and adopts rules of procedure for nature of service cases under 39 U.S.C. 3661 that follow the Secretary's signature as 39 CFR part 3001, subpart D.

2. The Commission hereby adopts conforming amendments to 39 CFR part 3001, subpart A that follow the Secretary's signature.

3. These rules shall take effect 30 days after publication of this order in the **Federal Register**.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information, Postal Service, Sunshine Act.

For the reasons discussed in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—Rules of General Applicability

■ 2. Revise § 3001.3 to read as follows:

§ 3001.3 Scope of rules.

Except as otherwise provided in § 3001.71, the rules of practice in this part are applicable to proceedings before the Postal Regulatory Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer and, as specified in part 3005 of this chapter to the procedures for compelling the production of information by the Postal Service. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

■ 3. In § 3001.5, revise paragraph (h) to read as follows:

§ 3001.5 Definitions.

* * * * *

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative. In a proceeding that is not conducted under subpart D of this part, for purposes of §§ 3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, the term *participant* includes persons who are limited participators.

* * * * *

■ 4. Revise § 3001.15 to read as follows:

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a Federal holiday. Except in proceedings conducted under subpart D of this part, in computing a period of time which is 5 days or less, all Saturdays, Sundays and Federal holidays are to be excluded.

■ 5. In § 3001.17, amend by:

■ a. Removing the word ''and'' at the end of paragraph (c)(4);

■ b. Redesignating existing paragraph (c)(5) as paragraph (c)(6); and

■ c. Adding new paragraph (c)(5) to read as follows:

§ 3001.17 Notice of proceeding.

* * * * *

(c) * * *

(5) In proceedings under subpart D of this part involving Postal Service requests for issuance of an advisory opinion, the notice issued under this section shall include the procedural schedule provided for under § 3001.80; and

* * * * *

■ 6. In § 3001.20, revise paragraphs (d) and (e) to read as follows:

§ 3001.20 Formal intervention.

* * * * *

(d) *Oppositions.* (1) Except as otherwise provided in paragraph (d)(2) of this section, oppositions to notices of intervention may be filed by any participant in the proceeding no later than 10 days after the notice of intervention is filed.

(2) Oppositions to notices of interventions in proceedings conducted under subpart D of this part may be filed by any participant in the proceeding no later than 3 days after the notice of intervention is filed.

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those conducted under subpart D of this part, delay on a day-for-day basis the date for responses to discovery requests filed by that intervenor.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a party to the proceeding subject, however, to a determination by the Commission, either in response to an opposition, or sua sponte, that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3001.24 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, propounding discovery, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision by the Commission that the intervenor is aggrieved for purposes of perfecting an appeal of any final order of the Commission.

■ 7. In § 3001.20a, revise the undesignated introductory paragraph to read as follows:

§ 3001.20a Limited participation by persons not parties.

Except for cases noticed for a proceeding under subpart D of this part, any person may, notwithstanding the provisions of § 3001.20, appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a) in accordance with the following provisions:

* * * * *

■ 8. In § 3001.31, revise paragraphs (e) and (k)(4) to read as follows:

§ 3001.31 Evidence.

* * * * *

(e) *Designation of evidence from other Commission dockets.* (1) Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number.

(2) In proceedings conducted under subpart D of this part, these requests must be made at least 6 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 3 days. Oppositions to requests for counter-designations are due within 2 days.

(3) In all other proceedings subject to this section, these requests must, in the absence of extraordinary circumstances, be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within 7 days.

(4) In all proceedings subject to this section, the moving participant must submit two copies of the identified material to the Secretary at the time requests for designations and counter-designations are made.

* * * * *

(k) * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12 no later than 3 days after a request is made under paragraph (e)(2) of this section or no later than 14 days after a request is made under paragraph (e)(3) of this section.

■ 9. Revise subpart D of part 3001 to read as follows:

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

Sec.

3001.71 Applicability.
3001.72 Advisory opinion and special studies.
3001.73 Computation of time.
3001.74 Service by the Postal Service.
3001.75 Motions.
3001.76–3001.79 [Reserved]
3001.80 Procedural schedule.
3001.81 Pre-filing requirements.
3001.82 Filing of formal requests.
3001.83 Contents of formal requests.
3001.84 Filing of prepared direct evidence.
3001.85 Mandatory technical conference.
3001.86 Discovery—in general.
3001.87 Interrogatories.
3001.88 Production of documents.
3001.89 Admissions.
3001.90 Rebuttal testimony.
3001.91 Surrebuttal testimony.
3001.92 Hearings.
3001.93 Initial and reply briefs.
Appendix A to Subpart D of Part 3001—Pro-Forma N-Case Procedural Schedule

§ 3001.71 Applicability.

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to 39 U.S.C. 3661 requesting from the Commission an advisory opinion on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in subpart A of this part are also applicable to proceedings conducted pursuant to this subpart except that § 3001.21 (Motions); § 3001.25 (Discovery—general policy); § 3001.26 (Interrogatories for purposes of discovery); § 3001.27 (Requests for production of documents or things for the purpose of discovery); § 3001.30 (Hearings); § 3001.33 (Depositions) and § 3001.34 (Briefs) do not apply in proceedings conducted under this subpart.

§ 3001.72 Advisory opinion and special studies.

(a) *Issuance of opinion.* In the absence of a determination of good cause for extension, the Commission shall issue an advisory opinion in proceedings conducted under this subpart not later than 90 days following the filing of the Postal Service's request for an advisory opinion.

(b) *Special studies.* Advisory opinions shall address the specific changes proposed by the Postal Service in the nature of postal services. If, in any proceeding, alternatives or related issues of significant importance arise, the Commission may, in its discretion, undertake an evaluation of such alternative or issues by means of special studies, public inquiry proceedings, or other appropriate means.

§ 3001.73 Computation of time.

In computing any period of time prescribed or allowed by this subpart,

the term *day* means a calendar day unless explicitly specified otherwise. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor Federal holiday.

§ 3001.74 Service by the Postal Service.

By filing its request electronically with the Commission, the Postal Service is deemed to have effectively served copies of its formal request and its prepared direct evidence upon those persons, including the officer of the Commission, who participated in the pre-filing conference held under § 3001.81. The Postal Service shall be required to serve hard copies of its formal request and prepared direct evidence only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's Web site.

§ 3001.75 Motions.

(a) *In general.* (1) An application for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. A motion shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 through 3001.12. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3001.91, and a motion that seeks to extend the deadline for issuance of an advisory opinion shall be addressed to the Commission. After a presiding officer is designated in a proceeding, all other motions in that proceeding, except those filed under part 3007 of this chapter, shall be addressed to the presiding officer.

(2) Within 5 days after a motion is filed, or such other period as the Commission or presiding officer in any proceeding under this subpart may establish, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 through 3001.12. Such an answer shall state with specificity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(b) *Motions to be excused from answering discovery requests.* (1) A motion to be excused from answering discovery requests shall be filed with the Commission within 3 days of the filing of the interrogatory, request for production, or request for admission to which the motion is directed. If a motion to be excused from answering is made part of an interrogatory, request for production, or request for admission, the part to which objection is made shall be clearly identified. Claims of privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. Claims of undue burden shall state with particularity the effort that would be required to answer or respond to the request, providing estimates of costs and workhours required, to the extent possible.

(2) An answer to a motion to be excused from answering a discovery request shall be filed within 2 days of the filing of the motion. The text of the discovery request and any answer previously provided by the Postal Service shall be included as an attachment to the answer.

(3) Unless the Commission or presiding officer grants the motion to be excused from answering, the Postal Service shall answer the interrogatory, production request, or request for admission. Answers shall be filed in conformance with §§ 3001.9 through 3001.12 within 3 days of the date on which a motion to be excused from answering is denied.

(4) The Commission or presiding officer may impose such terms and conditions as are just and may, for good cause, issue a protective order, including an order limiting or conditioning interrogatories, requests for production, and requests for admission as justice requires to protect the Postal Service from undue annoyance, embarrassment, oppression, or expense.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. A motion to strike testimony or exhibit materials must be submitted in writing at least 3 days before the scheduled appearance of a witness, unless good cause is shown. Responses to motions to strike are due within 2 days.

(d) *Motions for leave to file surrebuttal testimony.* Motions for leave to file surrebuttal testimony submitted pursuant to § 3001.91 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

§§ 3001.76–3001.79 [Reserved]

§ 3001.80 Procedural schedule.

(a) *Notice.* Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under § 3001.17 a procedural schedule based upon the pro forma schedule set forth in Appendix A of this part. The procedural schedule shall include:

(1) A deadline for notices of interventions;

(2) The date(s) for the mandatory technical conference between the Postal Service, Commission staff, and interested parties;

(3) The deadline for discovery on the Postal Service's direct case;

(4) The deadline for responses to participant discovery on the Postal Service's case;

(5) The deadline for participants to confirm their intent to file a rebuttal case;

(6) The date for filing participant rebuttal testimony, if any;

(7) The dates for filing motions for leave to file surrebuttal testimony and answers thereto;

(8) The date for filing surrebuttal, if any;

(9) The date(s) for hearings on the Postal Service's direct case, rebuttal testimony, and surrebuttal testimony, if any;

(10) The date for filing initial briefs;

(11) The date for filing reply briefs; and

(12) A deadline for issuance of an advisory opinion which is 90 days from the date of filing.

(b) *Changes for good cause.* These dates are subject to change for good cause only.

(c) *Incomplete request.* If at any time the Commission determines that the Postal Service's request is incomplete or that changes made subsequent to its filing significantly modify the request, the Commission may extend the deadlines established or take any other action as justice may require.

§ 3001.81 Pre-filing requirements.

(a) *Pre-filing conference required.* Prior to the Postal Service filing a request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to the procedures established in this subpart, the Postal Service shall conduct one or more pre-filing conference(s) with interested persons in the proceeding and shall make a good faith effort to address the concerns of such persons.

(b) *Purpose.* The purpose of a pre-filing conference is to expedite consideration of the Postal Service's request for the issuance of advisory opinions by informing interested persons of the Postal Service's proposal; by providing an opportunity for interested persons to give feedback to the Postal Service that can be used by the Postal Service to modify or refine its proposal before it is filed at the Commission; and by identifying relevant issues and information needed to address those issues during proceedings at the Commission.

(c) *Rationale for the proposal.* The Postal Service shall make available at the pre-filing conference a representative capable of discussing the policy rationale behind the Postal Service's proposal with interested persons.

(d) *Notice.* The Postal Service shall file with the Commission a notice of its intent to conduct any pre-filing conference(s) at least 10 days before the first scheduled conference. The notice filed by the Postal Service shall include a schedule of proposed date(s) and location(s) for the conference(s). Upon receipt of such notice, the Commission shall issue a notice of pre-filing conference(s), which shall be published in the **Federal Register**, and appoint a Public Representative.

(e) *Nature of conferences.* Discussions during the pre-filing conference(s) shall be informal and off the record. No formal record will be created during a pre-filing conference.

(f) *Noncompliance.* If the Postal Service's noncompliance with the requirements of the pre-filing conference under § 3001.83(b)(4) is established by a participant, the Commission may, in its discretion, consider an extension of, or modification to, the procedural schedule.

(g) *Informal meetings.* Interested persons may meet outside the context of a pre-filing conference, among themselves or with the Postal Service, individually or in groups, to discuss the proposed changes in the nature of postal services.

§ 3001.82 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 through 3001.11 and § 3001.83. The request shall be filed not less than 90 days before the proposed effective date of the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this section, the Secretary shall lodge a notice thereof with the director of the Office of the Federal Register for publication in the **Federal Register**.

§ 3001.83 Contents of formal requests.

(a) *General requirements.* A formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and interested persons of the nature, scope, significance, and impact of the proposed change in the nature of postal services and to show that the change in the nature of postal services is in accordance with and conforms to the policies established under title 39, United States Code.

(b) *Specific information.* A formal request shall include:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code;

(4) A statement that the Postal Service has completed the pre-filing conference(s) required by § 3001.81, including the time and place of each conference and a certification that the Postal Service has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference(s);

(5) The prepared direct evidence required by § 3001.84;

(6) The name of an institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses; and

(7) Confirmation that Postal Service witnesses, including its institutional witness, will be available for the mandatory technical conference provided for in § 3001.85.

(c) *Additional information.* The Commission may request additional information from the Postal Service concerning a formal request.

(d) *Reliance on prepared direct evidence.* The Postal Service may incorporate detailed data, information, and statements of reason or basis contained in prepared direct evidence submitted under paragraph (b)(5) of this section into its formal request by reference to specific portions of the prepared direct evidence.

§ 3001.84 Filing of prepared direct evidence.

As part of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.85 Mandatory technical conference.

(a) *Date.* A date for a mandatory technical conference shall be included in the procedural schedule required by § 3001.80. The date for this technical conference shall be set based upon the pro forma schedule set forth in Appendix A to this subpart. The conference shall be held at the offices of the Commission.

(b) *Witnesses.* The Postal Service shall make available at the technical conference each witness whose prepared direct testimony was filed pursuant to § 3001.84. If the Postal Service seeks for any witness to be excused on the basis that the witness's testimony neither presents nor is based upon technical information, it shall make such a motion concurrent with its request.

(c) *Purpose.* The purpose of the technical conference is to provide an informal, off-the-record opportunity for participants, the officer of the Commission representing the interests of the general public, and Commission staff to clarify technical issues and to identify and request information relevant to an evaluation of the nature of changes to postal services proposed by the Postal Service. The technical conference is not part of the formal record in the proceeding.

(d) *Relation to discovery process.* Information obtained during the mandatory technical conference may be used to discover additional relevant information by means of the formal discovery mechanisms provided for in §§ 3001.86 through 3001.89.

(e) *Record.* Information obtained during, or as a result of, the mandatory technical conference is not part of the

decisional record unless admitted under the standards of § 3001.31(a).

§ 3001.86 Discovery—in general.

(a) *Purpose.* The rules in this subpart allow discovery that is reasonably calculated to lead to admissible evidence during a proceeding. The notice and scheduling order issued pursuant to § 3001.80 shall provide that discovery will be scheduled to end at least 3 days prior to the commencement of hearings.

(b) *Informal discovery.* The discovery procedures in § 3001.86 and §§ 3001.87 through 3001.89 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, or by other appropriate means. In the interest of reducing motion practice, participants also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) *Failure to obey orders or rulings.* If a participant fails to obey an order of the Commission or ruling of presiding officer to provide or permit discovery pursuant to this section or §§ 3001.86 through 3001.89, the Commission or the presiding officer may issue orders or rulings in regard to the failure as are just. These orders or rulings may, among other things:

(1) Direct that certain designated facts are established for the purposes of the proceeding;

(2) Prohibit a participant from introducing certain designated matters in evidence;

(3) Strike certain evidence, requests, pleadings, or parts thereof; or,

(4) Such other relief as the Commission deems appropriate.

§ 3001.87 Interrogatories.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant in a proceeding may propound to any other participant no more than a total of 25 written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter of the proceeding. An interrogatory with subparts that are logically or factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. The respondent shall answer each interrogatory and furnish such information as is available. The participant propounding the interrogatories shall file them with the Commission in conformance with §§ 3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the period for intervenor discovery on the Postal Service case ends if the interrogatories are filed within 7 days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than 6 days prior to the filing date for the participant's rebuttal or surrebuttal testimony.

(b) *Answers.* (1) Answers to interrogatories shall be prepared so that they can be incorporated into the record as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who propounded the interrogatory, and the number and text of the question.

(2) Each interrogatory shall be answered separately and fully in writing by the individual responsible for the answer, unless it is objected to, in which event the reasons for objection shall be stated in a motion to be excused from answering in the manner prescribed by paragraph (c) of this section.

(3) An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact.

(4) Answers filed by a respondent shall be filed in conformance with §§ 3001.9 through 3001.12 within 7 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer. Any other period fixed by the Commission or presiding officer shall end before the conclusion of the hearing.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering an interrogatory, file a motion pursuant to § 3001.75(b) to be excused from answering.

(d) *Supplemental answers.* A respondent has a duty to timely amend a prior answer if it obtains information upon the basis of which it knows that the answer was incorrect when made or is no longer true. A respondent shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. A respondent shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

§ 3001.88 Production of documents.

(a) *Service and contents.* (1) In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant a request to produce and permit the participant making the request, or someone acting on behalf of the participant, to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the respondent.

(2) The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place, and manner of making inspection. The participant requesting the production of documents or items shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* (1) The respondent shall file an answer to a request under paragraph (a) of this section with the Commission in conformance with §§ 3001.9 through 3001.12 within 7 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, whether inspection will be permitted as requested.

(2) If the respondent objects to an item or category, it shall state the reasons for objection in a motion to be excused from answering as prescribed by paragraph (c) of this section.

(c) *Motions to be excused from answering.* A respondent may, in lieu of answering a request for production, file a motion pursuant to § 3001.75(b) to be excused from answering.

§ 3001.89 Admissions.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The admission shall be for purposes of the pending proceeding only. The participant requesting the admission shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* (1) A matter for which admission is requested shall be

separately set forth in the request and is deemed admitted unless, within 7 days after the request is filed, or within such other period as may be established by the Commission or presiding officer, the respondent files a written answer or motion to be excused from answering pursuant to paragraph (c) of this section. Answers to requests for admission shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12.

(2) If the answer filed by the respondent does not admit a matter asserted in the participant's request, it must either specifically deny the matter or explain in detail why it cannot truthfully admit or deny the asserted matter. When good faith requires, the respondent must admit a portion of the asserted matter and either deny or qualify the remaining portion of such asserted matter. Lack of knowledge for failing to admit or deny can be invoked only after reasonable inquiry if the information already possessed or reasonably obtainable is insufficient to enable an admission or denial.

(3) Grounds for objection to requests for admission must be stated. Objections cannot be based solely upon the ground that the request presents a genuine issue for trial.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering a request for admission, file a motion pursuant to § 3001.75(b) to be excused from answering.

§ 3001.90 Rebuttal testimony.

(a) *Timing.* Any participant may file rebuttal testimony on or before the date established for that purpose by the procedural schedule issued by the Commission pursuant to § 3001.80. Hearing on rebuttal testimony shall proceed as set forth in the procedural schedule.

(b) *Limitations.* The scope of rebuttal testimony shall be limited to material issues relevant to the specific proposal made by the Postal Service. Rebuttal testimony shall not propose, or seek to address, alternatives to the Postal Service's proposal.

(c) *Intent to file rebuttal testimony.* If a participant wishes to file rebuttal testimony, it must file a document confirming its intent to file rebuttal testimony with the Commission by the date provided in the procedural schedule.

(d) *Adjustment of dates.* If no participant files a confirmation of intent to file rebuttal testimony on or before the date established by the procedural schedule issued by the Commission pursuant to § 3001.80, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

§ 3001.91 Surrebuttal testimony.

(a) *Scope.* Surrebuttal testimony shall be limited to material issues relevant to the Postal Service's proposal and to the rebuttal testimony which the surrebuttal testimony seeks to address. Testimony that exceeds the scope of the Postal Service's proposal or rebuttal testimony shall not be permitted.

(b) *Motion for leave to file surrebuttal.* A participant who wishes to file surrebuttal testimony must obtain prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to § 3001.75(d) on or before the date provided in the procedural schedule established by the Commission. The motion must summarize the surrebuttal testimony the participant wishes to file and must identify and explain exceptional circumstances that require the filing of such testimony. The moving participant bears the burden of demonstrating exceptional circumstances that warrant a grant of the motion. Answers to such motions may be filed as provided in § 3001.75(d).

(c) *Deadline for filing surrebuttal authorized by the Commission.* In the event the Commission grants the motion for leave to file surrebuttal testimony, the moving participant must file its proposed surrebuttal testimony by the date provided in the procedural schedule established pursuant to § 3001.80.

(d) *Adjustment of procedural dates.* If no participant files a motion for leave to file surrebuttal testimony, or if the Commission denies all such motions as may be filed, the remaining dates in the procedural schedule may be adjusted by the Commission as it deems to be necessary and appropriate.

§ 3001.92 Hearings.

(a) *Initiation.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to § 3001.80.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting *en banc* with a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) *Order of procedure.* In requests for advisory opinions before the Commission, the Postal Service shall be the first participant to present its case. Unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of all other participants and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e)(1) *Presentations by participants.* Each participant shall have the right in public hearings to present evidence relevant to the Postal Service's proposal, cross-examine (limited to testimony adverse to the participant conducting the cross-examination), object, move, and argue. The participant's presentation shall be in writing and may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination shall be served in accordance with §§ 3001.9 through 3001.12 no later than 3 days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''PR–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)''). When a participant designates written cross-examination, two hard copies of the documents (unfastened, single-spaced, not hole-punched) to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will not be admitted into the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination shall be filed 3 or more days before the announced appearance of the witness and shall include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits shall be filed at least 2 days (including 1 working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant shall be delivered to counsel for that participant and served 3 or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least 2 days (including 1 working day) before the scheduled appearance of the witness.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately:

(1) The number of witnesses to be heard upon any issue,

(2) The examination by any participant to specific issues, and

(3) The cross-examination of a witness to that required for a full and true disclosure of the facts necessary for exploration of the Postal Service's proposal, disposition of the proceeding, and the avoidance of irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* Except as provided in § 3001.75(a), after a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefore and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any motion not reserved for decision by the Commission in § 3001.75(a). This section shall not preclude a presiding officer from referring any motion made in hearing to the Commission for ultimate determination.

(i) *Transcript corrections.* Corrections to the transcript of a hearing shall not be requested except to correct a material substantive error in the transcription made at the hearing.

(j) *Field Hearings.* Field hearings will not be held except upon a showing by any participant and determination by the Commission that there is exceptional need or utility for such a hearing which cannot be accomplished by alternative means.

§ 3001.93 Initial and reply briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, participants may file initial and reply briefs. The dates for filing initial and reply briefs shall be established in the procedural schedule issued pursuant to § 3001.80. Such dates may be modified by subsequent order issued by the Commission or the presiding officer.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request;

(4) A discussion of the evidence, reasons, and authorities relied upon with precise references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Length.* Initial briefs filed by all participants other than the Postal Service shall not exceed 14,000 words. Initial briefs filed by the Postal Service shall not exceed 21,000 words. Reply briefs filed by all participants other than the Postal Service shall not exceed 7,000 words. Reply briefs filed by the Postal Service shall not exceed 10,500 words. All participants shall attest to the number of words contained in their brief. Tables of cases, tables of citations, and appendices shall not be considered as part of the word count.

(d) *Include by reference.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(e) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(f) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 through 3001.12.

(g) *Statements of Position.* As an alternative to filing a formal brief, a participant may file a Statement of Position. To the extent practicable, the contents of each Statement of Position should include a clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request, as well as any points or factors in the existing record that support the participant's position. Statements of Position shall be limited to the existing record and shall not include any new evidentiary material.

Appendix A to Subpart D of Part 3001—Pro Forma N-Case Procedural Schedule

Line	Action	Day number
1	Pre-Filing Consultations [1]	n/a.
2	Commission Order [2]	n/a.
3	Filing of Postal Service Request	0.
4	Commission Notice and Order [3]	1–3.
5	Technical Conference	10.
6	Participant Discovery on Postal Service Case Ends	28.
7	Responses to Participant Discovery on Postal Service Case	35.
8	Participants Confirm Intent to File a Rebuttal Case	37.[4]

Line	Action	Day number
9	Filing of Rebuttal Cases (if submitted)	42.
10	Deadline for Motions to Leave to File Surrebuttal	44.[5]
11	Deadline for Answers to Motions for Surrebuttal	46.
12	Filing of Surrebuttal Cases (if authorized)	49.[6]
13	Hearings.	
	Hearings (with no Rebuttal Cases)	42–44.
	Hearings (with Rebuttal Cases, but no requests for leave to file Surrebuttal Cases).	49–51.
	Hearings (with Rebuttal Cases and requests for leave to file Surrebuttal Cases).	54–56.
14	Initial Briefs	(7 days after conclusion of hearings).
15	Reply Briefs	(7 days after filing of Initial Briefs).
16	Target Issuance Date of Advisory Opinion	90.

[1] The Postal Service would initiate pre-filing consultations and would file a notice with the Commission of such consultations prior to their commencement.
[2] This order would appoint a Public Representative.
[3] This notice and order would announce the Postal Service request, set a deadline for interventions, set a date for a technical conference, and establish a procedural schedule.
[4] If no participant elects to file a rebuttal case, hearings begin on Day 42.
[5] If no surrebuttal cases are requested, hearings being on Day 49.
[6] If one or more surrebuttal cases are requested (whether or not authorized by the Commission), hearings begin on Day 54.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–12430 Filed 6–9–14; 8:45 am]

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FEDERAL REGISTER

Vol. 79 Tuesday,
No. 111 June 10, 2014

Part IV

The President

Proclamation 9139—D-Day National Remembrance Day, 2014

Federal Register
Vol. 79, No. 111
Tuesday, June 10, 2014

Presidential Documents

Title 3—

The President

Proclamation 9139 of June 5, 2014

D-Day National Remembrance Day, 2014

By the President of the United States of America

A Proclamation

On June 6, 1944, before dawn broke across the beaches of Normandy, scores of allied service members prepared to fight a battle that would decide the fate of freedom in the 20th century. The odds weighed against them. That year, the Nazis had fortified the Atlantic Wall against a seaborne invasion, lined the coast with mines, and planted sharpened poles to await allied paratroopers. On D-Day, American, British, and Canadian forces advanced through thickets of barbed wire and scaled heavily protected cliffs. They braved gales of bullets and artillery fire, taking heavy losses as they cut through Nazi defenses. Thousands gave their last full measure of devotion, and by the end of the day, the ground on which they died was free once more.

Victory on D-Day dealt a significant blow to an ideology fueled by hatred. It allowed America and our allies to secure a foothold in France, open a path to Berlin, and liberate a continent from the grip of tyranny. It made possible the achievements that followed the end of World War II—the Marshall Plan, the NATO alliance, and the shared prosperity and security that flowed from each.

Seventy years later, we pay tribute to the service members who secured a beachhead on an unforgiving shore—the patriots who, through their courage and sacrifice, changed the course of an entire century. Today, as we carry on the struggle for liberty and universal human rights, let us draw strength from a moment when free nations beat back the forces of oppression and gave new hope to the world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 6, 2014, as D-Day National Remembrance Day. I call upon all Americans to observe this day with programs, ceremonies, and activities that honor those who fought and died so men and women they had never met might know what it is to be free.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

[FR Doc. 2014–13704
Filed 6–9–14; 11:15 am]
Billing code 3295–F4

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